

1 **Minutes of the New Market**
2 **Town Council Meeting**
3 **Monday, September 17, 2018**
4 **6:30 pm**
5

6 The New Market Town Council met in the Council Chambers of the Arthur L.
7 Hildreth, Jr. Municipal Building on Monday, September 17, 2018 with the following
8 members present: Mayor Douglas Bradley, Peggy Harkness, Daryl Watkins, Peter
9 Hughes, Scott Wymer, Tim Palmer, and Larry Bompiani.

10
11 Town Attorney – Jason Ham
12 Town Manager – J. Todd Walters
13 Town Treasurer – Teresa Green
14 Town Planner – Alex Berryman
15 Events & Marketing Director – Amber Smoot
16 Administrative Assistant – Donna Lohr
17

18 Mayor Bradley called the meeting to order and established a quorum with all
19 members present. The Pledge of Allegiance was recited in unison. Mayor Bradley
20 welcomed all visitors and guests.
21

22 **Approval of the Agenda:**
23

24 **Mr. Hughes made a motion to approve the agenda as presented. Mr. Palmer**
25 **seconded the motion which passed on a unanimous 6-0 voice vote.**
26

27 **Consent Agenda:**
28

29 **Mr. Bompiani moved to approve the consent agenda which included the**
30 **minutes from the August 20, 2018 Special Called meeting of the Town Council, the**
31 **minutes from the August 20, 2018 meeting of the Town Council, the minutes from**
32 **the September 4, 2018 Special Called meeting of the Town Council and the**
33 **Financial Statements for August 2018. Mr. Palmer seconded the motion which**
34 **carried on a unanimous 6-0 voice vote.**
35

36 **Public Hearing:**
37

38 No public hearings scheduled.
39

40 **Citizen Comments and Petitions:**
41

42 The first citizen to speak was Mr. Sonny Mongold of Pleasant View Subdivision.
43 He mentioned that he had concerns regarding a possible Conservation Easement on land
44 that the Shenandoah Valley Battlefields Foundation has contracted to purchase. Mr.
45 Mongold stated that he lives on Shady Lane and about five years ago a house on that
46 street burned down. Mr. Mongold stated that the Town has no jurisdiction over that. He
47 said it's a county problem because it comes under the County building code instead of the
48 Town's. Mr. Mongold stated that he doesn't fault the town and remarked that he
49 understands the system. Mr. Mongold said that he went on the computer and researched

50 the National Conservation Easement Database (NCED). Mr. Mongold read the
51 following: "What is a conservation easement? A conservation easement is a legal
52 agreement between the landowner and an eligible organization that restricts the activity
53 that may take place on property in order to protect the land's conservation value. Each
54 easement's restrictions are tailored to the particular property, to the interests of the
55 individual owner, and to the policies and purpose of the easement holder. Also known as
56 a conservational restriction, conservational easements are recorded as a deed restriction
57 and the restriction applies to all future owners of the land. The right to enforce the
58 restrictions is held by the easement holder. To understand the easement concept think of
59 owning land and holding a bunch of rights. A landowner may sell or give away the
60 whole bundle of rights or just one or two of these rights. The rights are given away, sold,
61 or otherwise transferred to the easement holder. They include, for example, the right to
62 construct buildings, to subdivide the land, to restrict access, to harvest timber. By selling
63 or donating a conservation easement a landowner retains some rights and gives up others
64 by deeding them to a qualified holder."

65 Mr. Mongold stated that he is not opposed to the conditional use permit. He remarked
66 that he will support that but he believes a conservation easement in the middle of
67 downtown New Market is ludicrous. He stated that if council supports that they are
68 giving up all their rights to control that land. Mr. Mongold mentioned a gentleman he
69 knows who had a property with a conservation easement on it and the man tried to move
70 two trailers on to the property and found out he could not do that. Mr. Mongold
71 reiterated that if a conservation easement is put at the Battlefield Foundation's property
72 then the Town will give up its rights to have any say to what goes on at that property.
73 Mr. Mongold remarked that he doesn't believe the Town or the adjoining property
74 owners want that. Mr. Mongold said that the conservation easement was not explained
75 very well at the recently held public hearing. In the future, he believes that a better job
76 needs to be done of educating the citizens.

77 The next citizen to speak was Ms. Deborah Dralle. She advised that she owns the
78 adjoining property to the Battlefield Foundation's property. She stated that she had done
79 a little research, met with Mr. Berryman, and read over the Virginia Department of
80 Historic Resources which is who would grant this conservation easement. The state
81 restrictions are much different than the national and being a historic property there is
82 tremendous control by the state over what happens on that property. They are only
83 allowed to make very minor repairs and changes to it. They cannot do drastic things or
84 build buildings without going before the board. Ms. Dralle stated that she is now very
85 comfortable with it. She believes they would be a good neighbor and she does not have a
86 problem with the conservation easement.

87 The next citizen to speak was Mr. Gordy Farrey of 9250 North Congress Street.
88 He stated that his wife Claudia and he are in favor of the Shenandoah Valley Battlefield
89 Foundation's intended use of the property, located at 9276 North Congress Street. He
90 suggests that the New Market Town Council support their efforts in every way possible,
91 when the purchase of the aforementioned property is finalized.

92 The next citizen to speak was Mrs. Ruth Reedy of 9262 John Sevier Road, which
93 is adjacent to the property the Shenandoah Valley Battlefields Foundation is under
94 contract to purchase. Mrs. Reedy stated that she was dismayed that a conservation
95 easement is being discussed because she did not see that on the agenda for this evening,
96 nor is it an issue in relation to the request for a conditional use permit. She stated that
97 only the property owner can request a conservation easement. She stated that if whoever
98 purchases the property, decides they want a conservation easement, it is their right to

99 request it. Until they own the property, it is not an issue and council needs to go on to the
100 more important issue of the request for a conditional use permit. Mrs. Reedy stated that
101 she is in support of the Shenandoah Valley Battlefields Foundation purchase of the
102 property.

103 Mr. Keven Walker of the Shenandoah Valley Battlefields Foundation (SVBF)
104 was the next person to speak. Mr. Walker spoke regarding the conservation easement.
105 He stated that the Town does not give up any of the authority that it would typically have
106 over any other property in town. The property is still within Town limits and it would
107 still be subject to all the authorities that this body has laid out in Town Ordinances. The
108 conservation easement has been brought up because SVBF is requesting a letter of
109 support from the Town that would support their application for grants to pay for that
110 property. The property is being purchased for \$285,000 of which approximately \$45,000
111 will be raised by SVBF nationally. In order to obtain the rest of the money they hope to
112 apply for grants, both state and federal. In order to qualify for the grants, what the state
113 and federal government is purchasing is the right to protect that property's historic
114 integrity. That is why they would give the SVBF a grant or money. They are not giving
115 the funds to purchase the property, but they are giving the money so that they give up
116 some of the rights to harm that property's historic integrity. In return for that, they will
117 give the SVBF cash, which they will use to pay down the debt they will incur in
118 purchasing the property. That is why the request for a letter of support is on the agenda
119 this evening. The SVBF needs the Town's support due to the "home rule" issue. It
120 would be a Virginia held easement on that property. The state of Virginia will not hold
121 an easement on any property that is out of line with the local municipality's decision
122 making process on that property. In order to apply for the grants, the SVBF needs a letter
123 from the Town stating that the Town agrees that this property can go under easement if
124 the SVBF ever applies for the easement. The SVBF can purchase the property without
125 those grants. The SVBF is investing in the Town. Mr. Walker stated that Mr. Mongold
126 came to the SVBF office and encouraged SVBF to purchase property 200 yards from the
127 property in question this evening because Mr. Mongold did not wish to see development
128 on that property. The Shenandoah Valley Battlefields Foundation has invested in
129 multiple properties in Town. They are investing in their hometown because heritage
130 tourism and historic integrity in the Town will play an important role in the future and
131 they believe their investment is worth it. Mr. Walker reiterated that if they are not able to
132 apply for grant funding in regards to this property, then they will have to pay the
133 \$285,000 in another way. Mr. Walker stated that if they do not receive cooperation from
134 the Town, then they leave \$285,000 on the table and they will not receive that money as a
135 community from the Commonwealth of Virginia or from the Federal Government. They
136 will have to bear that cost which means that their development projects for the Town will
137 come to a halt until they pay off that debt. That means that the parklike experience that
138 they are trying to develop between here and the VMI battlefield, historic signs, historic
139 fencing, brochures, public advertising, will be unaffordable until that debt is paid off.
140 They will preserve the property, but will they preserve the property and have the funds to
141 begin the community related projects right away? Or, will all the projects grind to a halt
142 because they could not access grant funding to purchase the property. The property is
143 battlefield, as is, the entire Town. The Battlefield Foundation does not believe that every
144 property in Town should be saved. He stated that they are not trying to rewind the clock
145 to the year 1864. They are picking and choosing small parcels of property, places where
146 they can tell the story of the Town of New Market in an engaging way to keep people on
147 our main streets longer. The Battlefield Foundation believes that their work will benefit

148 the community and will be an economic driver in the future. Mr. Walker stated that they
149 are not asking for anything that is outside the Comprehensive Plan adopted by the Town
150 years ago. The Battlefield Foundation is trying to actuate the plans laid out by Council in
151 the Comprehensive Plan.

152

153 **Committee Reports:**

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155 There were no Committee Reports.

156

157 **Staff Reports:**

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159 **1. Tourism Zone Report - Mr. Alex Berryman**

160 Mr. Berryman gave a brief power point presentation explaining the concept of a
161 tourism zone and how adopting a tourism zone program may benefit the Town. Mr.
162 Berryman distributed materials explaining the draft tourism zone program to council for
163 their review. A copy of Mr. Berryman's presentation and materials is on file with the
164 minutes.

165

166 **2. Public Safety Monthly Report – Chief Chris Rinker**

167 Chief Rinker gave a brief power point presentation which included statistics for
168 the department for the month of August as well as events and trainings attended by New
169 Market Officers. Chief Rinker also presented a new door hanger being utilized by the
170 police department. The door hangers enable the Police to let residents know if they have
171 stopped by the business or residence and the reason for the stop. It also lets residents
172 know to contact the police department if necessary. A copy of the information presented
173 by Chief Rinker is on file with the minutes.

174

175 **3. Events & Marketing Report – Mrs. Amber Smoot**

176 Mrs. Smoot gave a power point presentation which included a review of events
177 held during the month of August. She also presented information on upcoming events.
178 A copy of Mrs. Smoot's report is on file with the minutes.

179

180 **Action Items:**

181 The first action item was the discussion and consideration of a Conditional Use
182 Permit for Residences of Opportunity LLC/Good Life Corporation located at 178 Early
183 Street in New Market, VA. Mr. Walters advised that the Town did hold a joint public
184 hearing on this and the Planning Commission did recommend approval. Mr. Berryman
185 explained that Good Life Corporation currently operates a group home for people with
186 intellectual disabilities at this location. They wish to remodel the interior to create
187 independent living units and some office space. The Planning Commission
188 recommended approval of the Conditional Use Permit with the following conditions: No
189 more than five separate dwelling units shall exist within the primary structure; Off-street
190 parking shall be provided in accordance with Sec. 70-150 and certified by the Zoning
191 Administrator; Office space for the lifespan of the conditional use permit shall only be
192 used by Good Life Corporation or an affiliate that serves individuals with disabilities.
193 **Mr. Palmer made a motion to approve the Conditional Use Permit for Residences of**
194 **Opportunity LLC with the conditions as stated by Mr. Berryman, and as listed in**
195 **the packet. Mr. Hughes seconded the motion which passed on the following roll call**
196 **vote:**

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201

Mr. Hughes	Aye	Mr. Watkins	Aye
Mr. Wymer	Aye	Mr. Bompiani	Aye
Mr. Palmer	Aye	Mrs. Harkness	Aye

202 The next action item was the discussion and consideration of a Conditional Use
203 Permit for Shenandoah Valley Battlefields Foundation (SVBF) located at 9276 North
204 Congress Street. Mr. Berryman explained that the Battlefields Foundation is planning to
205 purchase the former Reformation Lutheran Church parsonage which is currently a single
206 family home. They are seeking to convert the structure's use to a mix of a museum,
207 archives, and retail gift shop space, with only 900 of the 2,700 square feet of the structure
208 being open to the public. The remaining space will be for their collections and if
209 members of the public wish to review them, then a member of the staff will get it and
210 bring it to the public area. The planning commission recommended approval with the
211 following conditions: The C.U.P. shall take effect upon the Zoning Administrator
212 certifying SVBF acquired full legal ownership of the property; Off-street parking shall be
213 provided in accordance with Sec. 70-150 and certified by the Zoning Administrator;
214 Operating hours shall be limited to Monday through Saturday 9:00 am to 5:00 pm and
215 Sunday 12:00 to 5:00 pm with the following exception – The facility may operate until
216 10:00 pm two times per calendar month, and written notice at least five days in advance
217 must be provided to the Town and adjacent landowners, including those across any road,
218 when exercising this exception. Mr. Walters mentioned that there had been some concern
219 that council would be granting a C.U.P. to a piece of land that technically the church still
220 owns and the Battlefields Foundation does not. The C.U.P. does take effect upon the
221 Battlefields Foundation taking ownership of the property so this would not be affecting
222 the church property if something happens and the sale of the property would fall through.
223 **Mr. Hughes made a motion to approve the request for a Conditional Use Permit for**
224 **Shenandoah Valley Battlefields Foundation (SVBF) located at 9276 North Congress**
225 **Street with the conditions as stated in the packet. Mrs. Harkness seconded the**
226 **motion.** Mr. Watkins asked Mr. Keven Walker if there were plans in place for the
227 location to be ADA compliant. Mr. Walker advised that the interior of the structure
228 appears to be ADA accessible, at least for the part that will be open to the public. There
229 will need to be some work done to the exterior in order to provide an ADA entrance. Mr.
230 Walker advised that the Battlefields Foundation has gone to great lengths at other
231 properties they own to make sure they are ADA accessible on all floors and he foresees
232 that the same will be done with this property. **With no further discussion, the motion**
233 **passed on the following roll call vote:**

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237
238

Mrs. Harkness	Aye	Mr. Palmer	Aye
Mr. Bompiani	Aye	Mr. Wymer	Aye
Mr. Watkins	Aye	Mr. Hughes	Aye

239 The third action item was the discussion and consideration of a letter of support
240 for the Shenandoah Valley Battlefields Foundation. Mr. Walters advised that this is a
241 carryover from council's last meeting when they tabled this request in order to have
242 further discussion regarding this issue. Four council members had met with Mr. Walker
243 in order to look over the property the Battlefields Foundation plans to purchase at 9276
244 North Congress Street. Mr. Walters remarked that if council members wished to discuss
245 this issue further, they could do so at this time. Mr. Palmer advised that he is in favor of

246 a greenway trail that has previously been proposed by the Battlefields Foundation
247 however he is unaware if an agreement has ever been struck, or if the logistics have ever
248 been worked out between the parties that would be involved in order for a greenway trail
249 to be built. Mr. Palmer advised that he is also in favor of the Battlefields Foundation
250 acquiring the property at 9276 North Congress Street. Mr. Palmer mentioned that in their
251 request for a letter of support from the Town, the Battlefields Foundation has stated that
252 their plans include following the Town of New Market's Future Growth Plan by
253 preserving open green space. Mr. Palmer advised that nothing in the Future Growth plan
254 states that anything is in perpetuity. Mr. Palmer advised that there is already open space
255 in town from the town parks, the golf course, and Rebel Park. Mr. Palmer stated that the
256 Battlefields Foundation owns other properties in the Town however, the location of 9276
257 North Congress Street is located in the center of the future growth area for New Market.
258 The future growth area is north of this location. The town cannot grow in any other
259 direction but north and this piece of property will be located right in the middle of that
260 growth area. However, if something were to happen to the building on this property, Mr.
261 Palmer has asked Mr. Walker if the Foundation would rebuild on that property and the
262 answer was no. Under those circumstances, the Town would lose an attraction for
263 tourism and nothing could be done with the property. Mr. Palmer stated that he would be
264 unable to justify voting for a letter of support for the Foundation when their vision for the
265 Town does not seem to be in line with the Town's vision for the future, based on the
266 future growth plan. Mr. Palmer stated that it is his understanding that the Battlefields
267 Foundation can still purchase the property even if they do not get grant funding so it is
268 not necessary for the Town to endorse a letter of support. Mr. Palmer stated that at best,
269 the Town would be approving an endorsement for a conservation easement for a trail that
270 can't be terminated on a VMI piece of property as far as we know at this point, for a
271 piece of property that doesn't have parking available to it, and for monies that they do not
272 have available to them at the time the conservation easement is offered.

273 Mrs. Harkness stated that there are a number of residents who live around the
274 property who have spoken and have advised Council that they want Council to support
275 this. In addition, Mr. Berryman has advised that this is in keeping with the Town's
276 Comprehensive Plan. Mrs. Harkness commented that if the Battlefields Foundation does
277 not get the grant funding to purchase this property then it ties up their funds which could
278 be utilized as an investment towards the greenway trail but instead will need to go
279 towards the purchase of this property and the greenway trail will be delayed until further
280 funds can be raised towards that project. Mrs. Harkness further stated that the
281 Battlefields Foundation has proven to be a good neighbor and an asset to the Town and
282 there is every reason to believe they will be the same good neighbor and asset to the
283 Town with the purchase of this location.

284 Mr. Wymer asked if this somehow limits the Town's decision making down the
285 road, if this conservation easement is granted. Does this limit the Town's control of what
286 can be done with this property?

287 Mr. Walters advised that depends on what is meant by "what the Town can do".
288 If the property is sold, the Town has no control over it anyway other than town
289 ordinances still have to be met.

290 Mr. Wymer remarked that if the Town ever wanted to use that land to expand,
291 does the conservation easement determine what can be done with the land?

292 Mr. Walters stated that if there is an easement there, it does say for perpetuity, but
293 that doesn't mean that somewhere down the line if this property is sold to someone else

294 for whatever reason, that they could not go to the state and ask for that easement to be
295 removed. It may require some money to be paid back though.

296 Mr. Wymer questioned if the state gets to control what happens to it then the
297 Town has no say in it.

298 Mr. Ham remarked that it would be like the property being sold to anyone else.
299 Ultimately the Town has the control to condemn any property that it wants to. The Town
300 hasn't done that in forever. When the pipeline was built, the line went through the front
301 yards of some properties and it was ultimately for the public good. So, the Town still has
302 that type of power. If the Town ever needed the property, it could legally be taken from
303 the Battlefields Foundation. Mr. Ham advised that he can't imagine that the Town would
304 ever do that, but the Town does have the power to do that. A conservation easement
305 doesn't change that. The idea that the Town somehow loses all control over the property
306 is not true. The Town still has regulatory power, zoning power, police power and
307 condemnation power.

308 Mr. Wymer asked if the land sold down the road and someone wanted to put a
309 McDonald's on the property, would that be possible.

310 Mr. Ham replied that he did not know what the conservation easement says, but
311 he suspects that the answer is probably not. The federal and state governments probably
312 want something for their money so he thinks there would probably be some caveats to
313 that, but he does not know that without seeing the conservation easement.

314 A brief discussion ensued regarding tax credits on properties with conservation
315 easements. Mr. Walker explained that the Shenandoah Valley Battlefields Foundation is
316 not eligible for tax credits for the property.

317 Mr. Palmer reiterated that he would find it difficult to justify to the community
318 that he supported putting a conservation easement on a property for perpetuity in the
319 middle of New Market.

320 Mr. Berryman offered clarification for Mr. Wymer on the zoning of the property.
321 Mr. Berryman advised that the property is zoned R-2A. The difference between R-2A
322 and R-2 is that a few very mild commercial uses such as a gift shop, or hair salon, with a
323 very low traffic impact are permissible. R-2A is located along Route 11 and Route 211
324 West. Given the potential owner and the expectation that the Battlefields Foundation will
325 be a long living and fiscally responsible non-profit organization. Between that combined
326 with the conservation easement, what is possible to expect is that what is on the site
327 currently, one home, 2,700 feet of open space with a detached garage and 1.25 acres of
328 total lot space will remain as existing.

329 Mr. Bompiani mentioned that he did not believe growth would occur on that
330 property or the properties next to it. But that does not matter because the Town has so
331 many acres that we want to develop and we will move forward with development in those
332 areas. He believes we should bring this business in and move forward.

333 Discussion continued regarding the state's power on properties that have
334 conservation easements on them and which properties in town currently have
335 conservation easements on them.

336 Mrs. Harkness mentioned that it is not often that neighbors come in to support
337 something and in this instance, there are several neighbors present to support the
338 Battlefields Foundation's purchase and intended use of the property.

339 **Mrs. Harkness made a motion to approve the letter of support for the**
340 **Shenandoah Valley Battlefields Foundation. Mr. Bompiani seconded the motion.**
341 **The motion passed on the following 4-2 roll call vote:**
342

343 **Mr. Hughes** **Aye** **Mr. Watkins** **Aye**
344 **Mr. Wymer** **Nay** **Mr. Bompiani** **Aye**
345 **Mr. Palmer** **Nay** **Mrs. Harkness** **Aye**
346

347 **Mayor's Comments:**

348
349 Mayor Bradley reminded everyone of the Fall Fling scheduled for this coming
350 Saturday, September 22, 2018 at the New Market Fire and Rescue Department.
351

352 **Council Comments:**

353
354 There were no comments from council members.
355

356 **Staff Comments:**

357 Mr. Walters mentioned the following items:


- 358 • The Shady lane property issue had been mentioned at this evening's
- 359 meeting. Mr. Walters stated that he has been in contact with the
- 360 building official and he is moving to his next legal step on that
- 361 property.
- 362 • Alex Berryman will be attending a Builder's Forum to be held at
- 363 Tripplett Tech on Wednesday, representing the Town of New Market
- 364 and the new and updated zoning code.
- 365 • Mr. Walters will be attending the VDOT LAP Conference for the next
- 366 few days. The LAP Conference goes over their funding, their
- 367 opportunities, and changes.
- 368 • The Tennis Court contractor is scheduled to begin work this week.
- 369 • The Pocket Park restoration of the Henkel Press sign is scheduled to
- 370 begin soon.
- 371 • The Cadet Road property went to closing today.

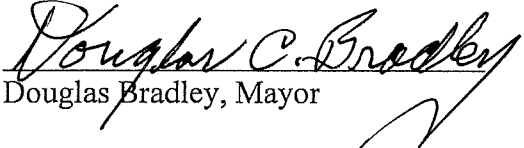
372
373 **Closed Meeting:**

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375 No closed meetings.
376

377 **Adjournment:**

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379 At 8:09 p.m. Mr. Watkins made a motion to adjourn the meeting. Mr.
380 Hughes seconded the motion which carried on a unanimous 6-0 voice vote.

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384 _____
385 J. Todd Walters, Town Clerk

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383 _____
384 Douglas Bradley, Mayor