

WINCHESTER COMMON COUNCIL
JUNE 11, 2013
AGENDA
7:00 P.M.

CALL TO ORDER AND ROLL CALL

INVOCATION – Kitty Hahn-Campanella, Highland Memorial Presbyterian Church

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – May 14, 2013 Regular Meeting, May 21, 2013 Work Session, May 28, 2013 Work Session, and May 28, 2013 Emergency Special Meeting

REPORT OF THE MAYOR

R-2013-28: Resolution – Recognizing the brave, calm manner of 14 year old Savanna Payne during a medical emergency (pages 5-7)

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

1.0 PUBLIC HEARINGS

- 1.1 O-2013-10:** Second Reading – AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2013 (**REQUIRES ROLL CALL VOTE**)(pages 8-15)

- 1.2 O-2013-12:** Second Reading – AN ORDINANCE TO REZONE 0.45 ACRES OF LAND AT 2307 STONERIDGE ROAD (Map Number 269-05-A-1) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH CE DISTRICT OVERLAY RZ-13-98 (**REQUIRES ROLL CALL VOTE**)(pages 16-23)

- 1.3 O-2013-13:** Second Reading – AN ORDINANCE TO REZONE A 0.75 ACRE PORTION OF LAND AT 441 LINDEN DRIVE (Map Number 130-01- -1) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT TO MEDICAL CENTER (MC) DISTRICT RZ-13-134 (**REQUIRES ROLL CALL VOTE**)(pages 24-29)

- 1.4 O-2013-14:** Second Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, AND 23 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY,

FEES, AND CORRIDOR ENHANCEMENT TA-13-138 (REQUIRES ROLL CALL VOTE)(pages 30-40)

- 1.5 O-2013-11:** Second Reading – AN ORDINANCE TO AUTHORIZE THE APPROPRIATION OF FUND FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2014 **(REQUIRES ROLL CALL VOTE)(pages 41-48)**
- 1.6 O-2013-15:** Second Reading – AN ORDINANCE TO IMPLEMENT THE PROVISIONS OF THE BOARDS AND COMMISSIONS MEMORANDUM ADOPTED BY COMMON COUNCIL ON FEBRUARY 12, 2013 PERTAINING TO THE FUNCTIONING AND PROCESSES ASSOCIATED WITH THE APPOINTMENT AND OPERATIONS OF THE COUNCIL-APPOINTED BOARDS AND COMMISSIONS **(REQUIRES ROLL CALL VOTE)(pages 49-60)**
- 1.7 CU-13-211:** Conditional Use Permit – Request of KKE Properties LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 24 Wolfe Street, Unit 6 and 26 Wolfe Street, Unit A (*Map Number 193-01-C-8*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. **(REQUIRES ROLL CALL VOTE)(pages 61-66)**
- 1.8 CU-13-176:** Conditional Use Permit – Request of Charles Salamone on behalf of AT&T Mobility for a conditional use permit to upgrade existing telecommunications facilities with additional antennas and equipment at 103 East Piccadilly Street (*Map Number 173-01-P-6*) zoned Central Business (B-1) – Aaron Grisdale, Director of Zoning & Inspections **(REQUIRES ROLL CALL VOTE)(pages 67-71)**

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

- 3.1 O-2013-17:** First Reading: AN ORDINANCE TO AUTHORIZE THE ACQUISITION OF PROPERTIES NECESSARY FOR THE REALIGNMENT OF NATIONAL AVENUE – PICCADILLY STREET – EAST LANE (pages 72-139)
- 3.2 O-2013-18:** First Reading: AN ORDINANCE TO DECLARE THE PROPERTY AT 414 S. BRADDOCK STREET TO BE A NUISANCE; AND APPROPRIATE FUNDS AND AUTHORIZE THE CITY TO ABATE THE NUISANCE AND MAKE EMERGENCY REPAIRS TO THE UNSAFE STRUCTURE (pages 140-205)
- 3.2 R-2013-29:** Resolution – Approval to apply for CLG grant funding through the Virginia Department of Historic Resources for the purposes of amending and

expanding the Nationally-Designated Winchester Historic District and amending the period of significance (pages 206-208)

3.3 Motion to re-appoint Melvin Thomas as a “Ward 4” member of the Winchester School Board to a four year term expiring June 30, 2017

3.4 Motion to re-appoint Mary Margaret Wise as a “Ward 1” member of the Winchester School Board to a four year term expiring June 30, 2017

4.0 AGENDA

4.1 O-2013-16: First Reading: AN ORDINANCE TO CREATE CITY CODE SECTION 14-15 – PHOTO MONITORING SYSTEMS TO ENFORCE TRAFFIC LIGHT SIGNALS (pages 209-215)

4.2 Motion for the Nomination of _____ for appointment to the School Board and direct the Clerk of Council to issue a Notice of a Public Hearing for citizen comment on same in accordance with §22.1-29.1 of the Code of Virginia.

4.3 Motion to appoint _____ as a member of the Winchester Regional Airport Authority to a four year term expiring June 30, 20117

4.4 Motion to appoint _____ as a member of the Northwestern Community Services Board to a three year term expiring December 31, 2016

4.5 Motion to appoint _____ as a member to the Board of Zoning Appeals to an unexpired term ending July 31, 2014

4.6 Motion to appoint _____ as a member of the Social Services Advisory Board to a four year term expiring March 31, 2017

4.7 Motion to appoint Sharon Farinholt as a private sector member and re-appoint Rebecca Ebert as a non-profit sector member and Bill Hottel as a private-sector member of the Winchester-Frederick County Tourism Board each to a three year term expiring on June 30, 2016 (pages 216-217)

4.8 Announce the term expiration of William Buettin as a member of the Economic Development Authority effective August 31, 2013 and direct the Clerk of Council to advertise the vacancy. Mr. Buettin is eligible for re-appointment.

5.0 EXECUTIVE SESSION

5.1 MOTION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO §2.2-3711(A)(7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF RECEIVING LEGAL ADVICE AND STATUS UPDATE FROM THE CITY ATTORNEY AND FOR RECEIVING LEGAL CONSULTATION REGARDING THE SUBJECT OF SPECIFIC LEGAL MATTERS REQUIRING THE PROVISION OF LEGAL ADVICE BY THE

CITY ATTORNEY AND MATTERS OF ACTUAL OR PROBABLE LITIGATION AND PURSUANT TO 2.2-3711(A)(28) FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF THE SUBJECT MATTER OF RECORDS EXCLUDED FROM OPEN MEETING REQUIREMENTS PURSUANT TO SUBDIVISION 11 OF §2.2-3705.6 OF THE CODE OF VIRGINIA AND ISSUED IN ACCORDANCE WITH §56-575.6 OF THE CODE OF VIRGINIA TO THE CITY OF WINCHESTER AS AN AFFECTED LOCAL JURISDICTION AS THOSE TERMS ARE DEFINED IN §56-575.1 OF THE CODE OF VIRGINIA.

6.0 ADJOURNMENT

R-2013-28

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: June 11, 2013 **CUT OFF DATE:** 5/22/13

RESOLUTION XX ORDINANCE PUBLIC HEARING

ITEM TITLE: Resolution to recognize Samantha Payne

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1.	_____	_____	_____
2.	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	5/14/2013
6. City Manager	<i>[Signature]</i>	_____	_____
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature:	<i>[Signature]</i>	_____	5/10/13 Date



APPROVED AS TO FORM:

[Signature]
5/14/2013
CITY ATTORNEY



CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Chief Kevin L. Sanzenbacher
Date: May 10, 2013
Re: Citizen Commendation Award

THE ISSUE:

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

On February 25, 2013, 14 year old Savanna Payne called our Emergency Communications Center (ECC) and advised the dispatcher that her godmother had suffered from a seizure, while in her car, and had crashed into a tree on Jubal Early Dr. Though under extreme stress Savanna remained calm and was able to direct emergency responders to their location by describing their surroundings.

The ECC staff found Vanessa's calm demeanor and concern for her godmother's well being to be astonishing for a person so young. It is for this reason that the ECC staff feels it would be appropriate that Savanna be recognized by a resolution from the Common Council.

BUDGET IMPACT:

OPTIONS:

RECOMMENDATIONS:

The Chief of Police recommends that the City Council approve the resolution recognizing Savanna Payne for her bravery in helping us get help to her godmother.

RESOLUTION TO RECOGNIZE SAVANNA PAYNE

WHEREAS, the cooperation of citizens is vital to the well being of the community; and

WHEREAS, on February 25, 2013, 14 year old Savanna Payne called the Winchester City Emergency Communications Center and advised the dispatcher that her godmother had suffered a seizure and crashed into a tree on Jubal Early Dr.; and,

WHEREAS, though under extreme stress Savanna remained calm and was able to direct emergency responders to the location by describing her surroundings; and,

WHEREAS, the Emergency Communications staff found Savanna's calm demeanor and concern for her godmother's well being to be astonishing for a person so young; and,

WHEREAS, it is the opinion of the ECC staff that it would be appropriate for Savanna to be recognized by a resolution from the Common Council, and,

NOW THEREFORE BE IT RESOLVED, that the Common Council of the City of Winchester, Virginia and the citizens it represents, recognizes the brave, calm, and caring manner in which Savanna Payne got medical assistance on the evening of February 25, in the year 2013.

0-2013-10

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: April 23, 2013 CUT OFF DATE:

RESOLUTION __ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

FY 2013 Supplemental Appropriation Requests

STAFF RECOMMENDATION:

Recommend approval of Supplemental Appropriation Requests

PUBLIC NOTICE AND HEARING:

N/A

ADVISORY BOARD RECOMMENDATION:

N/A

FUNDING DATA:

See attached.

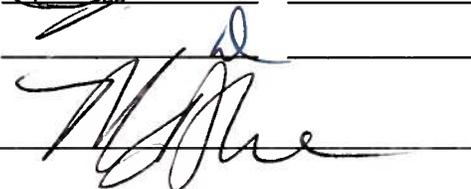
INSURANCE:

No liability assumed.

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney		_____	4/17/2013
6. City Manager		_____	4-18-13
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: _____



Finance Director

4-12-13
Date



APPROVED AS TO FORM:


4/17/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Mary Blowe, Finance Director
Date: April 23, 2013
Re: FY 2013 Supplemental Appropriation Requests

THE ISSUE: The City Finance department prepares two supplemental appropriations throughout the fiscal year. This is the second and last budget adjustment for FY 2013. This is necessary to ensure funds are properly appropriated at fiscal year end.

RELATIONSHIP TO STRATEGIC PLAN: With this resolution, City administration can work within our budget to maintain services and reallocate funds to accomplish *a more livable City for all. And support of our mission of a financially sound City providing top quality municipal services while focusing on the customer and engaging our Community.*

BACKGROUND: City Staff have submitted to the finance department requests for supplemental appropriations during the past 5 months to ensure budget compliance. Finance staff have reviewed the budgets to ensure proper compliance and have compiled the attached supplemental appropriation ordinance.

BUDGET IMPACT:

General Fund

- Debt- increase by \$27,478,200 for debt refunding of \$26,947,200 funded by bond proceeds
- Derecho (wind storm) cleanup- \$311,000 Federal grant; \$83,000 State grant and fund balance

School funds

- See attached School Board Resolutions dated December 10, 2012, April 8, 2013 and May 13, 2013

OPTIONS: City Council can review the supplemental appropriations and choose to not approve as submitted and modify.

RECOMMENDATIONS: Staff recommends the approval of the proposed supplemental appropriation ordinance as submitted.

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
DECEMBER 10, 2012**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2012-2013:

SCHOOL OPERATING FUND

CTE WORKPLACE READINESS GRANT of \$678. These reimbursable state funds will provide workplace readiness skills for standard diploma graduates.

MODIFIED ORAL PROFICIENCY INTERVIEW (MOPI) INSTITUTE FUNDING OF \$200. These reimbursable state funds will reimburse WPS for ACTFL/MOPI Certification Testing fees for teacher.

NATIONAL BOARD CERTIFICATION INCENTIVE INCREASE OF \$17,500. These reimbursable state funds are pass-through funds to our teachers who have their National Board certification.

FOOD SERVICES FUND

FRESH FRUIT AND VEGETABLE PROGRAM (FFVP) GRANT INCREASE OF \$62,880. These reimbursable federal funds will be used to provide fresh fruit and vegetable snacks for students at QES and VACDES.

FEDERAL GRANT FUNDS

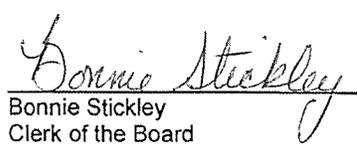
TITLE I INCREASE OF \$162,137. These carryover reimbursable funds will be used for expenses associated with the pre-school program, and the elementary reading programs.

TITLE II, PART A, DECREASE OF \$40,949. These carryover reimbursable funds are used for professional development and class size reduction,

SUMMARY OF FEDERAL GRANT FUNDS

GRANT	ALLOCATION	CARRY OVER	TOTAL	FY12 BUDGET	DIFFERENCE
Title I	974,655	222,034	1,196,689	1,034,552	162,137
Title II	157,321	51,751	209,072	168,123	40,949
TOTAL	1,131,976	273,785	1,405,761	1,202,675	203,086


John Bishop
Chairman


Bonnie Stickley
Clerk of the Board

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
APRIL 8, 2013**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2012-2013:

SCHOOL OPERATING FUND

PROJECT GRADUATION INCREASE OF \$4,500. These reimbursable state funds will target students who have not achieved a verified credit in English, Writing, Reading, and/or Algebra.

HOMELESS INCREASE FOR DONATIONS RECEIVED IN FY 13 OF \$23,000.
These donated funds were received in FY 13 from the Chain of Checks Charitable Program.

ADDITIONAL STATE FUNDING OF \$471,369 DUE TO INCREASED ADM (Average Daily Membership). The budgeted ADM for FY 2013 was 3,950 and it is estimated to be 4,080 at March 31, 2013 (see attachment). Revenues from the state for FY 2013 are based on the average daily membership from September 2012 through March 31, 2013. These reimbursable state funds will be used for:

DESCRIPTION	AMOUNT
Transfer to textbook fund	\$300,000
Bus purchase	\$171,369
TOTAL	\$471,369

State funded in FY 2013 \$366,099 for textbook funds. \$196,046 is the state share and \$170,053 is the local share. These textbook funds will be carried forward in FY 2014 for purchase of textbooks.

SURPLUS FUNDS AT YEAR-END. Any remaining surplus funds for fiscal year 2013 will be transferred to the Capital Improvement Fund (CIP).

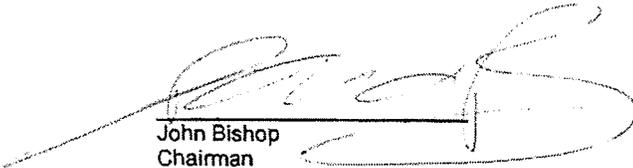
FOOD SERVICES FUND

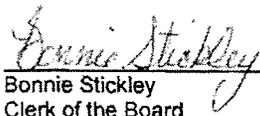
Fund balance transfer of \$47,000. These funds will be used to purchase the following equipment:

SCHOOL	DESCRIPTION	AMOUNT
FDES	Replace Milk Cooler	\$ 1,500
FDES	Replace Pass thru Warmer	\$ 4,500
HHS	New 5 Well – Tray Line – Main kitchen	\$ 8,000
HHS	Replace under-counter Dish Machine-Café 2	\$ 5,000
JKES	New Flatbed Dollie & Dunnage Storage racks	\$ 1,000
All	Replace/Upgrade Computer POS Equipment	\$27,000
	TOTAL	\$47,000

The current fund balance for the food services fund totals \$468,298.

ADDITIONAL STATE FUNDING OF \$8,304. These reimbursable state funds will be used for miscellaneous supplies.


John Bishop
Chairman


Bonnie Stickle
Clerk of the Board

Finance\RSLO4.08.13 budget amendments

**WINCHESTER PUBLIC SCHOOLS
SCHOOL BOARD RESOLUTION
MAY 13, 2013**

Be it resolved that the Winchester City School Board requests the following budget amendments for fiscal year 2012-2013:

INSURANCE FUND

INCREASE OF \$200,000 TO THE INSURANCE FUND FROM FUND BALANCE. WPS applied to participate in the Affordable Care Act's Early Retiree Reinsurance Program (ERRP) in December 2010. We received \$47,926.77 from this program and it was to be used to lower health insurance costs for employees and retirees. Since this has not been done we will provide all employees (current and retirees) a reimbursement of \$92 which would cost \$47,932. The remaining funds will be allocated for our health insurance costs for this fiscal year.

John Bishop
Chairman

Bonnie Stickle
Clerk of the Board

Finance\RSL05.13.13 budget amendments

COMMON COUNCIL



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601
540-667-1815
TDD 540-722-0782
www.ci.winchester.va.us

AN ORDINANCE TO AUTHORIZE THE ADDITIONAL APPROPRIATION OF FUNDS FOR NECESSARY EXPENDITURES OF THE CITY OF WINCHESTER, VIRGINIA FOR THE FISCAL YEAR ENDING JUNE 30, 2013

WHEREAS, Council approves the following additional funds for the purposes herein specified for the fiscal year ending June 30, 2013:

GENERAL FUND

REVENUE

State	83,000
Federal	311,000
Bond Proceeds	26,963,100
Fund Balance/Supplemental Appropriation	<u>121,100</u>
TOTAL GENERAL FUND REVENUE	27,478,200

EXPENDITURES

Parks, Recreation, Cultural	531,000
Community Development	(201,600)
Debt Service	<u>27,148,800</u>
TOTAL GENERAL FUND EXPENDITURES	27,478,200

SCHOOL OPERATING FUND

REVENUE

Local	23,000
State	<u>494,247</u>
TOTAL SCHOOL OPERATING REVENUE	517,247

EXPENDITURES

Instruction	45,878
Transportation	171,369
Fund Transfers	<u>300,000</u>
TOTAL SCHOOL OPERATING EXPENDITURES	517,247

SCHOOL FEDERAL GRANTS FUND

REVENUE

Federal	<u>203,086</u>
TOTAL SCHOOL GRANTS REVENUE	203,086

EXPENDITURES

Instruction	<u>203,086</u>
TOTAL SCHOOL GRANTS EXPENDITURES	203,086

SCHOOL TEXTBOOK FUND

REVENUE

Transfer	<u>300,000</u>
TOTAL SCHOOL TEXTBOOK REVENUE	300,000

EXPENDITURES

Instruction	<u>300,000</u>
TOTAL SCHOOL TEXTBOOK EXPENDITURES	300,000

SCHOOL FOOD SERVICES FUND

REVENUE

State	8,304
Federal	62,880
Fund Balance/Supplemental Appropriation	<u>47,000</u>
TOTAL SCHOOL FOOD SERVICES REVENUE	118,184

EXPENDITURES

Food Services	<u>118,184</u>
TOTAL SCHOOL FOOD SERVICES EXPENDITURES	118,184

SCHOOL INSURANCE FUND

REVENUE

Fund Balance/Supplemental Appropriation	<u>200,000</u>
TOTAL SCHOOL INSURANCE REVENUE	200,000

EXPENDITURES

Non-instructional	<u>200,000</u>
TOTAL SCHOOL INSURANCE EXPENDITURES	200,000

WHEREAS, there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations, and

WHEREAS, all appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully obligated or encumbered, and

WHEREAS, all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

NOW THEREFORE BE IT ORDAINED, by the Common Council of the City of Winchester that the additional appropriations specified herein are hereby appropriated for the purposes specified for the fiscal year ending June 30, 2013.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 4/23/13 (work session), **CUT OFF DATE:** 4/23/13
5/14/13 (1st Reading) 6/11/13 (2nd reading)

RESOLUTION ___ **ORDINANCE** X **PUBLIC HEARING** X

ITEM TITLE:

RZ-13-98 AN ORDINANCE TO REZONE 0.45 ACRES OF LAND AT 2307 STONERIDGE ROAD (*Map Number 269-05-A-1*) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH CE DISTRICT OVERLAY

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 6/11/13 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning	<u>AMG</u>	_____	<u>4/17/13</u>
2. Economic Development	<u>JWD</u>	_____	<u>4/17/13</u>
3. City Attorney	<u>ew</u>	_____	<u>4/18/2013</u>
4. City Manager	<u>ST</u>	_____	<u>4/18/13</u>
5. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: _____
 (Planning)

[Handwritten Signature]

4/17/13



APPROVED AS TO FORM:

[Handwritten Signature]
4/18/2013
 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council
From: Will Moore, Planner
Date: April 17, 2013
Re: RZ-13-98

THE ISSUE:

Rezoning a 0.45-acre vacant parcel of land created with the Harvest Ridge Subdivision back to a residential designation. The property was conditionally rezoned from a combination of HR and LR to B-2 in 2004 in anticipation of it being used accessory to the business immediately to the west in Frederick County, which was under common ownership at that time. That use never commenced and the property is now under separate ownership

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4 – Create a More Livable City for All; Objective 3 – Manage future growth, development and redevelopment consistent with the City's vision, comprehensive plan, and development standards and policies.

The proposed LR zoning for this vacant property is more consistent with the Neighborhood Stabilization Area designation as called for on the Character Map in the Future Development chapter of the Comp Plan than the existing conditional B-2 zoning.

BACKGROUND:

See attached staff report

BUDGET IMPACT:

None

OPTIONS:

- Approve
- Deny

RECOMMENDATIONS:

Planning Commission recommended approval.

Council Work Session
April 23, 2013

RZ-13-98 AN ORDINANCE TO REZONE 0.45 ACRES OF LAND AT 2307 STONERIDGE ROAD (*Map Number 269-05-A-1*) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH CE DISTRICT OVERLAY

REQUEST DESCRIPTION

The request is to rezone the subject vacant property created with the Harvest Ridge Subdivision back to a residential designation. The property was conditionally rezoned from a combination of HR and LR to B-2 in 2004 in anticipation of it being used accessory to the business immediately to the west in Frederick County, which was under common ownership at that time.

AREA DESCRIPTION

The subject property is located on the south side of Cedar Creek Grade at the western corporate limits of the City. Properties to the east fronting on Cedar Creek Grade are zoned HR(CE) and consist of single family homes. Properties to the east behind those fronting on Cedar Creek Grade and to the south are zoned LR and consist of single family homes. The property to the west in Frederick County is zoned RA (Rural Areas) and is in use as a country store/restaurant. Property to the north on the opposite side of Cedar Creek Grade is zoned RO-1(CE) and was the subject of a recent rezoning request that was ultimately denied ("Racey Meadows").



COMMENTS FROM STAFF

The existing conditional B-2 zoning was approved in 2004 to allow for limited use of the property as a nursery in conjunction with the commercially-used property to the west in Frederick County. A 2005 proffer revision was also approved to allow for accessory structures on the property. The use of the subject property as accessory to the adjoining commercial property never commenced, and the properties are now under separate ownership. The CE overlay zoning was approved in 2006 and is not proposed for change in conjunction with this underlying rezoning request.

The Character Map in the Comprehensive Plan identifies the subject property along with the surrounding, developed single family lots in the Harvest Ridge Subdivision as a *Neighborhood Stabilization Area*. These areas are intended as "places where households live, socialize, and raise families in relative quiet. Here, city planning aims to keep things the same, not bring dramatic change."

While the subject lot only has direct frontage on Cedar Creek Grade, it is served by an existing ingress/egress easement connecting to Stoneridge Rd that straddles the boundary line between lots 3 & 4 in Harvest Ridge. A driveway apron at Stoneridge Rd was installed at the time of development of the subdivision to allow for the future connection to the subject lot. The property is precluded from having a future connection directly to Cedar Creek Grade per the Subdivision Ordinance. The applicant acknowledges this condition in his attached letter dated February 21, 2013.

The proposed LR(CE) zoning would allow for single family use of the subject property. The property has insufficient lot area and width to be considered for any of the other limited uses that can be considered in LR, such as schools or places of worship. The applicant also indicated that another possible consideration would be to offer portions of the subject property to the adjoining owners fronting on Stoneridge Road in order to extend their rear yards.

RECOMMENDATION

Staff suggests that the rezoning of the subject property back to residential is consistent with the *Neighborhood Stabilization Area* designation in the Comprehensive Plan and is logical considering the separate ownership that now exists between the subject property and the adjoining, commercially-used property in the county.

At its April 16, 2013 meeting, the Planning Commission forwarded **RZ-13-98** to City Council recommending approval as depicted on an exhibit entitled "*Rezoning Exhibit RZ-13-98, Prepared by Winchester Planning Department, April 9, 2013*" because the request is consistent with the Neighborhood Stabilization Area designation in the Comprehensive Plan.

AN ORDINANCE TO REZONE 0.45 ACRES OF LAND AT 2307 STONERIDGE ROAD (*Map Number 269-05-A-1*) FROM HIGHWAY COMMERCIAL (B-2) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO LOW DENSITY RESIDENTIAL (LR) DISTRICT WITH CE DISTRICT OVERLAY
RZ-13-98

WHEREAS, the Common Council has received an application from Benjamin M. Butler, Esq., agent for NVA Properties, LLC, to rezone a property at 2307 Stoneridge Road from Highway Commercial (B-2) District with Corridor Enhancement (CE) District Overlay to Low Density Residential (LR) District to with Corridor Enhancement (CE) District Overlay; and,

WHEREAS, the Planning Commission considered the request at its April 16, 2013 meeting and forwarded the request to Council recommending approval of the rezoning as depicted on an exhibit titled "*Rezoning Exhibit RZ-13-98 Prepared by Winchester Planning Department, April 9, 2013*"; and,

WHEREAS, the Planning Commission's recommendation was based upon a finding that the rezoning is consistent with the Neighborhood Stabilization Area designation in the Comprehensive Plan; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with the property herein designated is consistent with the Comprehensive Plan.

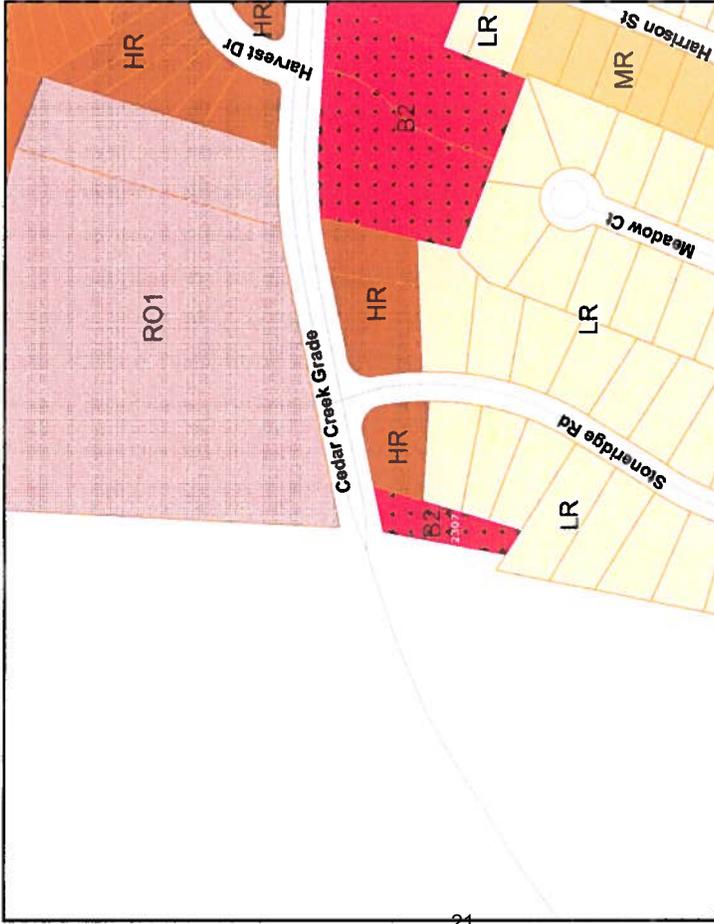
NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing conditional zoning designation of Highway Commercial (B-2) District with Corridor Enhancement (CE) District Overlay to Low Density Residential (LR) District to with Corridor Enhancement (CE) District Overlay:

0.45 acres of land at 2307 Stoneridge Road, as depicted on an exhibit titled "*Rezoning Exhibit RZ-13-98 Prepared by Winchester Planning Department, April 9, 2013*".

REZONING EXHIBIT

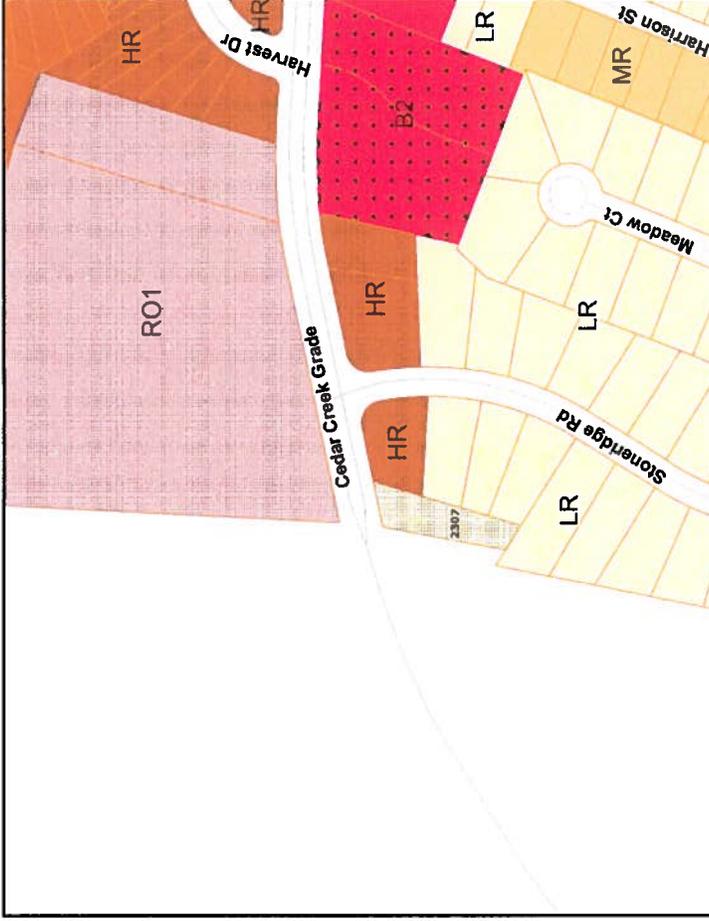
RZ-13-98

PREPARED BY WINCHESTER PLANNING DEPARTMENT
APRIL 9, 2013



EXISTING

CONDITIONAL B-2 (CE) ZONING FOR 2307 STONERIDGE RD



PROPOSED

LR (CE) ZONING FOR 2307 STONERIDGE RD



Benjamin M. Butler, P.L.C.

112 South Cameron Street
P. O. Drawer 830
Winchester, Virginia 22604-1297
(540) 662-3486
Facsimile (540) 722-3787
E-Mail: bmbiaw@comcast.net
bmbiaw2@comcast.net

Peter K. McKee (1934-1967)
Benjamin M. Butler

February 21, 2013

City of Winchester Planning Department
Rouss City Hall
15 N. Cameron Street
Winchester, VA 22601

In Re: Rezoning of Real Estate
From B-2 Conditional to LR
Tax Map: 269-05-A-1
Legal Description: Harvest Ridge Subdivision, Section 1, Lot 1,
West Side 2307 Stoneridge Road
My File: 2013-0013

Gentleman:

This letter is to be considered as part of the Rezoning Application filed for the above property located on Stoneridge Road.

This property lies in the City of Winchester contiguous to the Frederick County boundary, and the zoning of the same is B-2 Conditional which was made when the tract of land owned by Turner Enterprises, LLC was utilized with land lying in Frederick County on which there was operated a commercial property known as "Home Spun".

Subsequently, Turner Enterprises, LLC defaulted on its loan and a Deed in Lieu of Foreclosure was taken by NVAProperties, LLC, a Virginia limited liability company which is the wholly owned subsidiary of United Bank which had financed the property for Turner Enterprises, LLC.

The property is served by a fifteen (15) feet ingress/egress easement to Stoneridge Road as shown on the Plat of Harvest Ridge Subdivision, Section 1, attached hereto. The land is situated in such manner as it cannot have an entrance on Cedar Creek Grade independent of the

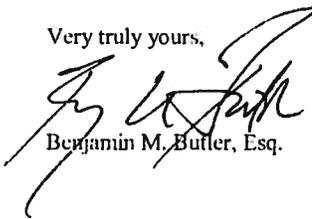
fifteen (15) feet ingress/egress easement because of its proximity to the intersection of Cedar Creek Grade and Stoneridge Road.

The property is best suited for residential use because the Lot 1, Harvest Ridge Subdivision, Section 1, has now been separated from the Frederick County Parcel previously owned by Turner Enterprises, LLC.

It is respectfully submitted that the highest and best use of this property would be as residential property, and the City of Winchester Comprehensive Plan provides for a portion of this property to be zoned HR and a portion of it to be zoned LR. It is submitted that the adjoining properties are zoned both HR and LR, but that LR would be suitable in this case because only a single family residential unit is to be placed on this property.

Thank you for your consideration in this matter.

Very truly yours,



Benjamin M. Butler, Esq.

BMD/cd

Enclosure

Cc: Evan Bowman, by email
Wanda Brown, by email

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 4/23/13 (work session), **CUT OFF DATE:** 4/17/13
5/14/13(1st Reading) 6/11/13 (2nd reading)

RESOLUTION **ORDINANCE** X **PUBLIC HEARING** X

ITEM TITLE:

RZ-13-134 AN ORDINANCE TO REZONE A 0.75 ACRE PORTION OF LAND AT 441 LINDEN DRIVE (Map Number 130-01- -1) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT TO MEDICAL CENTER (MC) DISTRICT

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 6/11/13 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning	<u>Amc</u>	_____	<u>4/17/13</u>
2. Economic Development	<u>JWD</u>	_____	<u>4/17/13</u>
3. City Attorney	<u>aw</u>	_____	<u>4/18/2013</u>
4. City Manager	<u>[Signature]</u>	_____	<u>4-18-13</u>
5. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: [Signature] 4/17/13
 (Planning)



APPROVED AS TO FORM:
[Signature] 4/18/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: April 17, 2013
Re: RZ-13-134

THE ISSUE:

Rezoning a 0.75-acre tract from LR to MC. The proposed MC zoning would allow grading and parking improvements associated with the proposed WMC Cancer Center.

RELATIONSHIP TO STRATEGIC PLAN:

This rezoning will accommodate the WMC Cancer Center, identified in the City's Strategic Plan as one of the Management Agenda actions for 2013-2014.

BACKGROUND:

See attached staff report

BUDGET IMPACT:

None

OPTIONS:

- Approve
- Deny (must state reasons for denial in the motion- e.g. "inconsistent with Comp Plan")

RECOMMENDATIONS:

Planning Commission recommended approval.

Council Work Session
April 23, 2013

RZ-13-134 AN ORDINANCE TO REZONE A 0.75 ACRE PORTION OF LAND AT 441 LINDEN DRIVE (Map Number 130-01- -1) FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT TO MEDICAL CENTER (MC) DISTRICT

REQUEST DESCRIPTION

This request would rezone a small triangular portion of the Frederick Co Middle School site that is proposed for transfer to the Winchester Medical Center to support off-street parking use associated with the cancer center project. No proffers are associated with this rezoning.

AREA DESCRIPTION

The subject 0.75-acre area is part of a 23.5-acre tract owned by Frederick County Schools and currently utilized as a public middle school. The parcel is entirely zoned LR. Land to the east and south of the County parcel is also zoned LR and contains residential lots fronting along Linden Drive. Most of the lots are vacant. Land to the north, west and southwest is part of the Winchester Medical Center (WMC) and is zoned Medical Center (MC). Most of the immediately adjoining MC land is undeveloped, including the area where the Cancer Center is proposed.



COMMENTS FROM STAFF

The Character Map in the Comprehensive Plan calls for Civic/Institutional use in this area and depicts a roadway connecting Linden Drive (near the lower curve) through the WMC property to connect to Campus Blvd near the private interchange on Rte 37. The bulk of the County School site otherwise fronting along Linden Drive is called out as a Redevelopment Site in Chapter 11 of the Comp Plan. On page 30 of Chapter 11, there is a concept plan for the school site as the featured redevelopment area in the Northwest Planning Area. It suggests that the roadway potentially connecting the site to Rte 37 could make the larger site attractive for mixed use, but notes that buffering might be needed to the existing and future single-family homes along the opposite side of Linden Drive.

The proposed MC zoning for the 0.75-acre portion permits uses closely related to a general hospital. In a March 4, 2013 letter (see attached) from Mr. Seth Roderick, agent for the applicant on the rezoning, he notes that the proposed off-street parking serving the proposed cancer center on the WMC land is not allowed by the current LR zoning. An overall grading plan exhibit titled 'Valley Health Cancer Center, Winchester Medical Center' dated 2-01-13 shows a small amount of proposed asphalt parking (approximately 13 parking spaces) within the rezoning area. A much larger amount of the area is used for topographic grading and storm water management.

Since no vehicular connection to Linden Drive is proposed with this request, there are no traffic impacts to evaluate. All traffic would make use of the existing private roadways on the WMC campus. The closest public street access is to the WMC interchange on Rte 37.

If this rezoning is approved, a Minor Subdivision (which has already been prepared and submitted for review with the City) would be recorded to adjust the boundary between the slightly reduced school site and the slightly enlarged WMC site.

RECOMMENDATION

Staff recommends that this small area of rezoning be approved to accommodate the WMC Cancer Center as identified in the City's Strategic Plan as one of the Management Agenda actions for 2013-2014. The proposal is consistent with the adopted Comprehensive Plan and promotes economic development by facilitating expansion of regional health care offered in Winchester.

At its April 16, 2013 meeting, the Commission forwarded **RZ-13-134** to City Council recommending approval as depicted on an exhibit entitled "*Rezoning Exhibit RZ-13-134, Prepared by Winchester Planning Department, April 9, 2013*" because the request is generally consistent with the Comprehensive Plan which calls for Civic/Institutional use on the periphery of the Medical Center District and because it supports development of the cancer center as called for in the City's Strategic Plan.

AN ORDINANCE TO REZONE A 0.75 ACRE PORTION OF LAND AT 441 LINDEN DRIVE FROM LOW DENSITY RESIDENTIAL (LR) DISTRICT TO MEDICAL CENTER (MC) DISTRICT
RZ-13-134

WHEREAS, the Common Council has received an application from Seth Roderick, agent to Frederick County School Board to rezone a portion of the property at 441 Linden Drive from Low Density Residential (LR) district to Medical Center (MC) district; and,

WHEREAS, the Planning Commission forwarded the request to Council recommending approval of the rezoning request as depicted on an exhibit titled "*Rezoning Exhibit RZ-13-134 Prepared by Winchester Planning Department, April 9, 2013*"; and,

WHEREAS, the Planning Commission's recommendation was based upon a finding that the rezoning is consistent with the City's Strategic Plan and generally consistent with the Comprehensive Plan; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with the portion of the property herein designated adequately addresses potential impacts associated with the rezoning and is consistent with the Comprehensive Plan.

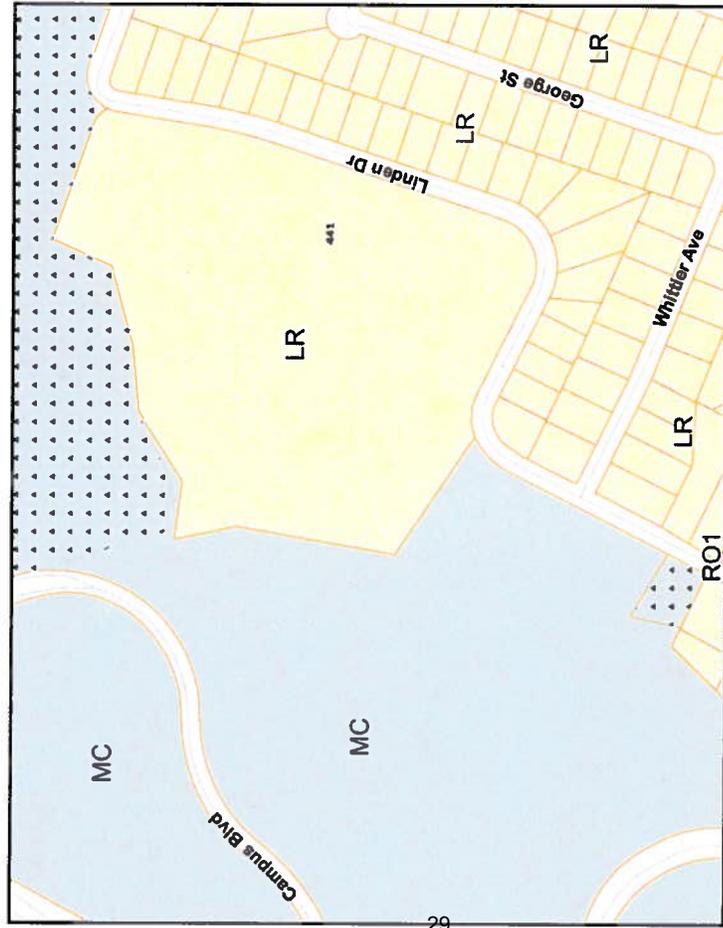
NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of Low Density Residential (LR) district to Medical Center (MC) district:

Approximately 0.75 acres of land at 441 Linden Drive, as depicted on an exhibit titled "*Rezoning Exhibit RZ-13-134 Prepared by Winchester Planning Department, April 9, 2013*".

REZONING EXHIBIT

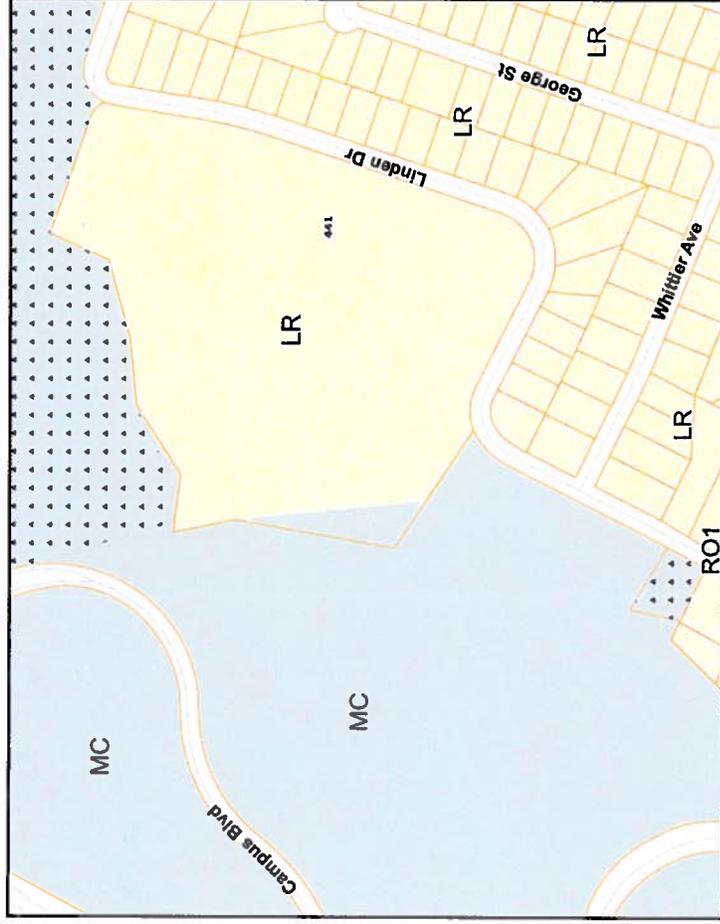
RZ-13-134

PREPARED BY WINCHESTER PLANNING DEPARTMENT
APRIL 9, 2013



EXISTING

LR ZONING FOR THE ENTIRETY OF 441 LINDEN DRIVE



PROPOSED

MC ZONING FOR A 0.75 ACRE PORTION OF 441 LINDEN DRIVE

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 4/23/13 (work session), CUT OFF DATE: 4/17/13
5/14/13 (1st Reading) 6/11/13 (2nd Reading/Public Hearing)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

TA-13-138 AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT.

STAFF RECOMMENDATION:

Approval.

PUBLIC NOTICE AND HEARING:

Public hearing for 6/11/13 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Planning, City Attorney, City Manager, and Clerk of Council with handwritten initials and dates.

Initiating Department Director's Signature: [Signature] 4/18/13
(Zoning and Inspections)



APPROVED AS TO FORM: [Signature] 4/18/2013 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections *AMG*
Date: April 17, 2013
Re: Zoning Text Amendment (TA-13-138) – Temporary Signs

THE ISSUE:

The proposed Zoning Ordinance text amendment will modify the existing Zoning Ordinance language pertaining to temporary signs, fees, and penalties.

RELATIONSHIP TO STRATEGIC PLAN:

This text amendment correlates to the 2018 Goal of "Create a More Livable City for All" as well as the policy agenda item of City Gateway Beautification.

BACKGROUND:

The goal of this text amendment is to establish clear guidelines, requirements, and limitations to temporary signs throughout the City of Winchester. As the Zoning Ordinance is currently constituted there are not permit requirements, and many categories of signs that have no maximum size, no placement criteria, or no maximum time of display. This proposed ordinance will set clear time, manner and place standards for temporary signs throughout the City. (A more detailed staff report is attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Adopt the Zoning Ordinance Text Amendment
- Decline to adopt the Zoning Ordinance Text Amendment

RECOMMENDATIONS:

Planning Commission and staff recommend approval.

TA-13-138 AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT.

REQUEST DESCRIPTION

This publicly sponsored text amendment is to serve as a refinement of the existing temporary sign ordinances, and provide clearer standards pertaining to size, number, and duration of display for such temporary signs. Additionally, the amendment will provide for a temporary sign permit requirements for some commercial signage as well as shorten the appeal period for sign violations.

STAFF COMMENTS

Presently, the Zoning Ordinance is vague when setting standards for temporary signs throughout the City. Many classifications of signs do not have a maximum size, limit for the number or time duration limitation. This proposed amendment seeks to provide clearer standards for temporary signs, while still allowing flexibility for individuals, groups, and businesses to conduct outside advertising on site.

The major changes include:

- Establishing maximum size, setback requirements, duration limitations, height and allowable number of sign standards for several classifications of signs.
- Creating and modifying definitions of several types of signs to make the Zoning Ordinance easier to interpret for citizens and business owners.
- Creation of a requirement for a temporary sign permit for several classifications of temporary commercial signs.
- Shortening the appeal period for temporary sign violations from 30 days to 10 days.
- Clarify standards for electronic message board signs, specifically as to the frequency of message changes.

As the Zoning Ordinance is currently constituted, enforcement of temporary signs is time and labor intensive. Absent a temporary sign permit requirement, there is no staff check or review on proposed temporary signage or trigger to initiate conversations between a business owner and staff to discuss regulations. When staff does identify a sign violation, the current appeal period of thirty (30) days results in a significant lag between notice of violation and resolution; with a shortened appeal period of ten (10) days, staff can more quickly initiate other enforcement measures such as civil penalties or court action, if needed. The changes proposed within the amendment will allow for expedited enforcement of such violations.

As part of City Council's Strategic Plan, the "Vision 2028" includes the establishment of Winchester as "a Beautiful, Historic City and a Hometown for Families." Having clear sign standards is important for the creation of a beautiful City, by creating harmonious neighborhoods and proportional sign standards.

Lastly, the proposed amendment will benefit businesses by continuing to allow for a variety of options and flexibility for conducting as needed temporary advertisements, thus resulting in a growing economy.

The most recent version of the proposed text amendment, Draft 5 – 4/17/13, includes revisions following Commissioners’ suggestions during the Planning Commission meeting as well as considerations from the City Attorney.

RECOMMENDATION

During their April 16, 2013 meeting, the Planning Commission unanimously recommended approval and adoption of this text amendment because it represents good planning practice by providing for reasonable standards for temporary signs while allowing flexibility for citizens and businesses to conduct temporary advertisements and announcements.

Temporary Signs Revisions

Type of Sign	Current Max. Size	Proposed Max. Size	Max. Display Period	Current Max. # of Signs	Proposed Max. #	Setback	Permit Required	Height	Special
Construction Signs	None	4 SF (resid.) / 16 SF (non-resid.)	Completion of Project	None	1 per Contractor	None	No	None	
Real Estate Signs	None	4 SF (resid. < 2 acres) / 8 SF (resid. >= 2 acres) & 12 SF (non-res. < 2 acres) / 32 SF (non-res >= 2 acres)	Completion of Sale / Rental / Lease	None	1 per frontage	None	No	None	
Political Campaign Signs	None	None	Removed NLT 14 days after event	None	None	None	No	None	
Street Banners	None	None	14 days before/after	None	None	N/A	Yes, City Council	None	
Civic/Fraternal/Charitable Event Sign	None	None	Removed NLT 5 days after event	None	None	None	No	None	
Signs advertising storage of materials	None	None	None	None	None	None	No	None	Not visible from off-site
Yard Sale Sign	2 SF	4 SF	3 days prior, removed upon completion	One	One	None	No	None	
Grand opening/special/promotional sale	None	16 SF	10 days	None	1 per business/tenant	5 feet	Yes^	4 feet*	* Unless attached to building ^Max 3 sign permits/year per property
Temporary business identification	None	16 SF	45 days	N/A	1 per business/tenant	5 feet	Yes^	4 feet*	* Unless attached to building ^Max 3 sign permits/year per property
Portable Price/Advertising Sign	16 SF	16 SF	30 days (except for Downtown Assess. Districts)	1 per street frontage	1 per street frontage	5 feet	Yes^	4 feet	^Max 3 sign permits/year per property
Temporary Event Signs	N/A	12 SF	Duration of Event	None	2 per event	5 feet	Yes^	4 feet	^Max 3 sign permits/year per property
Non-commercial Sign	N/A	12 SF	None	None	1 per property (residential properties 1/res. Unit)	None	No	4 feet	Not affixed to wall, fence, structure, vehicle, or landscaping.

RESOLUTION ADOPTING AN ORDINANCE TO AMEND AND REENACT ARTICLES 18, 21, 23, AND 14.2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO SIGNS, VIOLATION AND PENALTY, FEES, AND CORRIDOR ENHANCEMENT.

TA-13-138

WHEREAS, the Code of Virginia provides that one of the purposes of a Zoning Ordinance is to facilitate the creation of a convenient, attractive and harmonious community; and

WHEREAS, the Zoning Ordinance sign provisions have been established in order to ensure that signs are appropriate to the land, building, or use to which they are appurtenant and are adequate, but not excessive, for their intended purpose; and,

WHEREAS, the proposed Ordinance amendments will provide clearer established parameters for the size, location, and duration of display for temporary signs; and,

WHEREAS, in order to facilitate a dynamic and thriving community, uniform sign standards will allow for flexible opportunities for businesses, individuals, and other entities to communicate with the community.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Winchester hereby adopts the following text amendment:

- d. Temporary signs **provided in Section 18-8-12.2**, and signs painted on or hung behind windows as permitted in all districts under Section 18-8-12, **except as provided in this Ordinance**. (10/09/01, Case No. TA-01-05)
- e. Signs indicating the location of a community garden or market garden, provided that such signs shall not exceed four (4) square feet in area and shall not exceed six (6) feet in height. Such signs may include information, identification, and sponsorship reference. (10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-8-2.3 **Unless otherwise provided for within this Ordinance, all signs, temporary or permanent, shall be set back from the front property line by a minimum of five (5) feet, except within the B-1 and RB-1 districts.**

18-8-11 SIGNS PERMITTED IN THE HW DISTRICT. No ~~permanent~~ sign shall be erected or altered in the Historic Winchester (**HW**) District until a Certificate of Appropriateness has been issued by the **Zoning Administrator or Board of Architectural Review, unless otherwise provided in this Ordinance**. These signs are subject to the provisions of Article 14 and design guidelines as may be adopted by the Board of Architectural Review. Signage shall not be internally illuminated. Roof mounted signs, banners, and pennants are prohibited, **with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section**. (9/11/01, Case TA-01-02, Ord. No. 029-2001; 3/8/05, TA-04-08, Ord. No. 007-2005)

18-8-11.1 **SIGNS PERMITTED IN THE CE DISTRICTS. No sign shall be erected or altered in one of the Corridor Enhancement (CE) Districts until a Certificate of Appropriateness has been issued by the Planning Department, unless otherwise provided in this Ordinance, and which Certificate of Appropriateness shall be issued upon conformity with all the provisions and design criteria of Article 14.2 of this Ordinance.**

18-8-12 SIGNS PERMITTED IN ALL DISTRICTS. The following signs shall be permitted in all districts. ~~Unless otherwise indicated, Temporary Signs and signs painted on or hung behind windows shall not require a sign permit.~~ The area of any sign shall not be included in computing the aggregate sign areas specified for individual districts. (9/11/01, Case TA-01-02, Ord. No. 029-2001)

18-8-12.1 **Temporary Signs**, which shall be non-illuminated, and are limited to the following types:

18-8-12.2 **The following temporary signs may be installed by-right without a temporary sign permit, fee or Certificate of Appropriateness, provided the sign is installed in accordance with the size, location, and duration standards outlined in this section. No setback from property lines shall be required for any signs permitted in this section:**

property. No more than three temporary sign permits shall be issued per property during a twelve (12) month period:

- a. Signs advertising grand openings, special sales or similar promotional events, shall be permitted in RB-1, B-1, B-2, M-1, M-2, CM-1, and PC districts, provided that such signs are on display for no more than ten (10) days per month. One sign may be permitted per business or tenant, and each sign shall not exceed sixteen (16) square feet in area. Such signs shall not have a height greater than four (4) feet unless affixed to a permanent building or freestanding sign structure. A temporary sign permit shall be required.**
- b. Temporary Business Identification Signs during review and approval of a permanent building-mounted or freestanding sign. A maximum of one (1) sign is permitted per business. The sign shall not exceed sixteen (16) square feet in area, and may be permitted to be on display for a maximum of forty-five (45) days. The maximum height for such signs shall be four (4) feet, unless the sign is attached to a building or freestanding sign pole.**
- c. Portable price or advertising signs shall be permitted in the RB-1, B-1, B-2, CM-1, M-1, and M-2 districts, not exceeding an area of sixteen (16) square feet, four (4) feet in height, and limited to one (1) for each street the property fronts upon. Such signs shall be permitted to be on display a maximum of thirty (30) days, except for signs permitted in the Primary and Secondary Downtown Assessment Districts permitted under Section 18-7.**
- d. Temporary event signs, provided that no more than two (2) such signs are on display, with each sign being no larger than twelve (12) square feet and having a height of no more than four (4) feet. Such signs shall be on display for no longer than the approved temporary event.**

18-8-12.2 18-8-12.4 Permanent Signs.

- a. Directional Signs, as defined, provided each sign does not exceed ten (10) square feet in area nor four (4) feet in height. No more ~~that~~ than two (2) signs shall be permitted within one hundred (100) feet of each other within the limits of the development except signs required by a public authority for recognized traffic management needs. For commercial centers greater than fifty thousand square feet in floor area and Higher Education (HE-1) District uses, additional directional freestanding signs not exceeding thirty (30) square feet in area and six (6) feet in height shall be permitted within off-street parking areas when such signs provide directional assistance for multiple destinations. For Medical Center (MC) District uses, additional directional freestanding signs not exceeding seventy two (72) square feet in area and ten (10) feet in height shall be permitted within off-street parking areas when such signs provide directional assistance for multiple destinations. A sign permit shall be required. Such additional signs shall be limited to a single unifying logo representative of the development and text on a solid color background and shall be oriented so as to limit primary viewing to persons already on site and not to persons traveling on public and/or private**

18-8-13.4 Any sign or device, ~~other than pennants or banners~~ **whether or not any such device has written message content**, of which all or any part is in motion by any means, including fluttering, rotating, or other moving signs set in motion by movement of the atmosphere, **including but not limited to pennants, propellers, discs, and similar devices**. This shall not apply to the hand of a clock or a weather vane, **flags of a national, state or local government**.

18-8-13.5 Any sign, except official notices and advertisements, which is nailed, tacked, posted, or in any other manner attached to any utility pole or structure for supporting wire, cable, or pipe, or to any tree on any street or sidewalk or to public property of any description.

18-8-13.6 Outdoor advertising signs.

18-8-13.7 Moored balloons, **inflatable signs**, or other floating signs that are tethered to the ground.

18-8-13.8 Any sign with a minimum clearance of less than eight (8) feet above a walkway or sidewalk or less than fifteen (15) feet above a driveway or alley. (7/10/90, Case TA-90-04, Ord. No. 026-90)

18-8-14 ILLUMINATION.

18-8-14.1 The light from any illuminated sign shall not cause direct glare into or upon any building or property owner other than the building or property to which the sign may be related.

18-8-14.2 No sign shall display flashing or intermittent lights, or other lights of changing degrees of intensity, brightness or color, except a sign indicating time or temperature, with changes alternating on not less than five (5) second cycle when such time or temperature sign does not constitute a public hazard, in the judgment of the Zoning Administrator.

18-8-14.3 Neither the direct nor reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares.

18-8-14.4 Signs for developments in the Highway Commercial, B-2 District that include multifamily units, per Section 8-2-20, shall not utilize any internal illumination. External illumination, if any, shall be provided in a down-cast manner or shielded to prevent direct lighting of windows in multifamily units. (9/13/05, Case TA-05-02, Ord. No. 025-2005)

18-8-14.4 Electronic Message Board Signs shall not change message with a greater frequency than once every sixty (60) seconds in order to prevent traffic hazards to operators of motor vehicles on public thoroughfares, with exception of time or temperature changes per Section 18-8-14.2.

18-8-18 DEFINITIONS.

18-8-18.1 **Area of Sign**. The entire area within a circle, triangle, parallelogram, or trapezoids including the extreme limits of writing, reproduction, emblem, or any figure of similar character, together with any frame or other material or color forming an integral part of the display or used to differentiate the sign from the background against which it is placed, excluding the necessary supports or uprights on which

- 18-8-18.11** **Directional Sign.** A wall or freestanding sign in or primarily oriented toward a parking lot to identify entrances, exits, and divisions of the lot into sections, and to control vehicular and pedestrian traffic in the lot. In cases where a property owner agrees to close an existing driveway connecting directly to a street to permit shared access per Section 18-6-3.6 of this Ordinance or where an off-premises entrance from the public street in lieu of a direct connection is recommended by a public authority, one (1) off- premises directional sign bearing the name or simple logo of the commercial activity shall be permitted at the connection to the street. (1/9/97, Case TA-97-11, Ord. No. 034-097)
- 18-8-18.12** **Inflatable Sign.** A sign capable of being expanded by air or other gas and used on a temporary or permanent basis to advertise a product or event.
- 18-8-18.13** **Monument Sign.** A freestanding sign permanently installed on the property. The base of a monument sign is as wide as or wider than the main sign face. A monument sign is built on-grade in such a manner that the sign and the structure are an integral part of one another.
- 18-8-18.14** **Electronic message board sign.** A sign displaying characters or images that move or change, caused by any method other than physically removing and replacing the sign or its components. This includes a display that incorporates technology to allow the sign face to change the image, such as any display that incorporates LED lights manipulated through digital input, “digital ink” or any other method or technology that allows the sign face to present a series of images or displays.
- 18-8-18.15** **Construction Sign.** A sign depicting the name or logo of a contractor, engineer, architect, or other individual or business that is involved with a construction, renovation, or demolition project.
- 18-8-18.16** **Real Estate Sign.** A sign advertising the sale, lease, or rent of the property upon which the sign is located.
- 18-8-18.17** **Portable Price or Advertising Sign.** A sign that is not permanently affixed to the ground, building or a structure, designed to be on display for a limited period of time. Such signs include sandwich board signs, moveable chalkboard signs, portable flag signs and other signs of a similar nature. These signs shall not include any signs provided under Section 18-8-12.2.
- 18-8-18.18** **Yard Sale Sign.** A sign advertising a yard sale, garage sale, estate auction, or similar private sale of personal property and located upon the property where such sale is occurring.

**ARTICLE 14.2
CORRIDOR ENHANCEMENT DISTRICT – CE**

**14.2-6 AMHERST STREET, CEDAR CREEK GRADE, AND PLEASANT VALLEY RD/CORK STREET
CORRIDORS**

14.2-6.6 Signs

14.2-6.6a Roof mounted, portable, and temporary signs, as well as banners and pennants are prohibited, **with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.**

14.2-7 BERRYVILLE AVENUE AND VALLEY AVENUE CORRIDORS

14.2-7.6 Signs

14.2-7.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, **with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.**

14.2-8 FAIRMONT AVENUE, MILLWOOD AVENUE, AND NORTH LOUDOUN STREET CORRIDORS

14.2-8.6 Signs

14.2-8.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, **with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.**

14.2-9 NATIONAL AVENUE CORRIDOR

14.2-9.6 Signs

14.2-9.6a Roof mounted signs, banners, and pennants are prohibited, portable and temporary signs should not be used, **with the exception that one sign provided in Section 18-8-12.2 may be installed per property in accordance with the provisions of that Section.**

0-2013-11

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: April 23, 2013 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE X PUBLIC HEARING ___

ITEM TITLE: FY 2014 Budget review

STAFF RECOMMENDATION: Review and comment

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: See attached contract

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	4/17/2013
6. City Manager	<i>[Signature]</i>	_____	5-9-13
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature: <i>[Signature]</i>	Finance Director	_____	4-16-13 Date



APPROVED AS TO FORM: *[Signature]*
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Dale Iman, City Manager
Mary Blowe, Finance Director
Date: May 14, 2013
Re: Review Proposed FY 2014 Budget

THE ISSUE: The City Manager along with City staff has developed the projected revenues and expenditures for FY 2014. We have focused on the strategic plan and developed a results driven document to fund those projects that will accomplish those objectives stated in the strategic plan.

RELATIONSHIP TO STRATEGIC PLAN: With this resolution, City administration can work within our budget to maintain services and reallocate funds to accomplish *a more livable City for all. And support of our mission of a financially sound City providing top quality municipal services while focusing on the customer and engaging our Community.*

BACKGROUND: City staff has completed the budget book for your review and have incorporated the necessary documents into one complete document. The complete proposed budget is available on the City's website www.winchesterva.gov/finance. This document will be forwarded onto the second reading and public hearing scheduled for Tuesday June 11, 2013.

Minor changes made to the following documents following the April 23, 2013 worksession:

- Five-year Capital Improvement Plan
- Revenue and Expenditure Summary for all funds
- Position Title/Grade Listing (5% increase to minimums and maximums)
- Budget Ordinance

BUDGET IMPACT: The Proposed budget reflects an increase of \$124,000 over the adopted FY 2013 budget for the general fund.

OPTIONS: City Council can review the proposed budget document and recommend any changes to be implemented in the final budget document.

RECOMMENDATIONS: Staff recommends the adoption of the proposed budget document as submitted.

<i>Highway Maintenance Fund Revenues</i>	
Local	6,600
State	2,853,400
Other Financing Sources	1,710,000
Total Highway Maint Revenue	4,570,000

<i>Highway Maintenance Fund Expenditures</i>	
Public Works	4,570,000
Total Highway Maint Expenditures	4,570,000

<i>Transit Fund Revenues</i>	
Local Sources	100,700
State	254,000
Federal	962,800
Other Financing Sources	322,500
Total Transit Revenue	1,640,000

<i>Transit Fund Expenditures</i>	
Public Works	1,640,000
Total Transit Expenditures	1,640,000

<i>Emergency Medical Services Fund Revenues</i>	
Local	945,000
Other Financing Sources	25,000
Total EMS Revenue	970,000

<i>Emergency Medical Services Fund Expenditures</i>	
Public Safety	970,000
Total EMS Expenditures	970,000

<i>Win-Fred Co Convention & Visitors Bureau Revenues</i>	
Local	138,500
Other Financing Sources	113,500
Total WFCVB Revenue	252,000

<i>Win-Fred Co Convention & Visitors Bureau Expenditures</i>	
Community Development	252,000
Total WFCVB Expenditures	252,000

<i>Law Library Fund Revenues</i>	
Local	50,000
Total Law Library Revenue	50,000

<i>Law Library Fund Expenditures</i>	
Judicial Administration	50,000
Total Law Library Expenditures	50,000

<i>Winchester Parking Authority Revenues</i>		<i>Winchester Parking Authority Expenditures</i>	
Local	1,086,250	Public Safety	55,732
Other Financing Sources	1,058,750	Public Works	1,507,330
		Debt	581,938
Total WPA Revenue	2,145,000	Total WPA Expenditures	2,145,000
<i>City Capital Improvement Fund Revenues</i>		<i>City Capital Improvement Fund Expenditures</i>	
Local	950,000	Public Safety	3,360,000
State	7,845,000	Public Works	14,980,000
Federal	880,000	Parks, Recreation, Cultural	1,350,000
Other Financing Sources	10,015,000		
Total CIP Revenue	19,690,000	Total CIP Expenditures	19,690,000
<i>Utilities Operating Fund Revenues</i>		<i>Utilities Operating Fund Expenditures</i>	
Local	20,400,000	Public Works	8,573,900
Federal	289,000	Transfers	1,600,000
		Debt	10,515,100
Total Utilities Revenue	20,689,000	Total Utilities Expenditures	20,689,000
<i>Utilities Capital Improvement Fund Revenues</i>		<i>Utilities Capital Improvement Fund Expenditures</i>	
Federal	140,000	Public Works	185,000
Other Financing Sources	45,000		
Total Utilities CIP Revenue	185,000	Total Utilities CIP Expenditures	185,000
<i>Employee Benefits Fund Revenues</i>		<i>Employee Benefits Fund Expenditures</i>	
Local	4,090,000	General Government Administration	4,338,000
Other Financing Sources	248,000		
Total Employee Ben Revenue	4,338,000	Total Employee Ben Expenditures	4,338,000

<i>Equipment Operating Fund Revenues</i>	
Local	1,450,000
Total Equipment Revenue	1,450,000

<i>Equipment Operating Fund Expenditures</i>	
General Government Administration	1,450,000
Total Equipment Expenditures	1,450,000

<i>Other Post-Employment Benefits Fund Revenues</i>	
Local	477,000
Total OPEB Revenue	477,000

<i>Other Post-Employment Benefits Fund Expenditures</i>	
General Government Administration	477,000
Total OPEB Expenditures	477,000

<i>NW Regional Jail Authority Capital Fund Revenues</i>	
Local	1,075,000
Total NWRJA Revenue	1,075,000

<i>NW Regional Jail Authority Capital Fund Expenditures</i>	
Debt	1,075,000
Total NWRJA Expenditures	1,075,000

<i>Fred-Winc Service Authority Fund Revenues</i>	
Local	4,258,000
Total FWSA Revenue	4,258,000

<i>Fred-Winc Service Authority Fund Expenditures</i>	
Public Works	4,258,000
Total FWSA Expenditures	4,258,000

<i>Northwestern Regional Juvenile Detention Revenues</i>	
Local	1,792,666
State	765,182
Federal	18,000
Other Financing Sources	68,152
Total NRJDC Revenue	2,644,000

<i>Northwestern Regional Juvenile Detention Expenditures</i>	
Public Safety	2,644,000
Total NRJDC Expenditures	2,644,000

Total City Revenue	156,275,000
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Total City Expenditures	156,275,000
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<i>School Food Services Fund Revenues</i>	
Local Sources	695,500
State	36,950
Federal	1,219,129
Total Food Services Revenue	1,951,579

<i>School Food Services Fund Expenditures</i>	
Food Services	1,950,579
Operations & Maintenance	1,000
Total Food Services Expenditures	1,951,579

<i>School Operating Fund Revenues</i>		<i>School Operating Fund Expenditures</i>	
Local Sources	401,134	Technology	2,264,697
State	19,337,727	Instruction	34,670,300
Other Financing Sources	26,301,702	Attendance & Health	2,053,341
		Pupil Transportation	1,919,152
		Operations & Maintenance	5,129,073
		Facilities	4,000
Total School Operating Revenue	46,040,563	Total School Operating Expenditures	46,040,563
<i>Federal Grants Fund Revenues</i>		<i>Federal Grants Fund Expenditures</i>	
Federal	2,675,444	Technology	76,647
		Instruction	2,586,263
		Pupil Transportation	12,534
Total Federal Grants Revenue	2,675,444	Total Federal Grants Expenditures	2,675,444
<i>Textbook Fund Revenues</i>		<i>Textbook Fund Expenditures</i>	
Other Financing Sources	350,000	Instruction	350,000
Total Textbook Revenue	350,000	Total Textbook Expenditures	350,000
<i>School Fundraising Fund Revenues</i>		<i>School Fundraising Fund Expenditures</i>	
Local Sources	200,000	Facilities	200,000
Total Fundraising Revenue	200,000	Total Fundraising Expenditures	200,000
<i>School Capital Improvements Fund Revenues</i>		<i>School Capital Improvements Fund Expenditures</i>	
Other Financing Sources	490,000	Facilities	490,000
Total Capital Improv Revenue	490,000	Total Capital Improv Expenditures	490,000

<i>School Insurance Fund Revenues</i>		<i>School Insurance Fund Expenditures</i>	
Local Sources	4,600,000	Other Non-instructional Operations	2,015,200
Other Financing Sources	21,200	Transfers	2,606,000
Total Insurance Revenue	4,621,200	Total Insurance Expenditures	4,621,200
<i>School Scholarship Fund Revenues</i>		<i>School Scholarship Fund Expenditures</i>	
Local Sources	84,400	Other Non-instructional Operations	91,400
Other Financing Sources	7,000		
Total Scholarship Revenue	91,400	Total Scholarship Expenditures	91,400
Total All Schools Revenue Budgets	56,420,186	Total Schools Expenditures	56,420,186
Total City & Schools Revenue	212,695,186	Total City & Schools Expenditures	212,695,186

WHEREAS, there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations, and

WHEREAS, all appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully obligated or encumbered, and

WHEREAS, all ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

NOW THEREFORE BE IT ORDAINED, by the Common Council of the City of Winchester that the funds specified herein are hereby appropriated for the purposes specified for the fiscal year ending June 30, 2013.

Ordinance No. 2013-__

ADOPTED by the Common Council of the City of Winchester on the 11th of June, 2013.

Witness my hand and the seal of the City of Winchester, Virginia.

*Kari J. Van Diest
Deputy Clerk of the Common Council*

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: April 23, 2013 **CUT OFF DATE:** 04/18/13

RESOLUTION ___ **ORDINANCE** x **PUBLIC HEARING** ___

ITEM TITLE: STATUS UPDATE AND ORDINANCE TO IMPLEMENT THE PROVISIONS OF THE BOARDS AND COMMISSIONS MEMORANDUM ADOPTED BY COMMON COUNCIL ON FEBRUARY 12, 2013 PERTAINING TO THE FUNCTIONING AND PROCESSES ASSOCIATED WITH THE APPOINTMENT AND OPERATIONS OF THE TREE COMMISSION; NATURAL RESOURCES ADVISORY BOARD; AND OTHER COUNCIL-APPOINTED BOARDS AND COMMISSIONS

STAFF RECOMMENDATION: Approve

PUBLIC NOTICE AND HEARING: N/A

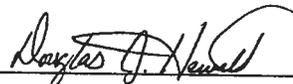
ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	_____	_____	_____
6. City Manager		_____	4-18-13
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature:  04/17/2013

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Doug Hewett, Assistant City Manager
Date: April 23, 2013
Re: Implementation of Board and Commission Recommendations

THE ISSUE:

Earlier this year, the City Council approved recommendations to streamline the procedures for the operation and appointment process for various boards and commissions. As part of that effort, the City Council also approved changes to the composition of some boards and commissions. The attached seeks to officially enact those already approved recommendations.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2 - Develop a High Performing City Organization

BACKGROUND:

On March 12, 2013 the City Council voted to enact the recommendations concerning their boards and commissions processes and procedures. The attached seeks to officially enact those already approved recommendations.

BUDGET IMPACT:

None

OPTIONS:

1. Approve as presented
2. Disapprove
3. Take no action

RECOMMENDATIONS:

Approve as presented so that the already approved recommendations can be formally enacted.

AN ORDINANCE TO IMPLEMENT THE PROVISIONS OF THE BOARDS AND COMMISSIONS MEMORANDUM ADOPTED BY COMMON COUNCIL ON FEBRUARY 12, 2013 PERTAINING TO THE FUNCTIONING AND PROCESSES ASSOCIATED WITH THE APPOINTMENT AND OPERATIONS OF ~~THE TREE COMMISSION; NATURAL RESOURCES ADVISORY BOARD; AND OTHER~~ COUNCIL-APPOINTED BOARDS AND COMMISSIONS

WHEREAS, on February 12, 2013, Common Council approved a Memorandum concerning a proposal to improve the functioning and processes associated with the appointment and operations of Council Appointed Boards and Commissions (Exhibit A); and

~~WHEREAS, the Memorandum and ensuing discussion by Common Council in an Open Meeting included direction by Common Council to Staff to take necessary action to facilitate the “*elimination of the Naturay Resources Advisory Board and Tree Commission and the consolidation of the responsibilities and resources of these two individual boards under the umbrella of the Parks and Reecreatiott Board.*”;~~ and

WHEREAS, further discussions were held between the City Manager and the Vice Mayor and the Vice President of Council concerning the implementation of the Memorandum approved by Council; and

WHEREAS, on March 25, 2013, the City Manager issued an Administrative Memorandum to the Parks and Recreation Director concerning the implementation of the Memorandum previously approved by Common Council; and

~~WHEREAS, the Tree Commission is created and defined under Chapter 30 of the Winchester City Code; and~~

~~WHEREAS, the Natural Resources Advisory Board was created by Ordinance 2007-23 adopted by Common Council on August 14, 2007; and~~

~~WHEREAS, the proposed chages to Chapter 30 of the Winchester City Code are believed to be necessary in order to properly implement the provisions of the Memorandum previously approved by Council; and~~

WHEREAS, Council has further directed City Staff to bring forward an Ordinance clarifying their intention to reserve the absolute authority of removal of any member of a Council Appointed Board or Commission unless otherwise specified under contrary controlling authority.

NOW therefore be it ~~ORDAINED~~, that Ordinance No.: ~~2007-23~~ is hereby rescinded and ~~the Natural Resources Advisory Board is hereby dissolved and any needs of Common~~

~~Council previously fulfilled the Natural Resources Advisory Board shall be directed to the Parks and Recreation Board through the Director of Parks and Recreation; and~~

BE it ~~further~~ ORDAINED that Common Council hereby adopts and incorporates into the Winchester Code of Ordinances the following Section 2-51 pertaining to the removal of members of Council-Appointed Boards and Commissions; and

~~BE it further ORDAINED that Chapter 30 of the Winchester City Code pertaining to Vegetation is hereby amended and readopted as follows:~~

|

SECTION 2-52 - 2-60. RESERVED.

**SECTION 2-51. REMOVAL OF MEMBERS OF COUNCIL APPOINTED
BOARDS AND COMMISSIONS**

Unless otherwise specifically and expressly provided by Ordinance or other controlling legal authority, Common Council for the City of Winchester hereby reserves unto itself the unqualified and absolute discretion and authority to remove at any time, regardless of appointed term of office, any member of a Council-Appointed Board or Commission without cause or further proceedings upon a majority vote of Common Council at any Regular or Special Meeting of Council.



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782
Website: www.winchesterva.gov

To: Honorable Members of Common Council
From: Vice President Willingham and Vice Mayor McInturff
Subj.: Council Appointed Boards and Commissions
Date: December 21, 2012

MEMORADUM

On August 21, 2012, Vice President Willingham and Vice Mayor McInturff were asked to work with the City Manager, City Attorney, and City Staff to review the City's current composition and operation of Council Appointed Boards and Commissions. Through a review of available materials and a series of individual and group discussions, this report was generated as an update and recommendation to Common Council focusing on the following areas:

1. Composition/Operations

There are currently thirty-six (36) Council Appointed Boards and Commissions identified on the City's Boards and Commissions List. With very few exceptions, these bodies are either statutorily required entities (such as the Planning Commission and School Board), or otherwise required as part of a program that the City has chosen to undertake (such as the Board of Architectural Review and Community Development Committee). There are very few Council Appointed Boards and Commissions which are purely discretionary in nature (such as the

"To provide a safe, vibrant, sustainable community while striving to constantly improve the quality of life for our citizens and economic partners."

EXHIBIT A

Natural Resources Advisory Board) or not mandated but established by choice as part of a program or initiative that the City is participating in (such as the Old Town Development Board).

In order to ensure that all Council Appointed Boards and Commission positions are adequately filled and in timely fashion, with the most qualified personnel, we recommend that the City Manager be tasked with initiating an ongoing process to encourage and solicit citizen involvement in appointed boards and commissions. In addition, the President shall annually appoint two (2) members of Council to serve as the Council Liaisons for handling all matters associated with reviewing applications and conducting preliminary interviews of candidates.

The recommended process would be as follows:

1. The Manager shall ensure that a Staff Liaison is appointed to every Board and Commission.
2. The Staff appointed liaison would be responsible for collecting and reviewing qualifications of candidates for their respective boards and to notify the Assistant City Manager of Board and Commission vacancies 60 days prior to the expiration date.
3. The Assistant City Manager would then contact the Council Liaisons to make them aware of applications and any open positions that need to be filled and to provide application material of citizens who have expressed formal interest in serving.
4. The Assistant City Manager would be responsible for conveying this to the Council Liaisons in a timely manner to ensure adequate time for review of applications and interviewing of candidates.
5. The Assistant City Manager would be responsible to keep the Council Liaisons up to date on the status of board participants, vacancies, expiration of terms, etc.
6. The Staff Liaison would contact board members eligible for reappointment and determine their interest and report findings to the Assistant City Manager .
7. At the end of the term of each member, the staff liaison will give a report to the Assistant City Manager on the board members participation, attendance, performance, etc. The Assistant City Manager would be responsible to keep the Council Liaisons up to date on the status of board participants, attendance, performance etc.

8. The Council Liaisons shall be responsible for reviewing this information and recommending to Council timely appointments to the various Boards and Commissions.
9. Staff Liaisons shall prepare a "Council Appointed Board Report" on a monthly basis, or as frequently as deemed necessary by the Manager, which shall be submitted to the City Manager for inclusion with the Written Reports submitted for Council review on monthly Work Session Agendas. The reports shall include actions and items of interest currently underway with regard to Council Appointed Boards as well as Board vacancies and other operational concerns.

This process would ensure that Council maintains involvement and awareness of the needs of the various boards and commissions while ensuring that City Staff personnel are continuing to address the needs of the boards as well as the needs of the City's Administration.

Consistent with the second goal discussed during the 2012 Council Strategic Planning Process ("To develop a high performing City Organization"), we would recommend that Council consider reorganizing some of its appointed Boards and Commissions which are not specifically mandated by state legislation.

For example, we would recommend the elimination of the Natural Resources Advisory Board and Tree Commission and the consolidation of the responsibilities and resources of these two individual boards under the umbrella of the Parks and Recreation Board. It is believed that this reallocation of resources will provide for more efficient and effective local governance of the issues faced by these three individual Council Appointed Boards.

If Council decides to move forward with this recommendation, the Department of Parks and Recreation will be called upon to work with the City Attorney and Public Services Department to incorporate the necessary revisions into the City Code.

Finally, while this Report has been drafted specifically to address issues related to Council Appointed Boards and Commissions, during the review of these matters, it was concluded that the appointment of the Mayor, Members of Council, or other City Officials to serve in their official capacities as participating and voting members of non-governmental organizations may create significant conflicts of interest and should be avoided. This should not be construed as a recommendation to preclude the Mayor, Members of Council, or other City Officials from volunteering to serve in their individual and personal capacities on such organizations, nor preclude the appointment by Council of non-voting liaisons who do not participate directly in the organizational operations of these entities.

2. Training / Orientation

A formal Orientation shall be required for all new members of Council Appointed Boards and Commissions. The orientation shall identify and train new members regarding the Goals and Objectives of Common Council, their responsibilities as appointed members of the respective Boards and Commissions, describe the general functioning of the City's Administration, and introduce new members to the general operation of local government in the City of Winchester.

This presentation shall be organized by the City Manager, and shall include presentations from the City Attorney, City Staff, and member(s) of Council at the discretion of the governing body.

3. Code of Ethics

The City currently has a Code of Ethics embodied within its Comprehensive Employee Management System ("CEMS") in Section 7.16 which applies to all City Employees, Members

of Council, and Members of Council Appointed Boards and Commissions. The section reads as follows:

7.16 Code of Ethics

The Code of Ethics is intended to provide ethical guidelines for City Councilors, employees and Council appointed Board and Commission members that are responsive to the public needs and preclude even the appearance of impropriety in the performance of their duties. All City Councilors, employees and Council appointed Board and Commission members have an obligation to conduct their official duties in a manner that serves the public interest, upholds the public trust and protects the City's resources. To this end, City Councilors, employees and Council appointed Board and Commission members have a responsibility to:

- 1. Perform their duties to the very best of their abilities, treating the public and each other in a courteous manner that is fair and equitable, without regard to race, color, gender, age, religion, national origin, disability, political affiliation, or any other factor unrelated to the impartial conduct of City business.*
- 2. Demonstrate integrity, honesty, and ethical behavior in the conduct of all City business.*
- 3. Ensure that their personal interests do not come into conflict with their official duties, resulting in a real conflict of interest or the appearance of a conflict of interest when dealing with vendors, customers, and other individuals doing business or seeking to do business with the City.*
- 4. Ensure that they do not accept any gift, favor or thing of value that may tend to, or be reasonably perceived to, influence the discharge of their duties, or grant any improper favor, service or thing of value in the discharge of their duties. This shall include the acceptance of a gift from a person who has interests that may be substantially affected by the performance of the employee's official duties under circumstances where timing and nature of the gift would cause a reasonable person to question the employee's impartiality in the matter affecting the donor. This prohibition shall not apply to the acceptance of any gift, favor or thing of value that benefits the City and/or the community as a whole.*
- 5. Ensure that information concerning the property, government or affairs of the City is held confidential, disclosed only with proper legal authorization, and never to advance the financial or other special interest of themselves or others.*
- 6. Ensure that all City resources, including City funds, equipment, vehicles and other property, are used in strict compliance with City policies and solely for the benefit of the City.*

7. Avoid any behavior that could fall under the definitions of misconduct in Section 7.2 Discipline of the City's Comprehensive Employee Management System.

Councilors, Board and Commission members, Department Heads, and supervisors must take a leadership role in the promotion and execution of the Code of Ethics. All City officials and employees have a responsibility to place cooperation, trust, and respect at the head of all they do.

But despite the formal incorporation of these provisions into the CEMS, which has been adopted and approved by a Resolution of Common Council, members of Council Appointed Boards and Commissions do not receive exposure or any formal training on this upon their appointment. As such, it is very likely that few members are even aware of their duties and responsibilities consistent with the foregoing Code of Ethics.

Accordingly, it is recommended that all members of Council Appointed Boards and Commissions consent to and follow, as a condition precedent to participation, the Code of Ethics as approved by the Governing Body. This consent shall be memorialized in a signed document prepared by the City Attorney reflecting the provisions of Section 7.16 of the CEMS and may include any additional provisions deemed necessary by Council to create a uniform Code of Ethics that embodies the expectations of Council and the Community with regard to service on a Council Appointed Board or Commission. Service on such bodies should be viewed and acknowledged as a privilege with accompanying responsibilities of appropriate conduct. The Code of Ethics should be signed by all appointed members prior to their formal appointment and should be enforced where violations occur.

Additionally, it is recommended that the Manager be directed to expand the CEMS provisions to include a non-comprehensive list of causes for removal or other forms of

disciplinary action available to Common Council to address instances of improper conduct by an appointed member of a Board or Commission.

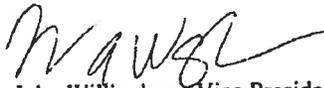
CONCLUSION

The City should require all new members of Council Appointed Boards and Commissions to execute a written Agreement prepared by the City Attorney memorializing that they are aware of, and will abide by the Code of Ethics in Section 7.16 of the CEMS and any other ethical requirements that the governing body may adopt as applicable to such members. The CEMS should be expanded to include causes for removal and other disciplinary measures for members who do not abide by these rules.

New members should receive training through a formal Orientation process which shall be organized by the Manager or his designee and should include presentations by City Staff, the City Attorney and members of Council (at Council's discretion) on topics including ethical responsibilities as an appointed board member and the general operation of City government.

Finally, a Council Liaison system should be established to continually work with the Assistant City Manager to ensure that vacancies to various the boards and commissions are properly filled. An outline of one possible system is included in Section 3 of this Memorandum.

Respectfully Submitted:


John Willingham, Vice President


Milt McInturff, Vice Mayor

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/28/13 (work session),
6/11/13 (regular mtg)

CUT OFF DATE: 5/22/13

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING X

ITEM TITLE:

CU-13-211 Request of KKE Properties LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 24 Wolfe Street, Unit 6 and 26 Wolfe Street, Unit A (Map Number 193-01-C-8) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

STAFF RECOMMENDATION:

Approval with conditions

PUBLIC NOTICE AND HEARING:

Public hearing for 6/11/13 Council mtg

ADVISORY BOARD RECOMMENDATION:

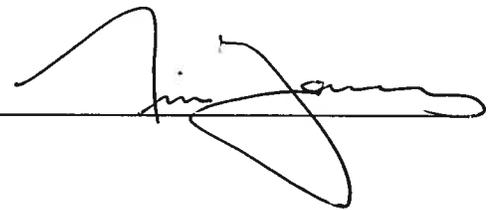
The Planning Commission recommended approval with conditions

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	AMG		5/22/13
2. City Attorney	AW		5/22/2013
3. City Manager			
4. Clerk of Council	DF		5-23-13

Initiating Department Director's Signature:  5/22/13
(Planning Dept)



APPROVED AS TO FORM:  5/22/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council
From: Will Moore, Planner
Date: May 22, 2013
Re: CU-13-211

THE ISSUE:

Conversion of ground-floor nonresidential space to multifamily residential use

RELATIONSHIP TO STRATEGIC PLAN:

Vision 2028 states that Winchester has a 'Vibrant Downtown' and 'Great Neighborhoods with a range of housing choices'. Continued Revitalization of Historic Old Town is a 2018 Goal.

BACKGROUND:

See attached staff report.

BUDGET IMPACT:

None

OPTIONS:

- Approve the request with conditions, consistent with the Planning Commission recommendation, because the proposed residential use of these particular units is as desirable, or preferable to, non-residential use.
- Approve with additional or modified conditions.
- Approve conversion of only one of the two units.
- Deny the request.

RECOMMENDATIONS:

The Planning Commission unanimously recommended approval for conversion of these two particular units.

Council Work Session
May 28, 2013

CU-13-211 Request of KKE Properties LLC for a conditional use permit for conversion of ground floor nonresidential use to residential use at 24 Wolfe Street, Unit 6 and 26 Wolfe Street, Unit A (*Map Number 193-01-C-8*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

REQUEST DESCRIPTION

This request would allow additional ground floor space in the existing structure fronting along the north side of Wolfe Street in an existing mixed use building on a parcel addressed as 28-30 S. Braddock St (also known as 22-36 Wolfe St) to be used for apartments. Specifically, the request is to establish: 1) permanent residential occupancy for unit 26-A, previously approved for residential occupancy for a temporary period, and 2) residential occupancy for unit 24-6, a vacant unit on the north side of the building.

AREA DESCRIPTION

The subject property, as well all adjacent properties are zoned B-1(HW). The subject property is also in the flood fringe portion of the 100-year floodplain. The applicant documents 6 existing apartments on the ground floor, exclusive of the 2 units included in this application and an additional unit at 22 Wolfe St approved by Council in May 2013 in a separate CUP application. Additionally, there are 9 units on the second floor and 2 units on the third floor.



Properties along both sides of S. Braddock St. include commercial use with some residential use on the upper levels. The property across Wolfe St to the south is a private church parking lot. Indian Alley adjoins the site to the east.

STAFF COMMENTS

26 Wolfe St, Unit A – 1 bedroom, 925sf

In December of 2009, Ms. Vickie Puckett, who was then the manager and applicant for this property on behalf of Ft Loudoun LLC, returned to City Council with a request for reconsideration of a denied proposal to convert 26-A from office to apartment. The original case (CU-08-12) had been denied by Council in October 2008. In denying the request, Council reiterated its desire to maintain ground floor space for commercial uses. Subsequent to the denial, the applicant requested and was granted a CUP for conversion of a separate 800sf ground floor space to residential use. That request differed in that the unit was accessed from a rear alleyway to the north and did not have an entrance fronting on Wolfe St.

In Ms. Puckett's 2009 letter addressing the intent and basis for reconsideration, she cited a recent history of being unable to occupy the available commercial space with a tenant, despite advertising efforts and having reduced the rent. She requested the granting of the CUP for residential use temporarily "until this economic crisis has passed." At its November 17, 2009 meeting, the Planning

Commission forwarded CU-09-302 to City Council recommending disapproval because the use does not meet the intent of the Ordinance for ground floor spaces in the B-1 District. City Council ultimately approved the request on December 8, 2009 with a condition that the permit was valid for 24 months past the day of the signing of the first lease for residential use.

Unfortunately, the Council-imposed restriction on the duration of the residential use of 26A was not properly communicated to Ms. Engel, who purchased the property as KKE Properties LLC in June of 2011 from Ft Loudoun LLC. The unit at 26-A is still being occupied as an apartment.

This application seeks to establish permanent occupancy of 26A as a residential unit.

24 Wolfe St, Unit 6 – 2 bedroom, 950sf

This unit is situated on the north side of the structure, fronting along a narrow, east-west public alley that connects Indian Alley to Braddock St and provides access to private parking areas of surrounding properties. This unit has little visibility to other surrounding public rights-of-way. It is currently vacant and has existing kitchen and bath facilities, although it was noted as commercial space by the previous property manager in the 2009 application.

Land Use

As a prerequisite for consideration, no unit may be situated facing a major commercial street. Neither Wolfe Street nor the alley along the north side of the property are considered major commercial streets. The other frontage of the subject property, S. Braddock Street, is considered a major commercial street. The B-1 district is intended for the conduct of business to which the public requires direct and frequent access. This includes such uses as retail stores, banks, theaters, business offices, newspaper offices, and restaurants. The Old Town area is generally characterized by a mix of commercial and residential uses. Consideration should be given to the appropriateness of this type of use for this specific location.

Residential Density

The subject parcel is a 0.304-acre site (13,242sf) lot. At a density requirement of 1,000sf per unit, the base density would be 13.24 units. A bonus of 1.32 units is applied for location within the Secondary OTDB assessment district (0.10 bonus). The proposed conversion of commercial spaces to residential eliminate the Economic Impact bonus (0.25) that was previously applied to the property, however the Planning Director recently determined that the applicant’s restoration and preservation efforts qualify for the Historic Preservation bonus (0.40 with 81% preserved), resulting in an additional 5.30 units. The total density permitted as proposed is 19.86, rounded to 20 units. If this application for two units is approved, the result would be the maximum of 20 residential units.

Unit Floor Area

The Ordinance regulates both absolute and average minimum floor area per dwelling unit in the B-1 District. For general population (non-age restricted) one-bedroom units, the absolute minimum is 575sf; the average minimum is 700sf. 26-A is 925sf, and the average of the 12 proposed one-bedroom units would be 838sf. For general population two- or three-bedroom units, the absolute minimum is 725sf; the average minimum is 900sf. 24-6 is 950sf, and the average of the 8 proposed two- and three-bedroom units would be 1170sf.

Green Space

The addition of dwelling units invokes a slight increase in green area. Staff recommends that the applicant provide a nominal landscaping improvement in the form of some foundation planting, flower boxes, or contribution to the OTDB for landscaping within the public right of way in the general area. The applicant should also ensure that landscape planters and improvements required with prior residential conversions are still in place. The applicant will need to consult with the Board of Architectural Review (BAR) to get a recommendation as to reduced green area associated with residential conversion. Retention of the rooftop garden terrace should also be stipulated as a condition of expanded residential occupancy.

Flood Plain

According to the updated Federal Insurance Administration Flood Insurance Study mapping, the structure falls within the 100 year flood fringe of the flood plain. Any conversion to residential use should include provisions to flood proof the structure in accordance with the National Flood Insurance Program (NFIP) standards.

RECOMMENDATION

In order for a CUP to be issued, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. Additionally, a finding must also be made for this specific type of CUP request that the proposed residential use is as suitable as, or preferable to, other permitted uses on the ground floor.

At its May 21, 2013 meeting, the Planning Commission forwarded **CU-13-211** to City Council recommending approval for conversion of both units because the use, as proposed: should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood; should not be injurious to adjacent properties or improvements in the neighborhood; and, is as suitable as, or preferable to, other permitted uses on the ground floor. The approval is subject to the following:

1. Adequate flood proofing of the portion of the structure proposed for conversion in accordance with the applicable flood map designation, as determined by the City Engineer;
2. Landscaping in the form of retaining the rooftop garden terrace, some foundation planting, flower boxes, and/or contribution to the OTDB for landscaping within the public right of way in the general area in conjunction with BAR review and recommendation of required green area per Section 19-5-6.3a of the Zoning Ordinance;
3. Conformity with the submitted floor plans; and,
4. The unit shall be subject to the Rental Housing Ordinance program within the City of Winchester.

24 Wolfe Street, Ste. 66
Winchester, VA 22601

CU-13-211

April 8, 2013

City of Winchester
Rouss City Hall
15 North Cameron Street
Winchester, VA 22601



To Whom It May Concern:

This letter is to request a Conditional Use for the property located at 26 Wolfe Street, Unit A and 24 Wolfe Street, Unit 6 in Winchester, VA. The first unit is currently a residential unit, and we would like to update the records to ensure it remains with this use. The other unit in this building is residential. There should be no adverse affect on the neighborhood, as this unit has served in this capacity since before we purchased the property with no ill effects. The second unit is currently vacant with kitchen and bath facilities, and we would like to maintain this space as residential. All It is at the back of the property with no visibility along any major roadways. We can consistently locate and retain quality rental tenants (doctors, nurses, lawyers, teachers, etc...), and would be able to ensure that these units remains occupied with tenants who will support and add to the vibrancy of the Old Town area. We appreciate your attention to this request, and can be reached at 540-822-0197 to answer any questions you may have.

Respectfully yours,

Gail Engel
Owner
KKE Properties LLC

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/28/13 (work session), **CUT OFF DATE:** 5/22/13
6/11/13 (regular mtg)

RESOLUTION ORDINANCE PUBLIC HEARING

ITEM TITLE:
 CU-13-176 Request of Charles Salamone on behalf of AT&T Mobility for a conditional use permit to upgrade existing telecommunications facilities with additional antennas and equipment at 103 East Piccadilly Street (*Map Number 173-01-P-6*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

STAFF RECOMMENDATION:
 Approval with conditions

PUBLIC NOTICE AND HEARING:
 Public hearing for 6/11/13 Council meeting

ADVISORY BOARD RECOMMENDATION:
 Planning Commission recommended approval with conditions

FUNDING DATA: N/A

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Planning		_____	<u>5/22/13</u>
2. City Attorney		_____	<u>5/22/2013</u>
3. City Manager		_____	<u>5-23-13</u>
4. Clerk of Council	_____	_____	_____
	_____	_____	_____

Initiating Department Director's Signature: 5/22/13
 (Zoning and Inspections)



APPROVED AS TO FORM:

 CITY ATTORNEY 5/22/2013

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale, Director of Zoning and Inspections
Date: May 22, 2013
Re: Conditional Use Permit (CU-13-176) – Telecommunications Facility

THE ISSUE:

Request for CUP for installation of three antennas and equipment to the roof of the George Washington Hotel at 103 East Piccadilly Street.

RELATIONSHIP TO STRATEGIC PLAN:

N/A

BACKGROUND:

City staff has received a conditional use permit application for the modification of an existing telecommunications facility at 103 East Piccadilly Street (GW Hotel). The applicant intends to install three antennas on existing sled-style mounts in three corners of the building's roof as well as update the support equipment. The applicant has received the necessary approvals from the Board of Architectural Review. (Full staff report is attached).

BUDGET IMPACT:

No funding is required.

OPTIONS:

- Approve with conditions recommended by the Planning Commission
- Approve with revised conditions
- Deny the application

RECOMMENDATIONS:

Planning Commission and staff recommend approval with conditions as noted within the staff report.

City Council
June 11, 2013

CU-13-176 Request of Charles Salamone on behalf of AT&T Mobility for a conditional use permit to upgrade existing telecommunications facilities with additional antennas and equipment at 103 East Piccadilly Street (*Map Number 173-01-P-6*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

REQUEST DESCRIPTION

The applicant is proposing to modify an existing telecommunications facility by adding three (3) antennas to existing mounts on the rooftop of the George Washington Hotel at 103 East Piccadilly Street.

AREA DESCRIPTION

The subject parcel is located on the southeast corner of the intersection of East Piccadilly and North Cameron Streets. The parcel is zoned Central Business (B-1) District with Historic Winchester (HW) District overlay. The surrounding properties are similarly zoned. The vicinity is composed of a mixture of commercial and residential uses.



STAFF COMMENTS

The applicant intends to install three (3) antennas to an existing set of antenna mounts located on the rooftop of the building located at 103 East Piccadilly Street as part of AT&T's deployment of 4G mobile broadband network (700 MHz Long Term Evolution (LTE)). The applicant states in his request letter that the upgrades will allow AT&T to provide 4G LTE wireless data services as well as help to improve its current 3G data and voice coverage. The antennas will be slightly larger than the existing antennas and will reach an approximate height of 80-feet. There will also be equipment cabinets placed on the existing steel platforms also located on the rooftop.

Previous conditional use permits were granted in 1997, 1999, and 2006 for telecommunications facilities on this property. The most recent request, CU-06-02 was for the installation of two sled-mount style structures in addition to the two existing, for a total of four sled-mounted antennas; one mount at each corner.

The applicant sought and received a certificate of appropriateness by the Board of Architectural Review (BAR-13-175) during their April 4, 2013 meeting. The antennas will be installed near the corners of the building on existing antenna mounts. The BAR discussed the concept of disguising the antennas, such as the construction of a false wall along the rooftop. However, the Board decided that the proposal as submitted would be less impactful to the existing structure and the historic district than the creation of a series of false walls above the roofline. All of the equipment and cabinets will be installed on the existing facilities on the rooftop.

RECOMMENDATION

For a conditional use permit to be approved, a finding must be made that the proposal as submitted or modified will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood.

During their May 21, 2013, meeting the Planning Commission forwarded **CU-13-176** to Council recommending approval because the use, as proposed, should not adversely affect the health, safety, or welfare of residents and workers in the neighborhood nor be injurious to adjacent properties or improvements in the neighborhood. The recommended approval is subject to the following conditions:

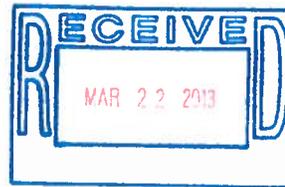
1. Submit an as-built emissions certification after the facility is in operation;
2. The applicant, tower owner, or property owner shall remove equipment within ninety (90) days once the equipment is no longer in active use;
3. Submit a bond guaranteeing removal of facilities should the use cease.



Aaron M. Grisdale, CZA
Director of Zoning and Inspections
City of Winchester

RE: AT&T Mobility-Washington Hotel

Site: Washington Hotel
103 E. Piccadilly Street
Winchester, VA 22601



Mr. Grisdale,

AT&T is proposing to install three panel antennas on the existing mounts located on the rooftop of the building located at 103 E. Piccadilly Street. Related equipment cabinets will be placed on the existing steel platform also located on the rooftop.

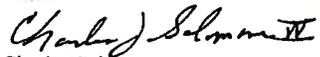
Currently AT&T has six antennas located on the roof. The new antennas will be mounted at the same RAD Center as the existing AT&T antennas.

- Existing antennas: Six (6) Kathrein 800 10121
- Proposed antennas: Three (3) Commscope SBNH-1D6565C
- Proposed cabinet: 1-Commscope RBA 72
- Proposed cabinet: 1-eNodeB 9412

AT&T is planning to deploy there Four G mobile broadband network using the 700 MHz Long Term Evolution (LTE) common access platform by modifying existing sites in the City of Winchester and surrounding areas.

If you have any questions regarding this application please contact me and thank you for your assistance.

Regards,


Charles Salamone
Network Building & Consulting Inc
Agent for AT&T Mobility
443-617-5691
bsalamone@nbcllc.com

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 6/11/13 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE x___ PUBLIC HEARING _x_

ITEM TITLE: An ordinance to authorize the acquisition of properties necessary for the realignment of National Avenue- Piccadilly Street- East Lane

STAFF RECOMMENDATION: Approve Ordinance

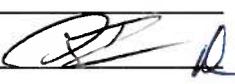
PUBLIC NOTICE AND HEARING: Required

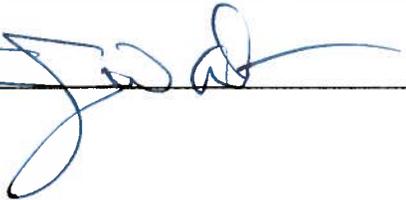
ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Identified in CAM

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. <u>Economic Development</u>	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	_____	_____	_____
6. City Manager		_____	6-6-13
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature:  _____ Date: 6/6/13

APPROVED AS TO FORM:
 6/6/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: James Deskins, Economic Development Director
Date: 6/6/13
Re: National Avenue Realignment



THE ISSUE: Proposal to realign National Avenue to connect to Piccadilly Street in a manner that will create a safer and more efficient traffic pattern thereby enhancing traffic flow into, out of and/or through the Old Town area of the City of Winchester

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2018 #4 - Creating a more livable City for all.

BACKGROUND: The Economic Development Authority has obtained preliminary design concepts for the realignment of National Avenue and has negotiated on behalf of the City to facilitate the voluntary acquisition of specified properties in furtherance of the proposed project. This Ordinance needs to be approved and adopted in order to proceed with acquisition of the identified properties. Additional acquisitions will require further action by Council which shall be proposed at a later time.

BUDGET IMPACT: Funds already identified in the current Budget Ordinance (O-2013-11) should be sufficient to cover the voluntary acquisitions.

OPTIONS: Approve the ordinance and authorize proceeding with the project or reject the ordinance and project.

RECOMMENDATIONS: Approval of the Ordinance.

**AN ORDINANCE TO AUTHORIZE THE ACQUISITION OF PROPERTIES NECESSARY FOR THE
REALIGNMENT OF NATIONAL AVENUE- PICCADILLY STREET- EAST LANE**

WHEREAS, Common Council for the City of Winchester desires to realign National Avenue to connect to Piccadilly Street in a manner that will create a safer and more efficient traffic pattern thereby enhancing traffic flow into, out of and/or through the Old Town area of the City of Winchester; and

WHEREAS, a preliminary design concept has been developed realigning National Avenue to connect with Piccadilly Street as further detailed in (Exhibit A) attached hereto; and

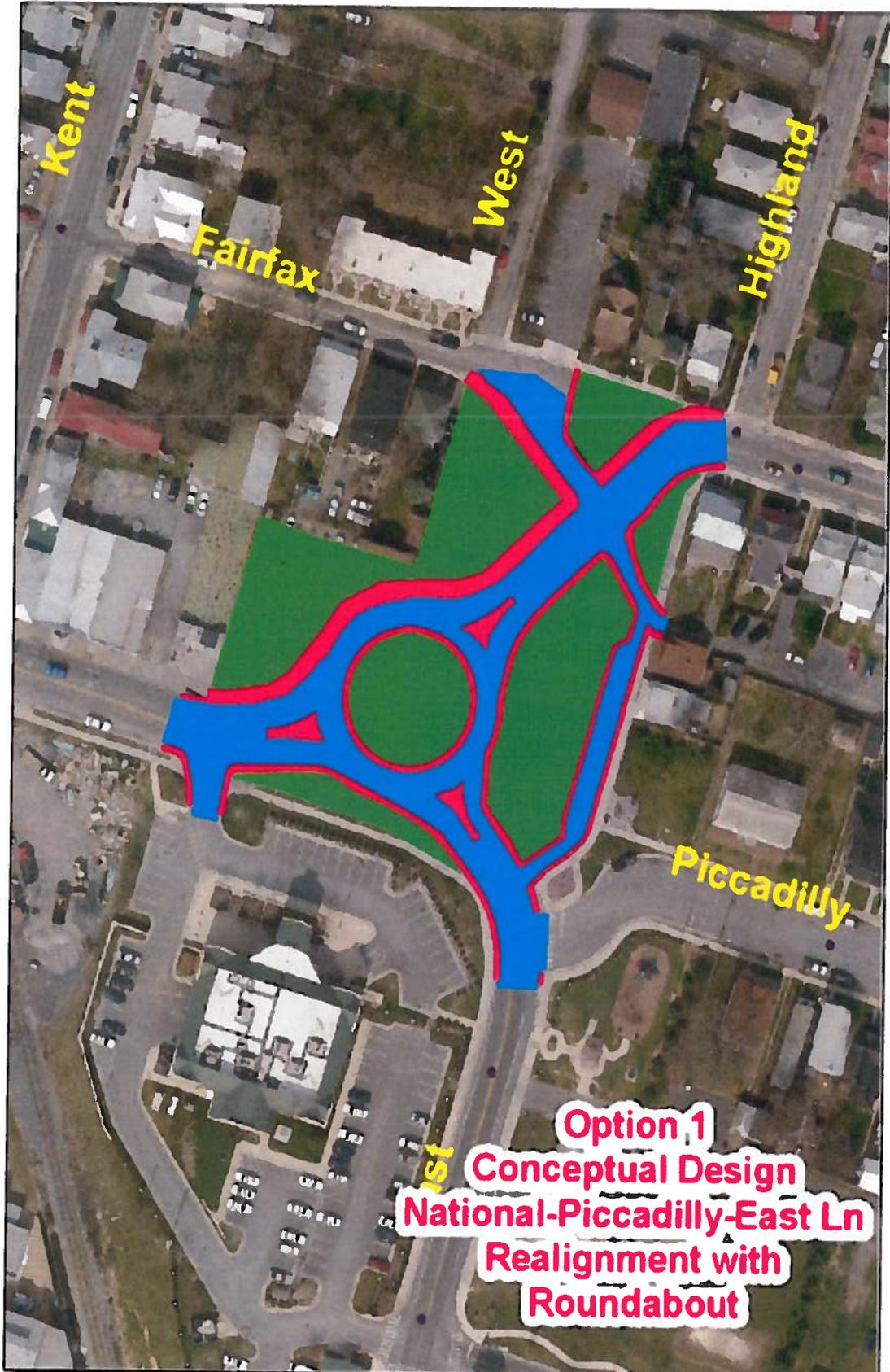
WHEREAS, City of Winchester will need to acquire 216 East Piccadilly St., 222 East Piccadilly St., 226 East Piccadilly St., 228 East Piccadilly St., 236 East Piccadilly St., 209 East Ln., 211-13 East Ln., 215 East Ln., 219 East Ln., 221 East Ln., and 247 East Fairfax Lane in order to complete this project; and

WHEREAS, the Economic Development Authority of the City of Winchester Virginia has negotiated to facilitate the voluntary acquisition of 216 East Piccadilly St., 222 East Piccadilly St., 226 East Piccadilly St., 209 East Ln., 211-13 East Ln., and 247 East Fairfax Ln. and entered into purchase contracts for the same contingent upon approval by Council and appropriation of funds, copies of which are included as (Exhibit B) attached hereto; and

WHEREAS, all funding necessary for the acquisitions of the properties for which purchase contracts have been obtained as identified in this Ordinance have been included in the Budget Ordinance for the Fiscal Year Ending June 30, 2014 (O-2013-11) which is being considered by Common Council concurrently with this Ordinance; and

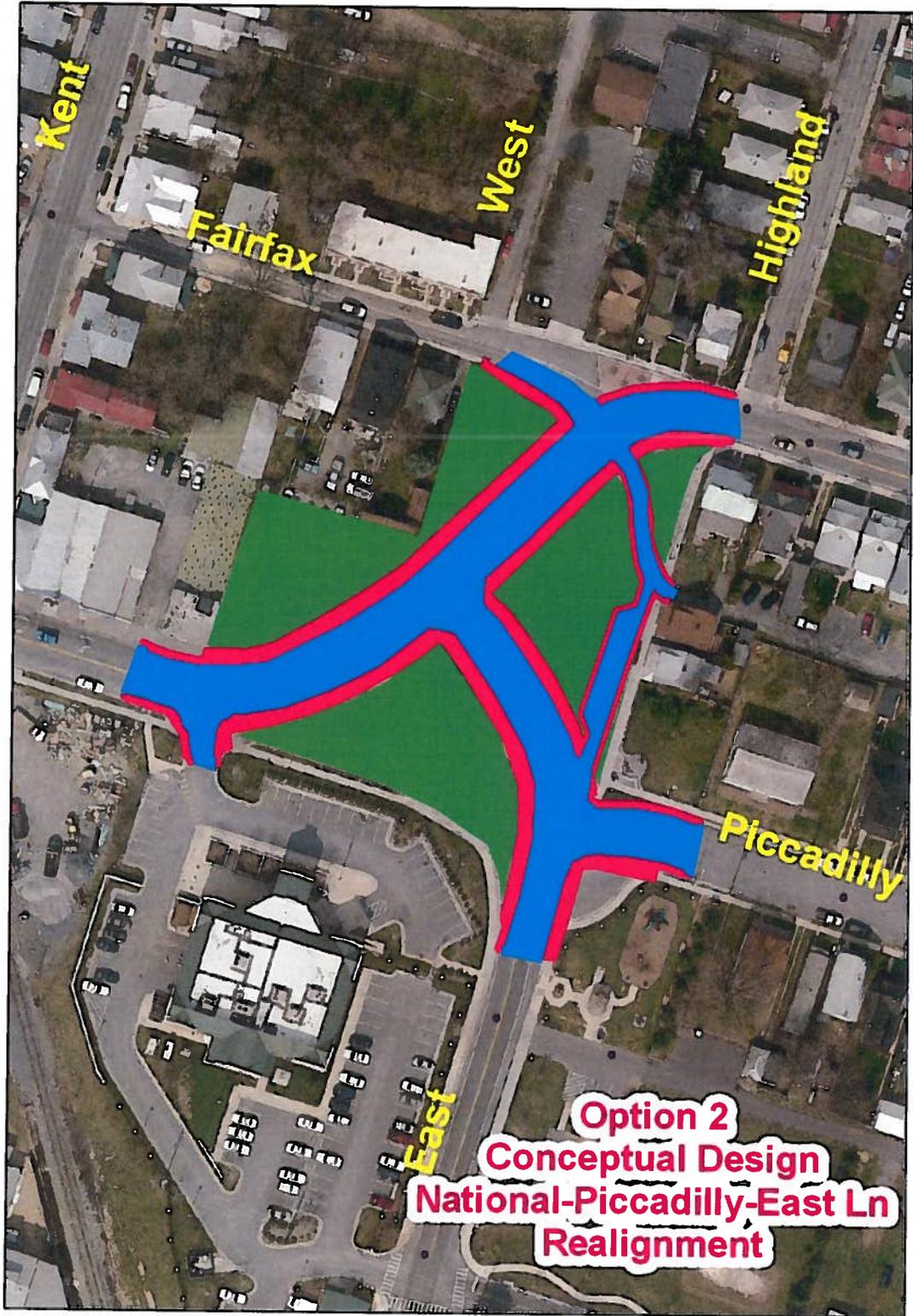
WHEREAS, Council will be presented with an Ordinance for acquisition of the remaining properties for which contracts have not yet been secured as identified in this Ordinance at such time that the EDA has exhausted negotiations with the property owners.

NOW THEREFORE be it ORDAINED that upon Council's appropriation of funds as identified in the Budget Ordinance (O-2013-11), the Common Council of the City of Winchester hereby authorizes City Manager and City Attorney to take all necessary steps to acquire properties held under contract with the Economic Development Authority of the City of Winchester as listed above in furtherance of the realignment of National Avenue-Piccadilly Street-East Lane. BE IT further ORDAINED that Common Council hereby accepts said properties on behalf of the City of Winchester.



**Option 1
Conceptual Design
National-Piccadilly-East Ln
Realignment with
Roundabout**







VIRGINIA ASSOCIATION OF REALTORS®
Commercial Purchase Agreement

Each commercial transaction is different. This form may not address your specific purpose. This is a legally binding document. If not understood, seek competent advice before signing.

This Commercial Purchase Agreement (the "Agreement") is dated March 22, 2013, between Carlos Navarro Economic Development Authority of the City of Winchester, VA ("Purchaser"). The parties acknowledge that Adams Nelson & Associates ("Listing Broker") represents Seller and that Oakcrest Commercial Real Estate ("Selling Broker") represents [select one]:
[] Seller [] Purchaser. The parties further acknowledge that disclosure of the brokerage relationships was made to them by the real estate licensees involved in this transaction when specific assistance was first rendered and confirmed in writing.

1. Sale of Property. Purchaser agrees to buy and Seller agrees to sell the land, all improvements thereon, and all rights and appurtenances thereto belonging, located in the City/County of Winchester, Virginia, with a tax parcel no. of * see below and a street address of 216 & 222 E. Piccadilly Street. Seller discloses that [select one]: [] there are no tenants or other parties in possession of the Property OR [] there are tenants or persons who are in possession of the Property as set forth on SCHEDULE A attached hereto. *174-1-J-17 and 174-1-J-16

2. Purchase Price. The purchase price for the Property is Four Hundred Thirty Two Thousand Dollars (\$432,000) (the "Purchase Price") and shall be paid to Seller at Settlement, subject to the prorations and adjustments described herein, as follows:

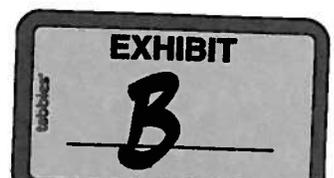
A. Deposit. Purchaser shall make a deposit of \$ 500.00 (the "Deposit") to be held by Oakcrest Commercial Real Estate (the "Escrow Agent"). Purchaser [select one]: [] has paid the Deposit to the Escrow Agent OR [] will pay the Deposit to the Escrow Agent within 5 days after this Agreement is fully executed by both parties. If Purchaser fails to pay the Deposit as set forth herein, then Seller may terminate this Agreement by written notice to Purchaser and neither party shall have any further obligation hereunder. The Deposit may be held in an interest bearing account and the parties waive claim to any such interest. The Deposit shall be applied towards the Purchase Price at Settlement. If Settlement does not occur, the Deposit shall be paid as provided herein.

B. Balance. The balance of the Purchase Price shall be paid by Purchaser at Settlement in certified funds or bank wire (inclusive of any loan obtained by Purchaser to purchase the Property).

3. Settlement.

A. Settlement of Property. Settlement of the purchase and sale of the Property shall be made at Michael L. Bryan's office 116 S. Braddock St. Winchester on 30 days after study period ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement.

B. Deliveries by Seller at Settlement. At Settlement, Seller shall deliver to Purchaser the following:



(i) A general warranty deed with full English covenants of title (the "Deed") conveying to the Purchaser good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, conditions and restrictions, except any lien for real estate taxes not yet due and payable, and any Title Objections for which Purchaser has no objection and/or has waived such objection pursuant to Paragraph 5;

(ii) An affidavit for the benefit of Purchaser and its title insurer, satisfactory to Purchaser's title company (the "Affidavit") stating that (i) no right to a mechanic's or materialman's lien has accrued with respect to the Property as a result of any act or omission by the Seller and (ii) there are no outstanding leases or agreements with regard to, or other parties in or entitled to possession of, the Property except as disclosed in **SCHEDULE A** attached hereto;

(iii) A Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code of 1986 and any other certificates required by any governmental authority or agency;

(iv) If the Property is leased, a tenant estoppel certificate and an assignment of lease (including the transfer of the security deposit at Settlement) for each and every tenant of the Property, in forms acceptable to Purchaser; and

(v) Such other Seller certifications as Purchaser's lender or title company may reasonably require.

C. Costs and Prorations. Seller shall pay the costs of preparing the Deed, the Grantor's tax thereon and any other expenses incurred by Seller. Purchaser shall pay for the title search, title insurance premiums, survey expenses, lender fees, Grantee's tax and all other settlement expenses incurred by Purchaser. Real estate taxes, rent, CAM and assessments, as applicable, shall be prorated between Seller and Purchaser as of the date of the Settlement. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement.

D. Condition of Property. Purchaser agrees to accept the Property at Settlement in its physical condition at the time this Agreement is fully executed by all parties, except as otherwise provided herein. Seller agrees to maintain the Property in good condition and repair until Settlement. At Settlement, Seller agrees to transfer to Purchaser all existing warranties, if any, on the Property's roof, structural components, HVAC, mechanical, electrical, security and plumbing systems.

4. Feasibility Period.

A. For a period of Ninety (90) days following execution of this Agreement by all parties (the "Feasibility Period"), Purchaser, its agents and contractors, shall have the right to: (i) enter the Property for the purpose of inspecting the Property and performing tests as are desirable to Purchaser in its sole and absolute discretion; (ii) seek zoning information from the local governing authority concerning Purchaser's intended use of the Property; and/or (iii) apply for lender financing to acquire the Property.

B. Within five (5) days after Seller's receipt of a fully executed copy of this Agreement, if not previously delivered, Seller shall deliver to Purchaser copies of the following materials related to the Property if in Seller's possession: (i) any Phase I or other environmental studies; (ii) a current survey; (iii) the most current owner's title insurance policy; and (iv) all leases and rent rolls for each tenant identified in **SCHEDULE A** (including without limitation, the base monthly rental and all taxes, insurance, and other pass-throughs paid by the tenant), and all

contracts affecting the Property that are not terminable at will. Items (i) through (iv) are collectively referred to as the "Materials".

C. If Purchaser is not satisfied in its sole and absolute discretion with all aspects of the Property (including zoning) or the Materials, or has not obtained financing upon terms and conditions satisfactory to Purchaser, then Purchaser shall have the right, upon written notice to Seller prior to the expiration of the Feasibility Period, to terminate this Agreement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11. Purchaser acknowledges that the Feasibility Period will not be extended for any reason, regardless of whether Purchaser has completed its inspections or zoning inquiry, or has obtained financing. *

D. If Purchaser fails to acquire the Property, Purchaser agrees: (i) to repair any damage arising as a result of its exercise of the right of access granted in this Paragraph 4; (ii) to indemnify and hold Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of Seller's negligence or misconduct or the negligence or misconduct of Seller's agents, employees or contractors; and (iii) upon demand to return the Materials to Seller.

5. Title and Survey Objections. Purchaser may, at its sole expense, obtain a title insurance commitment and a survey for the Property. Prior to the expiration of the Feasibility Period, Purchaser shall notify the Seller in writing as to any title or survey objections regarding the Property that the Purchaser is unwilling to accept (collectively the "Title Objections"). Seller shall advise Purchaser in writing within ten (10) days after receipt of such notice, which if any of the Title Objections will not be cured by Seller at or prior to Settlement. If Seller fails to respond to Purchaser within such ten (10) day period or if Seller's response indicates that it does not intend to cure one or more of the Title Objections, then Purchaser may, at its option either (i) terminate this Agreement by giving written notice to Seller; (ii) cure such Title Objections at its own expense and proceed to Settlement with no reduction in the Purchase Price; or (iii) waive such Title Objections and proceed to Settlement, with no reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

6. Conditions Precedent to Obligation of Purchaser. This Agreement and all of Purchaser's obligations hereunder are further subject to Purchaser determining in its sole and absolute discretion that all of the conditions set forth in this Paragraph 6 have been satisfied or waived in writing by Purchaser. In the event that any of the following conditions are not satisfied or waived by Purchaser, Purchaser may give written notice to Seller terminating this Agreement on or before Settlement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

A. Seller's Representations and Warranties. All the representations and warranties of Seller made herein shall have been true when made and shall be true and correct as of Settlement, with no material changes therein.

B. Seller's Deliveries. As of Settlement, Seller shall have taken all action and delivered all documents and materials required by this Agreement.

C. No Litigation. As of Settlement, there shall be no litigation, proceeding or investigation pending, or to the knowledge of Purchaser or Seller threatened, which might prevent or adversely affect the intended use of the Property or which questions the validity of any action

*The Purchaser may terminate this Agreement prior to the expiration of the Feasibility Period for any reason or for no reason in Purchaser's sole and absolute discretion.

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taken or to be taken by Seller or Purchaser hereunder, or which threatens the continued operation of the Property for commercial purposes.

7. Representations and Warranties of the Seller. Seller, jointly and severally (if more than one Seller), represents and warrants unto Purchaser as of the date hereof and on the Settlement date that:

A. Authority and Marketable Title. Seller is the owner of the Property, possesses the requisite authority to enter into and perform this Agreement, and has the absolute right to sell, assign, and transfer the Property to Purchaser at Settlement.

B. No Pending Litigation or Bankruptcy. There are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Settlement.

C. No Outstanding Purchase Option. No option, right of first refusal or other contractual opportunity to purchase the Property has been granted to, or executed with, a third-party that is enforceable against Seller and/or the Property giving such third-party a right to purchase an interest in the Property or any part thereof.

D. No Notice of Repairs. Seller has received no written notice from any governmental agency that repairs, alterations or corrections that must be made to the Property.

E. Utilities. The Property is connected to **[select one]**: a municipal water and sewer system and has utility meters installed within the Property **OR** a well and septic system located on the Property. Seller makes no representation on whether the capacities of such utilities are sufficient for Purchaser's intended use of the Property.

F. Hazardous Materials. To the best of Seller's actual knowledge, no toxic or hazardous materials (as said terms are defined in any applicable federal or state laws) have been used, discharged or stored on or about the Property in violation of said laws, and to the best of Seller's knowledge, no such toxic or hazardous materials are now or will be at Settlement located on or below the surface of the Property. There are no petroleum storage tanks located on or beneath the surface of the Property.

G. Parties in Possession. As of the Settlement date, there will be no adverse or other parties in possession of the Property or any part thereof, nor has any party been granted any license, lease or other right or interest relating to the use or possession of the Property or any part thereof, except for the Leases attached hereto and made a part hereof as **SCHEDULE A**.

H. Other Contracts. Seller is not a party to any contracts relating to the Property that is not terminable at will, except as disclosed on **SCHEDULE B**, which is attached hereto and made a part hereof. Between the date of this Agreement and the Settlement date, Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, enter into any contract relating to the Property that is not terminable at will.

I. No Undisclosed Restrictions. Seller has not, nor to the best of Seller's knowledge or belief has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property that has not specifically been disclosed to Purchaser or wouldn't be revealed by a title report.

8. **Risk of Loss.** The risk of loss or damage to the Property by fire or other casualty prior to Settlement shall be on the Seller. If such loss or damage materially and adversely affects the use of the Property as of Settlement, Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

9. **Condemnation.** If, prior to Settlement, any taking pursuant to the power of eminent domain is proposed or occurs, as to all or any portion of the Property intended to be acquired at Settlement by the Purchaser, or sale occurs in lieu thereof, the Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

10. **Access/Cooperation.** During the term of this Agreement, Purchaser and his duly authorized agents shall be entitled to reasonable access to the Property for the purpose of surveying, appraising and making other findings related to the Property. Purchaser agrees to indemnify and hold the Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of the Seller's gross negligence or willful misconduct.

11. **Agents and Brokers.** Each party represents and warrants that it did not consult or deal with any broker or agent with regard to this Agreement or the transaction contemplated hereby, except for the Listing Broker and the Selling Broker, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representation and warranty. Listing Broker shall be paid a brokerage fee by Seller of **■ 3** % of the Purchase Price. Selling Broker shall be paid by Seller a fee of **■ 3** % of the Purchase Price.

12. **Notices.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if, delivered by hand or messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Paragraph. Any such notice, request or demand so given shall be deemed given on the day it is received by the recipient.

For the Seller: Carlos Navarro
222 E. Piccadilly Street
Winchester, VA 22601

For Purchaser: Economic Development Authority
of the City of Winchester, VA
15 N. Cameron St. Winchester, VA 22601

13. **Default.**

A. **Default by Purchaser.** If Purchaser defaults under this Agreement, the damages suffered by Seller would be difficult to ascertain. **Therefore, Seller and Purchaser agree that, in the event of a default by Purchaser, Seller's sole and exclusive remedy, in lieu of all other remedies, shall be to terminate this Agreement and retain the Deposit as full and**

~~complete liquidated damages. If the Deposit is retained as liquidated damages, Seller agrees to pay one-half of the Deposit to the Listing Broker to compensate Broker for his brokerage services in the transaction. Such payment shall have no effect on the payment due in any subsequent transaction. Seller hereby specifically waives the right to seek specific performance of this Agreement by Purchaser or any other remedy at law or in equity, provided that Seller reserves the right to all remedies available at law and in equity solely in order to enforce the indemnification obligations of Purchaser under Paragraphs 4D., 10 and 11 herein.~~

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B. Default by Seller. If Seller defaults under this Agreement, Purchaser shall have the option to (i) seek specific performance of this Agreement, or (ii) terminate this Agreement, in which event the Deposit shall be promptly refunded to Purchaser. Seller shall be liable for Purchaser's expenses in the filing of any specific performance action, including reasonable attorney's fees and court costs.

C. Right to Cure Default. Prior to any termination of this Agreement as provided in Subparagraphs 13A. and 13B., the non-defaulting party shall provide written notice of any default(s) to the defaulting party (the "Default Notice") permitting the defaulting party ten (10) days to cure any such default(s). If defaulting party does not cure the default(s) or does not respond to the Default Notice, then the non-defaulting party may terminate the Agreement by written notice to the defaulting party. Nothing herein shall prevent either party from seeking a judicial determination regarding any default; provided however, the court shall award the expenses of attorney's fees and court costs to the prevailing party in any such action.

D. Brokerage Fees. ~~Notwithstanding the remedies set forth in Subparagraphs 13A., 13B, and 13C, if either Seller or Purchaser defaults under this Agreement, the defaulting party shall be liable for the full amount of the brokerage fees set forth in Paragraph 11 and any brokerage fees set forth in Seller's listing agreement with the Listing Broker for the Property (which document is hereby incorporated herein by this reference) as if this Agreement and Seller's listing agreement had been performed, and for any damages and all expenses incurred by the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Agreement and Seller's listing agreement, including, without limitation, attorney's fees and court costs. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Agreement shall not relieve the defaulting party of liability for any brokerage fees due under this Agreement or Seller's listing agreement.~~

14. Miscellaneous.

A. Final Agreement. This Agreement contains the entire agreement between the parties hereto relating to the Property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto.

B. Virginia Law Applicable. This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia and shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

C. Assignment. This Agreement shall not be assigned by one party without the written consent of the other party, except the assignment of this Agreement to an entity owned by Purchaser or the principals of Purchaser shall not require the consent of Seller, but Purchaser shall provide written notice to Seller of such assignment. This Agreement shall inure to the benefit of the parties hereto and their respective and permitted successors and assigns.

D. Counterparts. This Agreement may be signed in one or more counterparts, each of which is deemed to be an original and all of which shall together constitute the same instrument.

The parties agree that a fax of any signed original document shall have the same effect as an original.

E. Tax-Deferred Exchange. Either party may elect to include the conveyance of the Property in an IRS Section 1031 Like Kind Exchange (a tax-deferred exchange). In the event that a party makes such an election, the non-exchanging party agrees to execute such documents necessary to effectuate such an exchange (at no cost to the exchanging party), but in no event shall such exchange affect the terms of the transaction or a party's responsibilities to the other party under this Agreement. The exchanging party shall bear the sole costs of its exchange.

15. Additional Provisions: See Addendum 1 of 1 attached.

16. Acceptance. To be effective this Agreement must be executed by Purchaser and Seller and an original copy of this Agreement returned to Purchaser no later than 5:00 p.m. on March 29, 2013, or this Purchase Agreement shall be deemed withdrawn.

**REMAINDER OF PAGE
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Each of the parties has executed this Agreement in its name pursuant to due authority as of the dates set forth below.

Purchaser 
Printed Name: James W. Deskins
Title (if applicable): Executive Director
Date: 3/26/13

Seller 
Printed Name: Carlos Navarre
Title (if applicable): _____
Date: 03-27-13

Purchaser _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Seller _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Listing Company's Name and Address

Adams Nelson & Associates Inc.
303 Loudoun Street
Winchester, VA 22601

Selling Company's Name and Address

Oakcrest Commercial Real Estate
126 North Kent Street
Winchester, VA 22601

Agent's Name Gary Adams
Agent's tel. no. 540-667-2424
Fax no. 540-667-2441
Agent's email garyadams@adamsnelson.com

Agent's Name Bill Wiley
Agent's tel. no. 540-532-6259
Fax no. 540-504-0795
Agent's email billwiley@mris.com

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SCHEDULE A

**LEASES, AGREEMENTS AND CONTRACTS
FOR TENANTS AND OTHER PARTIES
IN POSSESSION OF THE PROPERTY**

List below each such tenant or other party in possession of the Property, and provide Purchaser with a copy of each lease, license or other agreement. If verbal agreement, summarize terms below.

Also provide Purchaser with any contract affecting the Property that is not terminable at will.

SCHEDULE B
CONTRACTS RELATING TO THE PROPERTY
(Not terminable at will)

**ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #1 OF 1**

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the “Contract”) dated March 22, 2013, between CARLOS NAVARRO (the “Seller”) and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the “Purchaser”) for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 216 AND 222 EAST PICCADILLY STREET, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-1-J-17 and 174-1-J-16, provides as follows:

- 1. This Agreement is contingent upon approval and appropriation of funds by the Common Council of the City of Winchester, Virginia for the purchase of the Property by Resolution adopted on or before June 19, 2013. If funds are not approved and appropriated on or before June 19, 2013, then this Agreement shall terminate, whereupon the Deposit shall be returned to the Purchaser.**
- 2. This Agreement is expressly contingent upon the approval by the Directors of the Economic Development Authority of the City of Winchester, Virginia (the “Authority”) by Resolution adopted on or before June 26, 2013. If such Resolution is not adopted by the Authority on or before June 26, 2013, then and in that event this Agreement shall terminate and be of no further binding force or effect, whereupon the Deposit shall be returned to the Purchaser.**
- 3. Time is of the essence as to all matters set forth in this Agreement.**
- 4. At Purchaser’s election, Purchaser shall have the right to have the Property appraised, at Purchaser’s sole cost and expense, during the Feasibility Period. In the event that the appraised value of the Property is less than the Purchase Price as set forth in Section 2 of the Agreement, or is otherwise deemed unacceptable to Purchaser, in Purchaser’s sole and absolute discretion, Purchaser shall have the right to terminate this Agreement upon notice to Seller given within ten (10) business days after receipt of the written appraisal by Purchaser or, at Purchaser’s election, to reduce the Purchase Price as set forth in Section 2 upon written notice to Seller, given within ten (10) business days after receipt of the written appraisal by Seller. Upon receipt of the reduced Purchase Price from Purchaser, Seller shall have the right, within five (5) business days after receipt of the reduced Purchase Price, to either accept the reduced Purchase Price or to terminate this Agreement upon written notice to Purchaser. In the event of termination of this Agreement by either Seller or Purchaser, the Deposit shall be returned to the Purchaser. In no event shall the Purchase Price be increased as a result of the market value as determined by any such appraisal commissioned by the Purchaser.**

5. Reference is made to that certain Deed dated May 10, 2006, of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 060002070 for a more particular description of the Property.

WITNESS the following duly authorized signatures and seals:

SELLER:

PURCHASER

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA



CARLOS NAVARRO

(Seal)

By:



(SEAL)

James W. Deskins, Executive Director

MLB/pmn
c:\Contracts\EDA - 216 - 222 East Piccadilly Addendum
3/22/13



VIRGINIA ASSOCIATION OF REALTORS®
Commercial Purchase Agreement

Each commercial transaction is different. This form may not address your specific purpose. This is a legally binding document. If not understood, seek competent advice before signing.

This Commercial Purchase Agreement (the "Agreement") is dated March 22, 2013, between Stan Brooks Jr., Economic Development Authority of the City of Winchester, VA ("Seller") and that N/A ("Purchaser"). The parties acknowledge Oakcrest Commercial Real Estate ("Listing Broker") represents Seller and that [select one] ("Selling Broker") represents [select one]: Seller Purchaser. The parties further acknowledge that disclosure of the brokerage relationships was made to them by the real estate licensees involved in this transaction when specific assistance was first rendered and confirmed in writing.

1. Sale of Property. Purchaser agrees to buy and Seller agrees to sell the land, all improvements thereon, and all rights and appurtenances thereto belonging, located in the City/County of Winchester, Virginia, with a tax parcel no. of * see below and a street address of 228 E. Piccadilly St & 247 E. Fairfax Ln. Seller discloses that [select one]: there are no tenants or other parties in possession of the Property OR there are tenants or persons who are in possession of the Property as set forth on SCHEDULE A attached hereto. *174-1-J-15 and 174-1-J-6

2. Purchase Price. The purchase price for the Property is One Hundred Ninety thousand Dollars (\$190,000) (the "Purchase Price") and shall be paid to Seller at Settlement, subject to the prorations and adjustments described herein, as follows:

A. Deposit. Purchaser shall make a deposit of \$500.00 (the "Deposit") to be held by Oakcrest Commercial Real Estate (the "Escrow Agent"). Purchaser [select one]: has paid the Deposit to the Escrow Agent OR will pay the Deposit to the Escrow Agent within 5 days after this Agreement is fully executed by both parties. If Purchaser fails to pay the Deposit as set forth herein, then Seller may terminate this Agreement by written notice to Purchaser and neither party shall have any further obligation hereunder. The Deposit may be held in an interest bearing account and the parties waive claim to any such interest. The Deposit shall be applied towards the Purchase Price at Settlement. If Settlement does not occur, the Deposit shall be paid as provided herein.

B. Balance. The balance of the Purchase Price shall be paid by Purchaser at Settlement in certified funds or bank wire (inclusive of any loan obtained by Purchaser to purchase the Property).

3. Settlement.

A. Settlement of Property. Settlement of the purchase and sale of the Property shall be made at Michael L. Bryan's office 116 S. Braddock St. Winchester on 30 days after study period ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement.

B. Deliveries by Seller at Settlement. At Settlement, Seller shall deliver to Purchaser the following:

Handwritten notes: SWBST, PA. DTB, STAN, KOT, 4250.00, SWBST, SWBST, Stan Brooks OK

(i) A general warranty deed with full English covenants of title (the "Deed") conveying to the Purchaser good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, conditions and restrictions, except any lien for real estate taxes not yet due and payable, and any Title Objections for which Purchaser has no objection and/or has waived such objection pursuant to Paragraph 5;

(ii) An affidavit for the benefit of Purchaser and its title insurer, satisfactory to Purchaser's title company (the "Affidavit") stating that (i) no right to a mechanic's or materialman's lien has accrued with respect to the Property as a result of any act or omission by the Seller and (ii) there are no outstanding leases or agreements with regard to, or other parties in or entitled to possession of, the Property except as disclosed in **SCHEDULE A** attached hereto;

(iii) A Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code of 1986 and any other certificates required by any governmental authority or agency;

(iv) If the Property is leased, a tenant estoppel certificate and an assignment of lease (including the transfer of the security deposit at Settlement) for each and every tenant of the Property, in forms acceptable to Purchaser; and

(v) Such other Seller certifications as Purchaser's lender or title company may reasonably require.

C. Costs and Prorations. Seller shall pay the costs of preparing the Deed, the Grantor's tax thereon and any other expenses incurred by Seller. Purchaser shall pay for the title search, title insurance premiums, survey expenses, lender fees, Grantee's tax and all other settlement expenses incurred by Purchaser. Real estate taxes, rent, CAM and assessments, as applicable, shall be prorated between Seller and Purchaser as of the date of the Settlement. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement.

D. Condition of Property. Purchaser agrees to accept the Property at Settlement in its physical condition at the time this Agreement is fully executed by all parties, except as otherwise provided herein. Seller agrees to maintain the Property in good condition and repair until Settlement. At Settlement, Seller agrees to transfer to Purchaser all existing warranties, if any, on the Property's roof, structural components, HVAC, mechanical, electrical, security and plumbing systems.

4. Feasibility Period.

A. For a period of Ninety (90) days following execution of this Agreement by all parties (the "Feasibility Period"), Purchaser, its agents and contractors, shall have the right to: (i) enter the Property for the purpose of inspecting the Property and performing tests as are desirable to Purchaser in its sole and absolute discretion; (ii) seek zoning information from the local governing authority concerning Purchaser's intended use of the Property; and/or (iii) apply for lender financing to acquire the Property. *Purchaser must be accompanied by seller to enter Property*

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S.W.S.T. B. Within five (5) days after Seller's receipt of a fully executed copy of this Agreement, if not previously delivered, Seller shall deliver to Purchaser copies of the following materials related to the Property if in Seller's possession: (i) any Phase I or other environmental studies; (ii) a current survey; (iii) the most current owner's title insurance policy; and (iv) all leases and rent rolls for each tenant identified in **SCHEDULE A** (including without limitation, the base monthly rental and all taxes, insurance, and other pass-throughs paid by the tenant), and all

And not before
APRIL 13th 2013

contracts affecting the Property that are not terminable at will. Items (i) through (iv) are collectively referred to as the "Materials".

C. If Purchaser is not satisfied in its sole and absolute discretion with all aspects of the Property (including zoning) or the Materials, or has not obtained financing upon terms and conditions satisfactory to Purchaser, then Purchaser shall have the right, upon written notice to Seller prior to the expiration of the Feasibility Period, to terminate this Agreement, in which event ~~the Deposit shall be refunded in full to Purchaser and~~ the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11. Purchaser acknowledges that the Feasibility Period will not be extended for any reason, regardless of whether Purchaser has completed its inspections or zoning inquiry, or has obtained financing. *

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D. If Purchaser fails to acquire the Property, Purchaser agrees: (i) to repair any damage arising as a result of its exercise of the right of access granted in this Paragraph 4; (ii) to indemnify and hold Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of Seller's negligence or misconduct or the negligence or misconduct of Seller's agents, employees or contractors; and (iii) upon demand to return the Materials to Seller.

5. Title and Survey Objections. Purchaser may, at its sole expense, obtain a title insurance commitment and a survey for the Property. Prior to the expiration of the Feasibility Period, Purchaser shall notify the Seller in writing as to any title or survey objections regarding the Property that the Purchaser is unwilling to accept (collectively the "Title Objections"). Seller shall advise Purchaser in writing within ten (10) days after receipt of such notice, which if any of the Title Objections will not be cured by Seller at or prior to Settlement. If Seller fails to respond to Purchaser within such ten (10) day period or if Seller's response indicates that it does not intend to cure one or more of the Title Objections, then Purchaser may, at its option either (i) terminate this Agreement by giving written notice to Seller; (ii) cure such Title Objections at its own expense and proceed to Settlement with no reduction in the Purchase Price; or (iii) waive such Title Objections and proceed to Settlement, with no reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, ~~the Deposit shall be refunded in full to Purchaser and~~ the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

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6. Conditions Precedent to Obligation of Purchaser. This Agreement and all of Purchaser's obligations hereunder are further subject to Purchaser determining in its sole and absolute discretion that all of the conditions set forth in this Paragraph 6 have been satisfied or waived in writing by Purchaser. In the event that any of the following conditions are not satisfied or waived by Purchaser, Purchaser may give written notice to Seller terminating this Agreement on or before Settlement, in which event ~~the Deposit shall be refunded in full to Purchaser and~~ the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

SUBST

A. Seller's Representations and Warranties. All the representations and warranties of Seller made herein shall have been true when made and shall be true and correct as of Settlement, with no material changes therein.

B. Seller's Deliveries. As of Settlement, Seller shall have taken all action and delivered all documents and materials required by this Agreement.

C. No Litigation. As of Settlement, there shall be no litigation, proceeding or investigation pending, or to the knowledge of Purchaser or Seller threatened, which might prevent or adversely affect the intended use of the Property or which questions the validity of any action

*The Purchaser may terminate this Agreement prior to the expiration of the Feasibility Period for any reason or for no reason in Purchaser's sole and absolute discretion.

INITIALS

taken or to be taken by Seller or Purchaser hereunder, or which threatens the continued operation of the Property for commercial purposes.

7. Representations and Warranties of the Seller. Seller, jointly and severally (if more than one Seller), represents and warrants unto Purchaser as of the date hereof and on the Settlement date that:

A. Authority and Marketable Title. Seller is the owner of the Property, possesses the requisite authority to enter into and perform this Agreement, and has the absolute right to sell, assign, and transfer the Property to Purchaser at Settlement.

B. No Pending Litigation or Bankruptcy. There are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Settlement.

C. No Outstanding Purchase Option. No option, right of first refusal or other contractual opportunity to purchase the Property has been granted to, or executed with, a third-party that is enforceable against Seller and/or the Property giving such third-party a right to purchase an interest in the Property or any party thereof.

D. No Notice of Repairs. Seller has received no written notice from any governmental agency that repairs, alterations or corrections that must be made to the Property.

E. Utilities. The Property is connected to [**select one**]: a municipal water and sewer system and has utility meters installed within the Property **OR** a well and septic system located on the Property. Seller makes no representation on whether the capacities of such utilities are sufficient for Purchaser's intended use of the Property.

F. Hazardous Materials. To the best of Seller's actual knowledge, no toxic or hazardous materials (as said terms are defined in any applicable federal or state laws) have been used, discharged or stored on or about the Property in violation of said laws, and to the best of Seller's knowledge, no such toxic or hazardous materials are now or will be at Settlement located on or below the surface of the Property. There are no petroleum storage tanks located on or beneath the surface of the Property.

G. Parties in Possession. As of the Settlement date, there will be no adverse or other parties in possession of the Property or any part thereof, nor has any party been granted any license, lease or other right or interest relating to the use or possession of the Property or any part thereof, except for the Leases attached hereto and made a part hereof as **SCHEDULE A**.

H. Other Contracts. Seller is not a party to any contracts relating to the Property that is not terminable at will, except as disclosed on **SCHEDULE B**, which is attached hereto and made a part hereof. Between the date of this Agreement and the Settlement date, Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, enter into any contract relating to the Property that is not terminable at will.

I. No Undisclosed Restrictions. Seller has not, nor to the best of Seller's knowledge or belief has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property that has not specifically been disclosed to Purchaser or wouldn't be revealed by a title report.

8. Risk of Loss. The risk of loss or damage to the Property by fire or other casualty prior to Settlement shall be on the Seller. If such loss or damage materially and adversely affects the use of the Property as of Settlement, Purchaser shall be entitled to terminate this Agreement by written notice to Seller, ~~in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.~~ *subst*

9. Condemnation. If, prior to Settlement, any taking pursuant to the power of eminent domain is proposed or occurs, as to all or any portion of the Property intended to be acquired at Settlement by the Purchaser, or sale occurs in lieu thereof, the Purchaser shall be entitled to terminate this Agreement by written notice to Seller, ~~in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.~~ *subst*

10. Access/Cooperation. During the term of this Agreement, Purchaser and his duly authorized agents shall be entitled to reasonable access to the Property for the purpose of surveying, appraising and making other findings related to the Property. Purchaser agrees to indemnify and hold the Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of the Seller's gross negligence or willful misconduct.

subst
11. Agents and Brokers. Each party represents and warrants that it did not consult or deal with any broker or agent with regard to this Agreement or the transaction contemplated hereby, except for the Listing Broker and the Selling Broker, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representation and warranty. Listing Broker shall be paid a brokerage fee by Seller of _____% of the Purchase Price. Selling Broker shall be paid by Seller a fee of 3 _____% of the Purchase Price.

PURCHASER
12. Notices. Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if, delivered by hand or messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Paragraph. Any such notice, request or demand so given shall be deemed given on the day it is received by the recipient.

For the Seller: Stan Brooks

For Purchaser: Economic Development Authority
of the City of Winchester, VA
15 N. Cameron St. Winchester, VA 22601

13. Default.

A. Default by Purchaser. If Purchaser defaults under this Agreement, the damages suffered by Seller would be difficult to ascertain. **Therefore, Seller and Purchaser agree that, in the event of a default by Purchaser, Seller's sole and exclusive remedy, in lieu of all other remedies, shall be to terminate this Agreement and retain the Deposit as full and**

~~complete liquidated damages. If the Deposit is retained as liquidated damages, Seller agrees to pay one-half of the Deposit to the Listing Broker to compensate Broker for his brokerage services in the transaction. Such payment shall have no effect on the payment due in any subsequent transaction. Seller hereby specifically waives the right to seek specific performance of this Agreement by Purchaser or any other remedy at law or in equity, provided that Seller reserves the right to all remedies available at law and in equity solely in order to enforce the Indemnification obligations of Purchaser under Paragraphs 4D., 10 and 11 herein.~~



B. Default by Seller. If Seller defaults under this Agreement, Purchaser shall have the option to (i) seek specific performance of this Agreement, or (ii) terminate this Agreement, in which event the Deposit shall be promptly refunded to Purchaser. Seller shall be liable for Purchaser's expenses in the filing of any specific performance action, including reasonable attorney's fees and court costs.

C. Right to Cure Default. Prior to any termination of this Agreement as provided in Subparagraphs 13A. and 13B., the non-defaulting party shall provide written notice of any default(s) to the defaulting party (the "Default Notice") permitting the defaulting party ten (10) days to cure any such default(s). If defaulting party does not cure the default(s) or does not respond to the Default Notice, then the non-defaulting party may terminate the Agreement by written notice to the defaulting party. Nothing herein shall prevent either party from seeking a judicial determination regarding any default; provided however, the court shall award the expenses of attorney's fees and court costs to the prevailing party in any such action.

D. Brokerage Fees. ~~Notwithstanding the remedies set forth in Subparagraphs 13A., 13B, and 13C, if either Seller or Purchaser defaults under this Agreement, the defaulting party shall be liable for the full amount of the brokerage fees set forth in Paragraph 11 and any brokerage fees set forth in Seller's listing agreement with the Listing Broker for the Property (which document is hereby incorporated herein by this reference) as if this Agreement and Seller's listing agreement had been performed, and for any damages and all expenses incurred by the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Agreement and Seller's listing agreement, including, without limitation, attorney's fees and court costs. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Agreement shall not relieve the defaulting party of liability for any brokerage fees due under this Agreement or Seller's listing agreement.~~



14. Miscellaneous.

A. Final Agreement. This Agreement contains the entire agreement between the parties hereto relating to the Property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto.

B. Virginia Law Applicable. This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia and shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

C. Assignment. This Agreement shall not be assigned by one party without the written consent of the other party, except the assignment of this Agreement to an entity owned by Purchaser or the principals of Purchaser shall not require the consent of Seller, but Purchaser shall provide written notice to Seller of such assignment. This Agreement shall inure to the benefit of the parties hereto and their respective and permitted successors and assigns.

D. Counterparts. This Agreement may be signed in one or more counterparts, each of which is deemed to be an original and all of which shall together constitute the same instrument.

The parties agree that a fax of any signed original document shall have the same effect as an original.

E. Tax-Deferred Exchange. Either party may elect to include the conveyance of the Property in an IRS Section 1031 Like Kind Exchange (a tax-deferred exchange). In the event that a party makes such an election, the non-exchanging party agrees to execute such documents necessary to effectuate such an exchange (at no cost to the exchanging party), but in no event shall such exchange affect the terms of the transaction or a party's responsibilities to the other party under this Agreement. The exchanging party shall bear the sole costs of its exchange.

15. Additional Provisions: See Addendum 1 of 1 attached.

16. Acceptance. To be effective this Agreement must be executed by Purchaser and Seller and an original copy of this Agreement returned to Purchaser no later than 5:00 p.m. on March 29, 2013, or this Purchase Agreement shall be deemed withdrawn.

**REMAINDER OF PAGE
LEFT INTENTIONALLY BLANK**

Each of the parties has executed this Agreement in its name pursuant to due authority as of the dates set forth below.

James W. Deskins 4/17/2013
Purchaser _____
Printed Name: James W. Deskins
Title (if applicable): Executive Director
Date: 3/26/13

Stan Brooks Jr. 4/17/2013
Seller _____
Printed Name: Stan Brooks Jr.
Title (if applicable): _____
Date: 3-29-13

Purchaser _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Seller _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Listing Company's Name and Address

Selling Company's Name and Address
Oakcrest Commercial Real Estate
126 North Kent Street
Winchester, VA 22601

Agent's Name _____
Agent's tel. no. _____
Fax no. _____
Agent's email _____

Agent's Name Bill Wiley
Agent's tel. no. 540-532-6259
Fax no. 540-504-0795
Agent's email billwiley@mrisc.com

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SCHEDULE A

**LEASES, AGREEMENTS AND CONTRACTS
FOR TENANTS AND OTHER PARTIES
IN POSSESSION OF THE PROPERTY**

List below each such tenant or other party in possession of the Property, and provide Purchaser with a copy of each lease, license or other agreement. If verbal agreement, summarize terms below.

Also provide Purchaser with any contract affecting the Property that is not terminable at will.

SCHEDULE B

**CONTRACTS RELATING TO THE PROPERTY
(Not terminable at will)**

**ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #1 OF 1**

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the "Contract") dated March 22, 2013, between STAN BROOKS (being one and the same Stanley W. Brooks, Jr.) (the "Seller") and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 226 EAST PICCADILLY STREET and 247 EAST FAIRFAX LANE, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-1-J-15 and 174-1-J-6, provides as follows:

1. This Agreement is contingent upon approval and appropriation of funds by the Common Council of the City of Winchester, Virginia for the purchase of the Property by Resolution adopted on or before June 19, 2013. If funds are not approved and appropriated on or before June 19, 2013, then this Agreement shall terminate, whereupon ~~the Deposit shall be returned to the Purchaser.~~ *SLB*
2. This Agreement is expressly contingent upon the approval by the Directors of the Economic Development Authority of the City of Winchester, Virginia (the "Authority") by Resolution adopted on or before June 26, 2013. If such Resolution is not adopted by the Authority on or before June 26, 2013, then and in that event this Agreement shall terminate and be of no further binding force or effect, whereupon ~~the Deposit shall be returned to the Purchaser.~~ *SLB*
3. Time is of the essence as to all matters set forth in this Agreement.
4. At Purchaser's election, Purchaser shall have the right to have the Property appraised, at Purchaser's sole cost and expense, during the Feasibility Period. In the event that the appraised value of the Property is less than the Purchase Price as set forth in Section 2 of the Agreement, or is otherwise deemed unacceptable to Purchaser, in Purchaser's sole and absolute discretion, Purchaser shall have the right to terminate this Agreement upon notice to Seller given within ten (10) business days after receipt of the written appraisal by Purchaser. In the event of termination of this Agreement by Purchaser, ~~the Deposit shall be returned to the Purchaser.~~ *SLB*
5. This Agreement is contingent upon acquisition of title to both Properties by Seller prior to expiration of the Feasibility Period as set forth in Section 4 of this Agreement. In the event that Seller fails to acquire title to both Properties prior to the expiration of the Feasibility Period, then and in that event this Agreement shall terminate on the date of expiration of the Feasibility Period and shall be of no further force or binding effect and ~~the Deposit shall be returned to the Purchaser.~~ *SLB*

WITNESS the following duly authorized signatures and seals:

SELLER:

PURCHASER

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA

 (Seal) By:  (SEAL)
STAN BROOKS JR. James W. Deskins, Executive Director





April 17-2013

4/17/2013

MLB/pmn
c:\Contracts\EDA - 226 Piccadilly 247 Fairfax Addendum
3/22/13

IF Notice is given by May 30th
2013 Deposit will be rebated by
Seller to Buyer at a rate of

\$56.00 (Fifty six dollars) a day for
a period of time from the day following
notice thru June 30, 2013.

Notice to terminate sales contract
must be provided in writing by
Purchaser and delivered to buyer prior
to May 30, 2013

Deposit to be paid by April 26, 2013.

Seller *Sh. Brooks*
Purchaser *J. Walsh*



VIRGINIA ASSOCIATION OF REALTORS®
Commercial Purchase Agreement

Each commercial transaction is different. This form may not address your specific purpose. This is a legally binding document. If not understood, seek competent advice before signing.

This Commercial Purchase Agreement (the "Agreement") is dated March 22, 2013, between Yan Wei ("Seller") and Economic Development Authority of the City of Winchester, VA ("Purchaser"). The parties acknowledge that Classic Realty, N/A ("Listing Broker") represents Seller and that Oakcrest Commercial Real Estate ("Selling Broker") represents [select one]: [] Seller [X] Purchaser. The parties further acknowledge that disclosure of the brokerage relationships was made to them by the real estate licensees involved in this transaction when specific assistance was first rendered and confirmed in writing.

yu/D

1. Sale of Property. Purchaser agrees to buy and Seller agrees to sell the land, all improvements thereon, and all rights and appurtenances thereto belonging, located in the City/County of Winchester, Virginia, with a tax parcel no. of 174-07-C and a street address of 208 N. East Ln. Seller discloses that [select one]: [] there are no tenants or other parties in possession of the Property OR [] there are tenants or persons who are in possession of the Property as set forth on SCHEDULE A attached hereto. [X] Subject to change.

2. Purchase Price. The purchase price for the Property is ~~Forty Two Thousand~~ One hundred and Eighty thousand Dollars (~~\$42,000~~ \$124,000) (the "Purchase Price") and shall be paid to Seller at Settlement, subject to the prorations and adjustments described herein, as follows: \$5,000.00

A. Deposit. Purchaser shall make a deposit of \$ ~~500.00~~ (the "Deposit") to be held by Oakcrest Commercial Real Estate (the "Escrow Agent"). Purchaser [select one]: [] has paid the Deposit to the Escrow Agent OR [X] will pay the Deposit to the Escrow Agent within 5 days after this Agreement is fully executed by both parties. If Purchaser fails to pay the Deposit as set forth herein, then Seller may terminate this Agreement by written notice to Purchaser and neither party shall have any further obligation hereunder. The Deposit may be held in an interest bearing account and the parties waive claim to any such interest. The Deposit shall be applied towards the Purchase Price at Settlement. If Settlement does not occur, the Deposit shall be paid as provided herein.

B. Balance. The balance of the Purchase Price shall be paid by Purchaser at Settlement in certified funds or bank wire (inclusive of any loan obtained by Purchaser to purchase the Property).

3. Settlement.

A. Settlement of Property. Settlement of the purchase and sale of the Property shall be made at Michael L. Bryan's office 116 S. Braddock St. Winchester on 30 days after study period ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement.

Purchaser to pay Seller \$100 per day of settlement delay caused by Purchaser.

B. Deliveries by Seller at Settlement. At Settlement, Seller shall deliver to Purchaser the following:

Special insurable
(I) A ~~general~~ warranty deed with full English covenants of title (the "Deed") conveying to the Purchaser good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, conditions and restrictions, except any lien for real estate taxes not yet due and payable, and any Title Objections for which Purchaser has no objection and/or has waived such objection pursuant to Paragraph 5;

(II) An affidavit for the benefit of Purchaser and its title insurer, satisfactory to Purchaser's title company (the "Affidavit") stating that (i) no right to a mechanic's or materialman's lien has accrued with respect to the Property as a result of any act or omission by the Seller and (ii) there are no outstanding leases or agreements with regard to, or other parties in or entitled to possession of, the Property except as disclosed in **SCHEDULE A** attached hereto;

(III) A Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code of 1986 and any other certificates required by any governmental authority or agency;

(iv) If the Property is leased, a tenant estoppel certificate and an assignment of lease (including the transfer of the security deposit at Settlement) for each and every tenant of the Property, in forms acceptable to Purchaser; and

(v) Such other Seller certifications as Purchaser's lender or title company may reasonably require.

C. Costs and Prorations. Seller shall pay the costs of preparing the Deed, the Grantor's tax thereon and any other expenses incurred by Seller. Purchaser shall pay for the title search, title insurance premiums, survey expenses, lender fees, Grantee's tax and all other settlement expenses incurred by Purchaser. Real estate taxes, rent, CAM and assessments, as applicable, shall be prorated between Seller and Purchaser as of the date of the Settlement. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement.

D. Condition of Property. Purchaser agrees to accept the Property at Settlement in its physical condition at the time this Agreement is fully executed by all parties, except as otherwise provided herein. Seller agrees to maintain the Property in good condition and repair until Settlement. At Settlement, Seller agrees to transfer to Purchaser all existing warranties, if any, on the Property's roof, structural components, HVAC, mechanical, electrical, security and plumbing systems.

4. Feasibility Period.

A. For a period of Ninety (90) days following execution of this Agreement by all parties (the "Feasibility Period"), Purchaser, its agents and contractors, shall have the right to: (i) enter the Property for the purpose of inspecting the Property and performing tests as are desirable to Purchaser in its sole and absolute discretion; (ii) seek zoning information from the local governing authority concerning Purchaser's intended use of the Property; and/or (iii) apply for lender financing to acquire the Property.

B. Within five (5) days after Seller's receipt of a fully executed copy of this Agreement, if not previously delivered, Seller shall deliver to Purchaser copies of the following materials related to the Property if in Seller's possession: (i) any Phase I or other environmental studies; (ii) a current survey; (iii) the most current owner's title insurance policy; and (iv) all leases and rent rolls for each tenant identified in **SCHEDULE A** (including without limitation, the base monthly rental and all taxes, insurance, and other pass-throughs paid by the tenant), and all

contracts affecting the Property that are not terminable at will. Items (i) through (iv) are collectively referred to as the "Materials".

C. If Purchaser is not satisfied in its sole and absolute discretion with all aspects of the Property (including zoning) or the Materials, or has not obtained financing upon terms and conditions satisfactory to Purchaser, then Purchaser shall have the right, upon written notice to Seller prior to the expiration of the Feasibility Period, to terminate this Agreement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11. Purchaser acknowledges that the Feasibility Period will not be extended for any reason, regardless of whether Purchaser has completed its inspections or zoning inquiry, or has obtained financing. *

D. If Purchaser fails to acquire the Property, Purchaser agrees: (i) to repair any damage arising as a result of its exercise of the right of access granted in this Paragraph 4; (ii) to indemnify and hold Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of Seller's negligence or misconduct or the negligence or misconduct of Seller's agents, employees or contractors; and (iii) upon demand to return the Materials to Seller.

5. Title and Survey Objections. Purchaser may, at its sole expense, obtain a title insurance commitment and a survey for the Property. Prior to the expiration of the Feasibility Period, Purchaser shall notify the Seller in writing as to any title or survey objections regarding the Property that the Purchaser is unwilling to accept (collectively the "Title Objections"). Seller shall advise Purchaser in writing within ten (10) days after receipt of such notice, which if any of the Title Objections will not be cured by Seller at or prior to Settlement. If Seller fails to respond to Purchaser within such ten (10) day period or if Seller's response indicates that it does not intend to cure one or more of the Title Objections, then Purchaser may, at its option either (i) terminate this Agreement by giving written notice to Seller; (ii) cure such Title Objections at its own expense and proceed to Settlement with no reduction in the Purchase Price; or (iii) waive such Title Objections and proceed to Settlement, with no reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

6. Conditions Precedent to Obligation of Purchaser. This Agreement and all of Purchaser's obligations hereunder are further subject to Purchaser determining in its sole and absolute discretion that all of the conditions set forth in this Paragraph 6 have been satisfied or waived in writing by Purchaser. In the event that any of the following conditions are not satisfied or waived by Purchaser, Purchaser may give written notice to Seller terminating this Agreement on or before Settlement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

A. Seller's Representations and Warranties. All the representations and warranties of Seller made herein shall have been true when made and shall be true and correct as of Settlement, with no material changes therein.

B. Seller's Deliveries. As of Settlement, Seller shall have taken all action and delivered all documents and materials required by this Agreement.

C. No Litigation. As of Settlement, there shall be no litigation, proceeding or investigation pending, or to the knowledge of Purchaser or Seller threatened, which might prevent or adversely affect the intended use of the Property or which questions the validity of any action

*The Purchaser may terminate this Agreement prior to the expiration of the Feasibility Period for any reason or for no reason in Purchaser's sole and absolute discretion.



taken or to be taken by Seller or Purchaser hereunder, or which threatens the continued operation of the Property for commercial purposes.

7. Representations and Warranties of the Seller. Seller, jointly and severally (If more than one Seller), represents and warrants unto Purchaser ~~as of the date hereof and on the Settlement date that:~~

Insurable

yw LD A. Authority and Marketable Title. Seller is the owner of the Property, possesses the requisite authority to enter into and perform this Agreement, and has the absolute right to sell, assign, and transfer the Property to Purchaser at Settlement.

yw LD B. No Pending Litigation or Bankruptcy. ~~There~~ are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Settlement.

yw LD C. No Outstanding Purchase Option. ~~No~~ option, right of first refusal or other contractual opportunity to purchase the Property has been granted to, or executed with, a third-party that is enforceable against Seller and/or the Property giving such third-party a right to purchase an interest in the Property or any party thereof.

yw LD D. No Notice of Repairs. At the time this Agreement is full excuted, Seller agency that repairs, alterations or corrections that must be made to the Property.

yw LD E. Utilities. ~~The Property is connected to [select one] a municipal water and sewer system and has utility meters installed within the Property. OR a well and septic system located on the Property. Seller makes no representation on whether the capacities of such utilities are sufficient for Purchaser's intended use of the Property.~~

yw LD F. Hazardous Materials. ~~As is physical condition as of the Settlement date. To the best of Seller's actual knowledge, no toxic or hazardous materials (as said terms are defined in any applicable federal or state laws) have been used, discharged or stored on or about the Property in violation of said laws, and to the best of Seller's knowledge, no such toxic or hazardous materials are now or will be at Settlement located on or below the surface of the Property. There are no petroleum storage tanks located on or beneath the surface of the Property.~~

G. Parties in Possession. As of the Settlement date, there will be no adverse or other parties in possession of the Property or any part thereof, nor has any party been granted any license, lease or other right or interest relating to the use or possession of the Property or any part thereof, except for the Leases attached hereto and made a part hereof as **SCHEDULE A**.

H. Other Contracts. Seller is not a party to any contracts relating to the Property that is not terminable at will, except as disclosed on **SCHEDULE B**, which is attached hereto and made a part hereof. Between the date of this Agreement and the Settlement date, Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, enter into any contract relating to the Property that is not terminable at will.

I. No Undisclosed Restrictions. Seller has not, nor to the best of Seller's knowledge or belief has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property that has not specifically been disclosed to Purchaser or wouldn't be revealed by a title report.

8. **Risk of Loss.** The risk of loss or damage to the Property by fire or other casualty prior to Settlement shall be on the Seller. If such loss or damage materially and adversely affects the use of the Property as of Settlement, Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

9. **Condemnation.** If, prior to Settlement, any taking pursuant to the power of eminent domain is proposed or occurs, as to all or any portion of the Property intended to be acquired at Settlement by the Purchaser, or sale occurs in lieu thereof, the Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

10. **Access/Cooperation.** During the term of this Agreement, Purchaser and his duly authorized agents shall be entitled to reasonable access to the Property for the purpose of surveying, appraising and making other findings related to the Property. Purchaser agrees to indemnify and hold the Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of the Seller's gross negligence or willful misconduct.

11. **Agents and Brokers.** Each party represents and warrants that it did not consult or deal with any broker or agent with regard to this Agreement or the transaction contemplated hereby, except for the Listing Broker and the Selling Broker, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representation and warranty. Listing Broker shall be paid a brokerage fee by Seller of ■ \$N/A % of the Purchase Price. Selling Broker shall be paid by Seller a fee of ■ 3 % of the Purchase Price. 4w / JD

JD 4w
INITIALS

12. **Notices.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if, delivered by hand or messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Paragraph. Any such notice, request or demand so given shall be deemed given on the day it is received by the recipient.

For the Seller: Yan Wei, Global Realty
4200 Evergreen Ln #304 3013 McMaster Ct
Annandale, VA 22003 = Herndon, VA 20171 4w / JD

For Purchaser: Economic Development Authority
of the City of Winchester, VA
15 N. Cameron St Winchester, VA 22601

13. **Default.**

A. **Default by Purchaser.** If Purchaser defaults under this Agreement, the damages suffered by Seller would be difficult to ascertain. Therefore, Seller and Purchaser agree that, in the event of a default by Purchaser, Seller's sole and exclusive remedy, in lieu of all other remedies, shall be to terminate this Agreement and retain the Deposit as full and

~~complete liquidated damages. If the Deposit is retained as liquidated damages, Seller agrees to pay one-half of the Deposit to the Listing Broker to compensate Broker for his brokerage services in the transaction. Such payment shall have no effect on the payment due in any subsequent transaction. Seller hereby specifically waives the right to seek specific performance of this Agreement by Purchaser or any other remedy at law or in equity, provided that Seller reserves the right to all remedies available at law and in equity solely in order to enforce the indemnification obligations of Purchaser under Paragraphs 4D., 10 and 11 herein.~~

JDW
INITIALS

B. Default by Seller. If Seller defaults under this Agreement, Purchaser shall have the option to (i) seek specific performance of this Agreement, or (ii) terminate this Agreement, in which event the Deposit shall be promptly refunded to Purchaser. Seller shall be liable for Purchaser's expenses in the filing of any specific performance action, including reasonable attorney's fees and court costs.

C. Right to Cure Default. Prior to any termination of this Agreement as provided in Subparagraphs 13A. and 13B., the non-defaulting party shall provide written notice of any default(s) to the defaulting party (the "Default Notice") permitting the defaulting party ten (10) days to cure any such default(s). If defaulting party does not cure the default(s) or does not respond to the Default Notice, then the non-defaulting party may terminate the Agreement by written notice to the defaulting party. Nothing herein shall prevent either party from seeking a judicial determination regarding any default; provided however, the court shall award the expenses of attorney's fees and court costs to the prevailing party in any such action.

D. Brokerage Fees. ~~Notwithstanding the remedies set forth in Subparagraphs 13A., 13B, and 13C, if either Seller or Purchaser defaults under this Agreement, the defaulting party shall be liable for the full amount of the brokerage fees set forth in Paragraph 11 and any brokerage fees set forth in Seller's listing agreement with the Listing Broker for the Property (which document is hereby incorporated herein by this reference) as if this Agreement and Seller's listing agreement had been performed, and for any damages and all expenses incurred by the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Agreement and Seller's listing agreement, including, without limitation, attorney's fees and court costs. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Agreement shall not relieve the defaulting party of liability for any brokerage fees due under this Agreement or Seller's listing agreement.~~

JDW
INITIALS

14. Miscellaneous.

A. Final Agreement. This Agreement contains the entire agreement between the parties hereto relating to the Property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto.

B. Virginia Law Applicable. This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia and shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

C. Assignment. This Agreement shall not be assigned by one party without the written consent of the other party, except the assignment of this Agreement to an entity owned by Purchaser or the principals of Purchaser shall not require the consent of Seller, but Purchaser shall provide written notice to Seller of such assignment. This Agreement shall inure to the benefit of the parties hereto and their respective and permitted successors and assigns.

D. Counterparts. This Agreement may be signed in one or more counterparts, each of which is deemed to be an original and all of which shall together constitute the same instrument.

The parties agree that a fax of any signed original document shall have the same effect as an original.

E. Tax-Deferred Exchange. Either party may elect to include the conveyance of the Property in an IRS Section 1031 Like Kind Exchange (a tax-deferred exchange). In the event that a party makes such an election, the non-exchanging party agrees to execute such documents necessary to effectuate such an exchange (at no cost to the exchanging party), but in no event shall such exchange affect the terms of the transaction or a party's responsibilities to the other party under this Agreement. The exchanging party shall bear the sole costs of its exchange.

15. Additional Provisions: See Addendum 1 of 1 attached

yw
~~Seller reserves the right to modify SCHEDULE A anytime till 10 days before the Settlement date and Purchaser may terminate the Agreement with full Deposit refund and release Seller from any further obligation and liability as the result of the SCHEDULE A modifications.~~

(To be continued below Provision 16)

16. Acceptance. To be effective this Agreement must be executed by Purchaser and Seller and an original copy of this Agreement returned to Purchaser no later than 5:00 p.m. on March 29, 2013, or this Purchase Agreement shall be deemed withdrawn.

Additional Provisions (continued)

Within 10 business days after this Agreement is fully executed by both parties, Purchaser to provide Seller with

- 1) Copies of both sides of the cashed Deposit check.
- 2) the acceptable forms of tenant estoppel certificate and lease assignment to Purchaser, along with a full list of certifications Purchaser's lender or title company may require. Seller may terminate the Agreement within 10 business days after receiving the forms and certification list without any further obligation and liability to one another.

**REMAINDER OF PAGE
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Each of the parties has executed this Agreement in its name pursuant to due authority as of the dates set forth below.

Purchaser *[Signature]*
Printed Name: James W. Deskins
Title (if applicable): Executive Director
Date: 3/26/13

Seller *[Signature]*
Printed Name: Yan Wei
Title (if applicable): _____
Date: 3/28/2013

Purchaser _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Seller _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Listing Company's Name and Address

Selling Company's Name and Address

yw

Classic Realty N/A
4288 Evergreen Ln #334
Annandale, VA 22008

Oakcrest Commercial Real Estate
126 North Kent Street
Winchester, VA 22601

Agent's Name Yan Wei
Agent's tel. no. 202-596-5906
Fax no. 815-366-8008
Agent's email yan_z_wei@yahoo.com

Agent's Name Bill Wiley
Agent's tel. no. 540-532-6259
Fax no. 540-504-0785
Agent's email billwiley@mrts.com

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SCHEDULE A

**LEASES, AGREEMENTS AND CONTRACTS
FOR TENANTS AND OTHER PARTIES
IN POSSESSION OF THE PROPERTY**

List below each such tenant or other party in possession of the Property, and provide Purchaser with a copy of each lease, license or other agreement. If verbal agreement, summarize terms below.

Also provide Purchaser with any contract affecting the Property that is not terminable at will.

SCHEDULE B

**CONTRACTS RELATING TO THE PROPERTY
(Not terminable at will)**

**ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #1 OF 1**

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the "Contract") dated March 22, 2013, between YAN WEI (being one and the same Yanzhen Wei) (the "Seller") and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 209 NORTH EAST LANE, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-07-C, provides as follows:

1. This Agreement is contingent upon approval and appropriation of funds by the Common Council of the City of Winchester, Virginia for the purchase of the Property by Resolution adopted on or before June 19, 2013. If funds are not approved and appropriated on or before June 19, 2013, then this Agreement shall terminate, whereupon the Deposit shall be returned to the Purchaser.
2. This Agreement is expressly contingent upon the approval by the Directors of the Economic Development Authority of the City of Winchester, Virginia (the "Authority") by Resolution adopted on or before June 26, 2013. If such Resolution is not adopted by the Authority on or before June 26, 2013, then and in that event this Agreement shall terminate and be of no further binding force or effect, whereupon the Deposit shall be returned to the Purchaser.
3. Time is of the essence as to all matters set forth in this Agreement.
4. Seller is a licensed real estate agent in the Commonwealth of Virginia.

gw

5. ~~At Purchaser's election, Purchaser shall have the right to have the Property appraised, at Purchaser's sole cost and expense, during the Feasibility Period. In the event that the appraised value of the Property is less than the Purchase Price as set forth in Section 2 of the Agreement, or is otherwise deemed unacceptable to Purchaser, in Purchaser's sole and absolute discretion, Purchaser shall have the right to terminate this Agreement upon notice to Seller given within ten (10) business days after receipt of the written appraisal by Purchaser or, at Purchaser's election, to reduce the Purchase Price as set forth in Section 2 upon written notice to Seller, given within ten (10) business days after receipt of the written appraisal by Seller. Upon receipt of the reduced Purchase Price from Purchaser, Seller shall have the right, within five (5) business days after receipt of the reduced Purchase Price, to either accept the reduced Purchase Price or to terminate this Agreement upon written notice to Purchaser. In the event of termination of this Agreement by either Seller or Purchaser, the Deposit shall be returned to the Purchaser. In no event shall the Purchase Price be increased as a result of the market value as determined by any such appraisal commissioned by the Purchaser.~~

6. Reference is made to Special/Limited Warranty Deed dated March 8, 2013, of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 130000736 for a more particular description of the Property.

WITNESS the following duly authorized signatures and seals:

SELLER:

PURCHASER

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA



YAN WEI (Seal)

By: 

(SEAL)
James W. Deskins, Executive Director

MLB/pmn
c:\Contracts\EDA - 209 East Lane Addendum
3/22/13

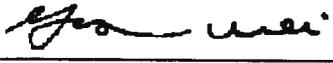
ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #2 OF 2

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made part of contract of purchase (the "Contract") dated March 22, 2013, between Yan Wei (being one and the same Yanzhen Wei) (the "Seller") and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 209 NORTH EAST LANE, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-07-C, provides as follows:

1. Seller and Purchaser agree that the ratified price is \$110,000. Ratification date is set on April 12, 2013.

WITNESS the following duly authorized signatures and seals:

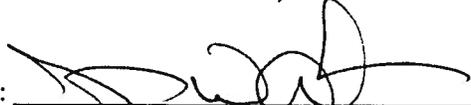
SELLER:


_____ (Seal)

YAN WEI 4/17/2013

PURCHASER:

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA

By: 
_____ (Seal)

James W. Deskins, Executive Director

4/16/13



VIRGINIA ASSOCIATION OF REALTORS®
Commercial Purchase Agreement

Each commercial transaction is different. This form may not address your specific purpose. This is a legally binding document. If not understood, seek competent advice before signing.

This Commercial Purchase Agreement (the "Agreement") is dated March 22, 2013, between FFC Properties LLC ("Seller") and Economic Development Authority of the City of Winchester, VA ("Purchaser"). The parties acknowledge that N/A ("Listing Broker") represents Seller and that Oakcrest Commercial Real Estate ("Selling Broker") represents [select one]: [] Seller [X] Purchaser. The parties further acknowledge that disclosure of the brokerage relationships was made to them by the real estate licensees involved in this transaction when specific assistance was first rendered and confirmed in writing.

1. Sale of Property. Purchaser agrees to buy and Seller agrees to sell the land, all improvements thereon, and all rights and appurtenances thereto belonging, located in the City/County of Winchester, Virginia, with a tax parcel no. of 174-07-D and a street address of 211 & 213 N. Road Ln. Seller discloses that [select one]: [X] there are no tenants or other parties in possession of the Property OR [] there are tenants or persons who are in possession of the Property as set forth on SCHEDULE A attached hereto.

2. Purchase Price. The purchase price for the Property is 170,000 Dollars (\$170,000) (the "Purchase Price") and shall be paid to Seller at Settlement, subject to the prorations and adjustments described herein, as follows: One hundred thirty thousand

A. Deposit. Purchaser shall make a deposit of \$ 500.00 (the "Deposit") to be held by Oakcrest Commercial Real Estate (the "Escrow Agent"). Purchaser [select one]: [] has paid the Deposit to the Escrow Agent OR [X] will pay the Deposit to the Escrow Agent within 5 days after this Agreement is fully executed by both parties. If Purchaser fails to pay the Deposit as set forth herein, then Seller may terminate this Agreement by written notice to Purchaser and neither party shall have any further obligation hereunder. The Deposit may be held in an interest bearing account and the parties waive claim to any such interest. The Deposit shall be applied towards the Purchase Price at Settlement. If Settlement does not occur, the Deposit shall be paid as provided herein.

B. Balance. The balance of the Purchase Price shall be paid by Purchaser at Settlement in certified funds or bank wire (inclusive of any loan obtained by Purchaser to purchase the Property).

3. Settlement.

A. Settlement of Property. Settlement of the purchase and sale of the Property shall be made at Michael L. Bryan's office 118 S. Bradjack St. Winchester on 30 days after study period ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement.

B. Deliveries by Seller at Settlement. At Settlement, Seller shall deliver to Purchaser the following:

(i) A general warranty deed with full English covenants of title (the "Deed") conveying to the Purchaser good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, conditions and restrictions, except any lien for real estate taxes not yet due and payable, and any Title Objections for which Purchaser has no objection and/or has waived such objection pursuant to Paragraph 5;

(ii) An affidavit for the benefit of Purchaser and its title insurer, satisfactory to Purchaser's title company (the "Affidavit") stating that (i) no right to a mechanic's or materialman's lien has accrued with respect to the Property as a result of any act or omission by the Seller and (ii) there are no outstanding leases or agreements with regard to, or other parties in or entitled to possession of, the Property except as disclosed in SCHEDULE A attached hereto;

(iii) A Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code of 1986 and any other certificates required by any governmental authority or agency;

(iv) If the Property is leased, a tenant estoppel certificate and an assignment of lease (including the transfer of the security deposit at Settlement) for each and every tenant of the Property, in forms acceptable to Purchaser; and

(v) Such other Seller certifications as Purchaser's lender or title company may reasonably require.

C. Costs and Prorations. Seller shall pay the costs of preparing the Deed, the Grantor's tax thereon and any other expenses incurred by Seller. Purchaser shall pay for the title search, title insurance premiums, survey expenses, lender fees, Grantee's tax and all other settlement expenses incurred by Purchaser. Real estate taxes, rent, CAM and assessments, as applicable, shall be prorated between Seller and Purchaser as of the date of the Settlement. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement.

D. Condition of Property. Purchaser agrees to accept the Property at Settlement in its physical condition at the time this Agreement is fully executed by all parties, except as otherwise provided herein. Seller agrees to maintain the Property in good condition and repair until Settlement. At Settlement, Seller agrees to transfer to Purchaser all existing warranties, if any, on the Property's roof, structural components, HVAC, mechanical, electrical, security and plumbing systems.

4. Feasibility Period.

A. For a period of Ninety ⁹⁰ ~~(90)~~ days following execution of this Agreement by all parties (the "Feasibility Period"), Purchaser, its agents and contractors, shall have the right to: (i) enter the Property for the purpose of inspecting the Property and performing tests as are desirable to Purchaser in its sole and absolute discretion; (ii) seek zoning information from the local governing authority concerning Purchaser's intended use of the Property; and/or (iii) apply for lender financing to acquire the Property.

B. Within five (5) days after Seller's receipt of a fully executed copy of this Agreement, if not previously delivered, Seller shall deliver to Purchaser copies of the following materials related to the Property if in Seller's possession: (i) any Phase I or other environmental studies; (ii) a current survey; (iii) the most current owner's title insurance policy; and (iv) all leases and rent rolls for each tenant identified in SCHEDULE A (including without limitation, the base monthly rental and all taxes, insurance, and other pass-throughs paid by the tenant), and all

contracts affecting the Property that are not terminable at will. Items (i) through (iv) are collectively referred to as the "Materials".

C. If Purchaser is not satisfied in its sole and absolute discretion with all aspects of the Property (including zoning) or the Materials, or has not obtained financing upon terms and conditions satisfactory to Purchaser, then Purchaser shall have the right, upon written notice to Seller prior to the expiration of the Feasibility Period, to terminate this Agreement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11. Purchaser acknowledges that the Feasibility Period will not be extended for any reason, regardless of whether Purchaser has completed its inspections or zoning inquiry, or has obtained financing. *

D. If Purchaser fails to acquire the Property, Purchaser agrees: (i) to repair any damage arising as a result of its exercise of the right of access granted in this Paragraph 4; (ii) to indemnify and hold Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of Seller's negligence or misconduct or the negligence or misconduct of Seller's agents, employees or contractors; and (iii) upon demand to return the Materials to Seller.

5. Title and Survey Objections. Purchaser may, at its sole expense, obtain a title insurance commitment and a survey for the Property. Prior to the expiration of the Feasibility Period, Purchaser shall notify the Seller in writing as to any title or survey objections regarding the Property that the Purchaser is unwilling to accept (collectively the "Title Objections"). Seller shall advise Purchaser in writing within ten (10) days after receipt of such notice, which if any of the Title Objections will not be cured by Seller at or prior to Settlement. If Seller fails to respond to Purchaser within such ten (10) day period or if Seller's response indicates that it does not intend to cure one or more of the Title Objections, then Purchaser may, at its option either (i) terminate this Agreement by giving written notice to Seller; (ii) cure such Title Objections at its own expense and proceed to Settlement with no reduction in the Purchase Price; or (iii) waive such Title Objections and proceed to Settlement, with no reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

6. Conditions Precedent to Obligation of Purchaser. This Agreement and all of Purchaser's obligations hereunder are further subject to Purchaser determining in its sole and absolute discretion that all of the conditions set forth in this Paragraph 6 have been satisfied or waived in writing by Purchaser. In the event that any of the following conditions are not satisfied or waived by Purchaser, Purchaser may give written notice to Seller terminating this Agreement on or before Settlement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

A. Seller's Representations and Warranties. All the representations and warranties of Seller made herein shall have been true when made and shall be true and correct as of Settlement, with no material changes therein.

B. Seller's Deliveries. As of Settlement, Seller shall have taken all action and delivered all documents and materials required by this Agreement.

C. No Litigation. As of Settlement, there shall be no litigation, proceeding or investigation pending, or to the knowledge of Purchaser or Seller threatened, which might prevent or adversely affect the intended use of the Property or which questions the validity of any action

*The Purchaser may terminate this Agreement prior to the expiration of the Feasibility Period for any reason or for no reason in Purchaser's sole and absolute discretion.

taken or to be taken by Seller or Purchaser hereunder, or which threatens the continued operation of the Property for commercial purposes.

7. **Representations and Warranties of the Seller.** Seller, jointly and severally (if more than one Seller), represents and warrants unto Purchaser as of the date hereof and on the Settlement date that:

A. **Authority and Marketable Title.** Seller is the owner of the Property, possesses the requisite authority to enter into and perform this Agreement, and has the absolute right to sell, assign, and transfer the Property to Purchaser at Settlement.

B. **No Pending Litigation or Bankruptcy.** There are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Settlement.

C. **No Outstanding Purchase Option.** No option, right of first refusal or other contractual opportunity to purchase the Property has been granted to, or executed with, a third-party that is enforceable against Seller and/or the Property giving such third-party a right to purchase an interest in the Property or any party thereof.

D. **No Notice of Repairs.** Seller has received no written notice from any governmental agency that repairs, alterations or corrections that must be made to the Property.

E. **Utilities.** The Property is connected to [select one]: a municipal water and sewer system and has utility meters installed within the Property OR a well and septic system located on the Property. Seller makes no representation on whether the capacities of such utilities are sufficient for Purchaser's intended use of the Property.

F. **Hazardous Materials.** To the best of Seller's actual knowledge, no toxic or hazardous materials (as said terms are defined in any applicable federal or state laws) have been used, discharged or stored on or about the Property in violation of said laws, and to the best of Seller's knowledge, no such toxic or hazardous materials are now or will be at Settlement located on or below the surface of the Property. There are no petroleum storage tanks located on or beneath the surface of the Property.

G. **Parties in Possession.** As of the Settlement date, there will be no adverse or other parties in possession of the Property or any part thereof, nor has any party been granted any license, lease or other right or interest relating to the use or possession of the Property or any part thereof, except for the Leases attached hereto and made a part hereof as SCHEDULE A.

H. **Other Contracts.** Seller is not a party to any contracts relating to the Property that is not terminable at will, except as disclosed on SCHEDULE B, which is attached hereto and made a part hereof. Between the date of this Agreement and the Settlement date, Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, enter into any contract relating to the Property that is not terminable at will.

I. **No Undisclosed Restrictions.** Seller has not, nor to the best of Seller's knowledge or belief has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property that has not specifically been disclosed to Purchaser or wouldn't be revealed by a title report.

8. **Risk of Loss.** The risk of loss or damage to the Property by fire or other casualty prior to Settlement shall be on the Seller. If such loss or damage materially and adversely affects the use of the Property as of Settlement, Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

9. **Condemnation.** If, prior to Settlement, any taking pursuant to the power of eminent domain is proposed or occurs, as to all or any portion of the Property intended to be acquired at Settlement by the Purchaser, or sale occurs in lieu thereof, the Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the indemnity provisions of Paragraphs 4D., 10 and 11.

10. **Access/Cooperation.** During the term of this Agreement, Purchaser and his duly authorized agents shall be entitled to reasonable access to the Property for the purpose of surveying, appraising and making other findings related to the Property. Purchaser agrees to indemnify and hold the Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of the Seller's gross negligence or willful misconduct.

11. **Agents and Brokers.** Each party represents and warrants that it did not consult or deal with any broker or agent with regard to this Agreement or the transaction contemplated hereby, except for the Listing Broker and the Selling Broker, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representation and warranty. Listing Broker shall be paid a brokerage fee by Seller of _____% of the Purchase Price. Selling Broker shall be paid by Seller a fee of 3 _____% of the Purchase Price.
Purchaser

NO
INITIALS

12. **Notices.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if, delivered by hand or messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Paragraph. Any such notice, request or demand so given shall be deemed given on the day it is received by the recipient.

For the Seller: FFC Properties LLC
17080 Quail Creek Circle
Hamilton, VA 20188

For Purchaser: Economic Development Authority
of the City of Winchester, VA
15 N. Cameron St. Winchester, VA 22601

13. **Default.**

A. **Default by Purchaser.** If Purchaser defaults under this Agreement, the damages suffered by Seller would be difficult to ascertain. Therefore, Seller and Purchaser agree that, in the event of a default by Purchaser, Seller's sole and exclusive remedy, in lieu of all other remedies, shall be to terminate this Agreement and retain the Deposit as full and

complete liquidated damages. If the Deposit is retained as liquidated damages, Seller agrees to pay one-half of the Deposit to the Listing Broker to compensate Broker for his brokerage services in the transaction. Such payment shall have no effect on the payment due in any subsequent transaction. Seller hereby specifically waives the right to seek specific performance of this Agreement by Purchaser or any other remedy at law or in equity, provided that Seller reserves the right to all remedies available at law and in equity solely in order to enforce the indemnification obligations of Purchaser under Paragraphs 4D., 10 and 11 herein.

10-11
INITIALS

B. Default by Seller. If Seller defaults under this Agreement, Purchaser shall have the option to (i) seek specific performance of this Agreement, or (ii) terminate this Agreement, in which event the Deposit shall be promptly refunded to Purchaser. Seller shall be liable for Purchaser's expenses in the filing of any specific performance action, including reasonable attorney's fees and court costs.

C. Right to Cure Default. Prior to any termination of this Agreement as provided in Subparagraphs 13A. and 13B., the non-defaulting party shall provide written notice of any default(s) to the defaulting party (the "Default Notice") permitting the defaulting party ten (10) days to cure any such default(s). If defaulting party does not cure the default(s) or does not respond to the Default Notice, then the non-defaulting party may terminate the Agreement by written notice to the defaulting party. Nothing herein shall prevent either party from seeking a judicial determination regarding any default; provided however, the court shall award the expenses of attorney's fees and court costs to the prevailing party in any such action.

D. Brokerage Fees. Notwithstanding the remedies set forth in Subparagraphs 13A., 13B. and 13C., if either Seller or Purchaser defaults under this Agreement, the defaulting party shall be liable for the full amount of the brokerage fees set forth in Paragraph 11 and any brokerage fees set forth in Seller's listing agreement with the Listing Broker for the Property (which document is hereby incorporated herein by this reference) as if this Agreement and Seller's listing agreement had been performed, and for any damages and all expenses incurred by the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Agreement and Seller's listing agreement, including, without limitation, attorney's fees and court costs. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Agreement shall not relieve the defaulting party of liability for any brokerage fees due under this Agreement or Seller's listing agreement.

10-11
INITIALS

14. Miscellaneous.

A. Final Agreement. This Agreement contains the entire agreement between the parties hereto relating to the Property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto.

B. Virginia Law Applicable. This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia and shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

C. Assignment. This Agreement shall not be assigned by one party without the written consent of the other party, except the assignment of this Agreement to an entity owned by Purchaser or the principals of Purchaser shall not require the consent of Seller, but Purchaser shall provide written notice to Seller of such assignment. This Agreement shall inure to the benefit of the parties hereto and their respective and permitted successors and assigns.

D. Counterparts. This Agreement may be signed in one or more counterparts, each of which is deemed to be an original and all of which shall together constitute the same instrument.

The parties agree that a fax of any signed original document shall have the same effect as an original.

E. Tax-Deferred Exchange. Either party may elect to include the conveyance of the Property in an IRS Section 1031 Like Kind Exchange (a tax-deferred exchange). In the event that a party makes such an election, the non-exchanging party agrees to execute such documents necessary to effectuate such an exchange (at no cost to the exchanging party), but in no event shall such exchange affect the terms of the transaction or a party's responsibilities to the other party under this Agreement. The exchanging party shall bear the sole costs of its exchange.

15. **Additional Provisions:** See Addendum 1 of 1 attached.

16. **Acceptance.** To be effective this Agreement must be executed by Purchaser and Seller and an original copy of this Agreement returned to Purchaser no later than 5:00 p.m. on March 28, 2013, or this Purchase Agreement shall be deemed withdrawn.

**REMAINDER OF PAGE
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Each of the parties has executed this Agreement in its name pursuant to due authority as of the dates set forth below.

Purchaser: _____
Printed Name: James W. Decker
Title (if applicable): Executive Director
Date: 3/26/13

Seller: _____
Printed Name: FFC Properties LLC
Title (if applicable): _____
Date: 4/18/13

Purchaser: _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Seller: _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Listing Company's Name and Address

Selling Company's Name and Address

Oxford Commercial Real Estate
128 North Kent Street
Winchester, VA 22601

Agent's Name _____
Agent's tel. no. _____
Fax no. _____
Agent's email _____

Agent's Name Bill Wiley
Agent's tel. no. 540-532-8288
Fax no. 540-504-0788
Agent's email billw@omre.com

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SCHEDULE A

**LEASES, AGREEMENTS AND CONTRACTS
FOR TENANTS AND OTHER PARTIES
IN POSSESSION OF THE PROPERTY**

List below each such tenant or other party in possession of the Property, and provide Purchaser with a copy of each lease, license or other agreement. If verbal agreement, summarize terms below.

Also provide Purchaser with any contract affecting the Property that is not terminable at will.

SCHEDULE B

**CONTRACTS RELATING TO THE PROPERTY
(Not terminable at will)**

**ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #1 OF 1**

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the "Contract") dated March 22, 2013, between FFC PROPERTIES, LLC (the "Seller") and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 211 - 213 NORTH EAST LANE, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-7-D, provides as follows:

- 1. This Agreement is contingent upon approval and appropriation of funds by the Common Council of the City of Winchester, Virginia for the purchase of the Property by Resolution adopted on or before June 19, 2013. If funds are not approved and appropriated on or before June 19, 2013, then this Agreement shall terminate, whereupon the Deposit shall be returned to the Purchaser.**
- 2. This Agreement is expressly contingent upon the approval by the Directors of the Economic Development Authority of the City of Winchester, Virginia (the "Authority") by Resolution adopted on or before June 26, 2013. If such Resolution is not adopted by the Authority on or before June 26, 2013, then and in that event this Agreement shall terminate and be of no further binding force or effect, whereupon the Deposit shall be returned to the Purchaser.**
- 3. Time is of the essence as to all matters set forth in this Agreement.**
- 4. At Purchaser's election, Purchaser shall have the right to have the Property appraised, at Purchaser's sole cost and expense, during the Feasibility Period. In the event that the appraised value of the Property is less than the Purchase Price as set forth in Section 2 of the Agreement, or is otherwise deemed unacceptable to Purchaser, in Purchaser's sole and absolute discretion, Purchaser shall have the right to terminate this Agreement upon notice to Seller given within ten (10) business days after receipt of the written appraisal by Purchaser or, at Purchaser's election, to reduce the Purchase Price as set forth in Section 2 upon written notice to Seller, given within ten (10) business days after receipt of the written appraisal by Seller. Upon receipt of the reduced Purchase Price from Purchaser, Seller shall have the right, within five (5) business days after receipt of the reduced Purchase Price, to either accept the reduced Purchase Price or to terminate this Agreement upon written notice to Purchaser. In the event of termination of this Agreement by either Seller or Purchaser, the Deposit shall be returned to the Purchaser. In no event shall the Purchase Price be increased as a result of the market value as determined by any such appraisal commissioned by the Purchaser.**

5. Reference is made to that certain Trustee's Deed dated October 3, 2012, of record in the Clerk's Office of the Circuit Court of the City of Winchester, Virginia as Instrument No. 120003306 for a more particular description of the Property.

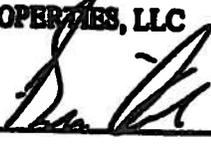
WITNESS the following duly authorized signatures and seals:

SELLER:

PURCHASER

FFC PROPERTIES, LLC

**ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA**

By:  _____ (Seal)
Its: _____

By:  _____ (SEAL)
James W. Deskins, Executive Director

MLB/pmm
Contract#EDA - 211 - 213 East Lane Addendum
3/23/13

**ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #2 OF 2**

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made part of contract of purchase (the "Contract") dated March 22, 2013, between FFC PROPERTIES, LLC (the "Seller") and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 211-213 NORTH EAST LANE, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-07-D, provides as follows:

1. Seller and Purchaser agree that the ratified price is \$130,000.

WITNESS the following duly authorized signatures and seals:

SELLER:

FFC PROPERTIES, LLC

By:  (Seal)

Its: _____

PURCHASER:

**ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA**

By:  (Seal)

James W. Dackins, Executive Director

4/16/13



VIRGINIA ASSOCIATION OF REALTORS®
Commercial Purchase Agreement

Each commercial transaction is different. This form may not address your specific purpose. This is a legally binding document. If not understood, seek competent advice before signing.

Handwritten initials 'JPM'

This Commercial Purchase Agreement (the "Agreement") is dated April 9, 2013, between ~~Barthelme Enterprises - Ryan Morala~~ ("Seller") and Economic Development Authority of the City of Winchester, VA ("Purchaser"). The parties acknowledge that N/A ("Listing Broker") represents Seller and that ~~Outcast Commercial Real Estate~~ ("Selling Broker") represents [select one]:

[] Seller [X] Purchaser. The parties further acknowledge that disclosure of the brokerage relationships was made to them by the real estate licensees involved in this transaction when specific assistance was first rendered and confirmed in writing.

1. Sale of Property. Purchaser agrees to buy and Seller agrees to sell the land, all improvements thereon, and all rights and appurtenances thereto belonging, located in the City/County of Winchester, Virginia, with a tax parcel no. of 174-01-310 and a street address of 218 North East Ln. Seller discloses that [select one]: [X] there are no tenants or other parties in possession of the Property OR [] there are tenants or persons who are in possession of the Property as set forth on SCHEDULE A attached hereto.

Handwritten notes: 'JD JPM' and '\$88,000'

2. Purchase Price. The purchase price for the Property is ~~102,000~~ one hundred two thousand Dollars (\$102,000) (the "Purchase Price") and shall be paid to Seller at Settlement, subject to the provisions and adjustments described herein, as follows:

Handwritten note: 'JPM' with a large 'X' over it

A. Deposit. Purchaser shall make a deposit of \$1000 (the "Deposit") to be held by Outcast Commercial Real Estate (the "Escrow Agent"). Purchaser [select one]: [] has paid the Deposit to the Escrow Agent OR [X] will pay the Deposit to the Escrow Agent within 5 days after this Agreement is fully executed by both parties. If Purchaser fails to pay the Deposit as set forth herein, then Seller may terminate this Agreement by written notice to Purchaser and neither party shall have any further obligation hereunder. The Deposit may be held in an interest bearing account and the parties waive claim to any such interest. The Deposit shall be applied towards the Purchase Price at Settlement. If Settlement does not occur, the Deposit shall be paid as provided herein.

B. Balance. The balance of the Purchase Price shall be paid by Purchaser at Settlement in certified funds or bank wire (inclusive of any loan obtained by Purchaser to purchase the Property).

3. Settlement.

A. Settlement of Property. Settlement of the purchase and sale of the Property shall be made at Michael L. Brown office 110 E. Bradley St. Winchester on 30 days after this period ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement.

B. Deliveries by Seller at Settlement. At Settlement, Seller shall deliver to Purchaser the following:

(I) A general warranty deed with full English covenants of title (the "Deed") conveying to the Purchaser good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, conditions and restrictions, except any lien for real estate taxes not yet due and payable, and any Title Objections for which Purchaser has no objection and/or has waived such objection pursuant to Paragraph 5;

(II) An affidavit for the benefit of Purchaser and its title insurer, satisfactory to Purchaser's title company (the "Affidavit") stating that (i) no right to a mechanic's or materialman's lien has accrued with respect to the Property as a result of any act or omission by the Seller and (ii) there are no outstanding leases or agreements with regard to, or other parties in or entitled to possession of, the Property except as disclosed in SCHEDULE A attached hereto;

(III) A Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code of 1986 and any other certificates required by any governmental authority or agency;

(iv) If the Property is leased, a tenant estoppel certificate and an assignment of lease (including the transfer of the security deposit at Settlement) for each and every tenant of the Property, in forms acceptable to Purchaser; and

(v) Such other Seller certifications as Purchaser's lender or title company may reasonably require.

C. Costs and Prorations. Seller shall pay the costs of preparing the Deed, the Grantor's tax thereon and any other expenses incurred by Seller. Purchaser shall pay for the title search, title insurance premiums, survey expenses, lender fees, Grantor's tax and all other settlement expenses incurred by Purchaser. Real estate taxes, rent, CAM and assessments, as applicable, shall be prorated between Seller and Purchaser as of the date of the Settlement. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement.

D. Condition of Property. Purchaser agrees to accept the Property at Settlement in its physical condition at the time this Agreement is fully executed by all parties, except as otherwise provided herein. Seller agrees to maintain the Property in good condition and repair until Settlement. At Settlement, Seller agrees to transfer to Purchaser all existing warranties, if any, on the Property's roof, structural components, HVAC, mechanical, electrical, security and plumbing systems.

4. Feasibility Period.

A. For a period of Ninety (90) days following execution of this Agreement by all parties (the "Feasibility Period"), Purchaser, its agents and contractors, shall have the right to: (i) enter the Property for the purpose of inspecting the Property and performing tests as are desirable to Purchaser in its sole and absolute discretion; (ii) seek zoning information from the local governing authority concerning Purchaser's intended use of the Property; and/or (iii) apply for lender financing to acquire the Property.

B. Within five (5) days after Seller's receipt of a fully executed copy of this Agreement, if not previously delivered, Seller shall deliver to Purchaser copies of the following materials related to the Property if in Seller's possession: (i) any Phase I or other environmental studies; (ii) a current survey; (iii) the most current owner's title insurance policy; and (iv) all leases and rent rolls for each tenant identified in SCHEDULE A (including without limitation, the base monthly rental and all taxes, insurance, and other pass-throughs paid by the tenant), and all

contracts affecting the Property that are not terminable at will. Items (i) through (iv) are collectively referred to as the "Materials".

C. If Purchaser is not satisfied in its sole and absolute discretion with all aspects of the Property (including zoning) or the Materials, or has not obtained financing upon terms and conditions satisfactory to Purchaser, then Purchaser shall have the right, upon written notice to Seller prior to the expiration of the Feasibility Period, to terminate this Agreement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11. Purchaser acknowledges that the Feasibility Period will not be extended for any reason, regardless of whether Purchaser has completed its inspections or zoning inquiry, or has obtained financing. *

D. If Purchaser fails to acquire the Property, Purchaser agrees: (i) to repair any damage arising as a result of its exercise of the right of access granted in this Paragraph 4; (ii) to indemnify and hold Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of Seller's negligence or misconduct or the negligence or misconduct of Seller's agents, employees or contractors; and (iii) upon demand to return the Materials to Seller.

5. Title and Survey Objections. Purchaser may, at its sole expense, obtain a title insurance commitment and a survey for the Property. Prior to the expiration of the Feasibility Period, Purchaser shall notify the Seller in writing as to any title or survey objections regarding the Property that the Purchaser is unwilling to accept (collectively the "Title Objections"). Seller shall advise Purchaser in writing within ten (10) days after receipt of such notice, which if any of the Title Objections will not be cured by Seller at or prior to Settlement. If Seller fails to respond to Purchaser within such ten (10) day period or if Seller's response indicates that it does not intend to cure one or more of the Title Objections, then Purchaser may, at its option either (i) terminate this Agreement by giving written notice to Seller; (ii) cure such Title Objections at its own expense and proceed to Settlement with no reduction in the Purchase Price; or (iii) waive such Title Objections and proceed to Settlement, with no reduction in the Purchase Price. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11.

6. Conditions Precedent to Obligation of Purchaser. This Agreement and all of Purchaser's obligations hereunder are further subject to Purchaser determining in its sole and absolute discretion that all of the conditions set forth in this Paragraph 6 have been satisfied or waived in writing by Purchaser. In the event that any of the following conditions are not satisfied or waived by Purchaser, Purchaser may give written notice to Seller terminating this Agreement on or before Settlement, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11.

A. Seller's Representations and Warranties. All the representations and warranties of Seller made herein shall have been true when made and shall be true and correct as of Settlement, with no material changes therein.

B. Seller's Deliveries. As of Settlement, Seller shall have taken all action and delivered all documents and materials required by this Agreement.

C. No Litigation. As of Settlement, there shall be no litigation, proceeding or investigation pending, or to the knowledge of Purchaser or Seller threatened, which might prevent or adversely affect the intended use of the Property or which questions the validity of any action

*The Purchaser may terminate this Agreement prior to the expiration of the Feasibility Period for any reason or for no reason in Purchaser's sole and absolute discretion.



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taken or to be taken by Seller or Purchaser hereunder, or which threatens the continued operation of the Property for commercial purposes.

7. **Representations and Warranties of the Seller.** Seller, jointly and severally (if more than one Seller), represents and warrants unto Purchaser as of the date hereof and on the Settlement date that:

A. **Authority and Marketable Title.** Seller is the owner of the Property, possesses the requisite authority to enter into and perform this Agreement, and has the absolute right to sell, assign, and transfer the Property to Purchaser at Settlement.

B. **No Pending Litigation or Bankruptcy.** There are no actions, suits or proceedings at law or in equity pending, threatened against, or affecting the Property before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality. No bankruptcy or similar action, whether voluntary or involuntary, is pending or is threatened against Seller, and Seller has no intention of filing or commencing any such action within ninety (90) days following Settlement.

C. **No Outstanding Purchase Option.** No option, right of first refusal or other contractual opportunity to purchase the Property has been granted to, or executed with, a third-party that is enforceable against Seller and/or the Property giving such third-party a right to purchase an interest in the Property or any party thereof.

D. **No Notice of Repairs.** Seller has received no written notice from any governmental agency that repairs, alterations or corrections that must be made to the Property.

E. **Utilities.** The Property is connected to [select one]: a municipal water and sewer system and has utility meters installed within the Property OR a well and septic system located on the Property. Seller makes no representation on whether the capacities of such utilities are sufficient for Purchaser's Intended use of the Property.

F. **Hazardous Materials.** To the best of Seller's actual knowledge, no toxic or hazardous materials (as said terms are defined in any applicable federal or state laws) have been used, discharged or stored on or about the Property in violation of said laws, and to the best of Seller's knowledge, no such toxic or hazardous materials are now or will be at Settlement located on or below the surface of the Property. There are no petroleum storage tanks located on or beneath the surface of the Property.

G. **Parties in Possession.** As of the Settlement date, there will be no adverse or other parties in possession of the Property or any part thereof, nor has any party been granted any license, lease or other right or interest relating to the use or possession of the Property or any part thereof, except for the Leases attached hereto and made a part hereof as SCHEDULE A.

H. **Other Contracts.** Seller is not a party to any contracts relating to the Property that is not terminable at will, except as disclosed on SCHEDULE B, which is attached hereto and made a part hereof. Between the date of this Agreement and the Settlement date, Seller will not, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, enter into any contract relating to the Property that is not terminable at will.

I. **No Undisclosed Restrictions.** Seller has not, nor to the best of Seller's knowledge or belief has any predecessor in title, executed or caused to be executed any document with or for the benefit of any governmental authority restricting the development, use or occupancy of the Property that has not specifically been disclosed to Purchaser or wouldn't be revealed by a title report.

8. **Risk of Loss.** The risk of loss or damage to the Property by fire or other casualty prior to Settlement shall be on the Seller. If such loss or damage materially and adversely affects the use of the Property as of Settlement, Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11.

9. **Condemnation.** If, prior to Settlement, any taking pursuant to the power of eminent domain is proposed or occurs, as to all or any portion of the Property intended to be acquired at Settlement by the Purchaser, or sale occurs in lieu thereof, the Purchaser shall be entitled to terminate this Agreement by written notice to Seller, in which event the Deposit shall be refunded in full to Purchaser and the parties shall have no further obligation or liability to one another, except for any liability pursuant to the Indemnity provisions of Paragraphs 4D., 10 and 11.

10. **Access/Cooperation.** During the term of this Agreement, Purchaser and his duly authorized agents shall be entitled to reasonable access to the Property for the purpose of surveying, appraising and making other findings related to the Property. Purchaser agrees to indemnify and hold the Seller harmless from any and all liability of any kind or nature whatsoever as a result of the exercise of such right of access, other than as a result of the Seller's gross negligence or willful misconduct.

11. **Agents and Brokers.** Each party represents and warrants that it did not consult or deal with any broker or agent with regard to this Agreement or the transaction contemplated hereby, except for the Listing Broker and the Selling Broker, and each party hereto agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representation and warranty. Listing Broker shall be paid a brokerage fee by Seller of _____ % of the Purchase Price. Selling Broker shall be paid by Seller a fee of 3 % of the Purchase Price.

12. **Notices.** Any notice, request or demand required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed sufficiently given if, delivered by hand or messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient, at the intended recipient's address set forth below, or at such other address as the intended recipient may have specified by written notice to the sender given in accordance with the requirements of this Paragraph. Any such notice, request or demand so given shall be deemed given on the day it is received by the recipient.

For the Seller:

~~Ben Mojalla~~ *Peyam Mojalla*
PO Box 641
Ashburn, VA 20148

For Purchaser:

Economic Development Authority
of the City of Winchester, VA
15 N. Cameron St. Winchester, VA 22601

13. **Default.**

A. **Default by Purchaser.** If Purchaser defaults under this Agreement, the damages suffered by Seller would be difficult to ascertain. Therefore, Seller and Purchaser agree that, in the event of a default by Purchaser, Seller's sole and exclusive remedy, in lieu of all other remedies, shall be to terminate this Agreement and retain the Deposit as full and

complete liquidated damages. If the Deposit is retained as liquidated damages, Seller agrees to pay one-half of the Deposit to the Listing Broker to compensate Broker for his brokerage services in the transaction. Such payment shall have no effect on the payment due in any subsequent transaction. Seller hereby specifically waives the right to seek specific performance of this Agreement by Purchaser or any other remedy at law or in equity, provided that Seller reserves the right to all remedies available at law and in equity solely in order to enforce the indemnification obligations of Purchaser under Paragraphs 4D., 10 and 11 herein.

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B. Default by Seller. If Seller defaults under this Agreement, Purchaser shall have the option to (i) seek specific performance of this Agreement, or (ii) terminate this Agreement, in which event the Deposit shall be promptly refunded to Purchaser. Seller shall be liable for Purchaser's expenses in the filing of any specific performance action, including reasonable attorney's fees and court costs.

C. Right to Cure Default. Prior to any termination of this Agreement as provided in Subparagraphs 13A. and 13B., the non-defaulting party shall provide written notice of any default(s) to the defaulting party (the "Default Notice") permitting the defaulting party ten (10) days to cure any such default(s). If defaulting party does not cure the default(s) or does not respond to the Default Notice, then the non-defaulting party may terminate the Agreement by written notice to the defaulting party. Nothing herein shall prevent either party from seeking a judicial determination regarding any default; provided however, the court shall award the expenses of attorney's fees and court costs to the prevailing party in any such action.

D. Brokerage Fees. Notwithstanding the remedies set forth in Subparagraphs 13A., 13B., and 13C, if either Seller or Purchaser defaults under this Agreement, the defaulting party shall be liable for the full amount of the brokerage fees set forth in Paragraph 11 and any brokerage fees set forth in Seller's listing agreement with the Listing Broker for the Property (which document is hereby incorporated herein by this reference) as if this Agreement and Seller's listing agreement had been performed, and for any damages and all expenses incurred by the Listing Broker and the Selling Broker in connection with this transaction and the enforcement of this Agreement and Seller's listing agreement, including, without limitation, attorney's fees and court costs. Payment of a real estate broker's fee as the result of a transaction relating to the Property which occurs subsequent to a default under this Agreement shall not relieve the defaulting party of liability for any brokerage fees due under this Agreement or Seller's listing agreement.

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14. Miscellaneous.

A. Final Agreement. This Agreement contains the entire agreement between the parties hereto relating to the Property and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties hereto.

B. Virginia Law Applicable. This Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia and shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

C. Assignment. This Agreement shall not be assigned by one party without the written consent of the other party, except the assignment of this Agreement to an entity owned by Purchaser or the principals of Purchaser shall not require the consent of Seller, but Purchaser shall provide written notice to Seller of such assignment. This Agreement shall inure to the benefit of the parties hereto and their respective and permitted successors and assigns.

D. Counterparts. This Agreement may be signed in one or more counterparts, each of which is deemed to be an original and all of which shall together constitute the same instrument.

The parties agree that a fax of any signed original document shall have the same effect as an original.

E. Tax-Deferred Exchange. Either party may elect to include the conveyance of the Property in an IRS Section 1031 Like Kind Exchange (a tax-deferred exchange). In the event that a party makes such an election, the non-exchanging party agrees to execute such documents necessary to effectuate such an exchange (at no cost to the exchanging party), but in no event shall such exchange affect the terms of the transaction or a party's responsibilities to the other party under this Agreement. The exchanging party shall bear the sole costs of its exchange.

15. **Additional Provisions:** See Addendum 1 of 1 attached.

16. **Acceptance.** To be effective this Agreement must be executed by Purchaser and Seller and an original copy of this Agreement returned to Purchaser no later than 5:00 p.m. on April 24, 2013, or this Purchase Agreement shall be deemed withdrawn.

**REMAINDER OF PAGE
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Each of the parties has executed this Agreement in its name pursuant to due authority as of the dates set forth below.

Purchaser [Signature]
Printed Name: James W. Dodkins
Title (if applicable): Executive Director
Date: 4/16/2013

Seller [Signature]
Printed Name: Sanjiv Patel - Peyam Hojalla JPM
Title (if applicable):
Date: 4/17/13 JD

Purchaser _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Seller _____
Printed Name: _____
Title (if applicable): _____
Date: _____

Listing Company's Name and Address

Selling Company's Name and Address

Oakcrest Commercial Real Estate
128 North Kent Street
Winchester, VA 22601

Agent's Name _____
Agent's tel. no. _____
Fax no. _____
Agent's email _____

Agent's Name Bill Wiley
Agent's tel. no. 540-532-8259
Fax no. 540-504-0785
Agent's email billwiley@mrts.com

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SCHEDULE A

**LEASES, AGREEMENTS AND CONTRACTS
FOR TENANTS AND OTHER PARTIES
IN POSSESSION OF THE PROPERTY**

List below each such tenant or other party in possession of the Property, and provide Purchaser with a copy of each lease, license or other agreement. If verbal agreement, summarize terms below.

Also provide Purchaser with any contract affecting the Property that is not terminable at will.

Sharon K Brown - Tenant *JOPM*

**ADDENDUM TO CONTRACT OF PURCHASE
ADDENDUM #1 OF 1**

This ADDENDUM TO CONTRACT OF PURCHASE, which is attached to and made a part of contract of purchase (the "Contract") dated April 9, 2013, between BEN MOJALLAL (the "Seller") and ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF WINCHESTER, VIRGINIA (the "Purchaser") for the sale of that certain real property and all improvements thereon located in the City of Winchester, Virginia, and described in the Contract as 215 NORTH EAST LANE, CITY OF WINCHESTER, VIRGINIA, TAX MAP NO. 174-1-J-10, provides as follows:

*Ben
Mojallal
JOPM*

1. This Agreement is contingent upon approval and appropriation of funds by the Common Council of the City of Winchester, Virginia for the purchase of the Property by Resolution adopted on or before June 19, 2013. If funds are not approved and appropriated on or before June 19, 2013, then this Agreement shall terminate, whereupon the Deposit shall be returned to the Purchaser.
2. This Agreement is expressly contingent upon the approval by the Directors of the Economic Development Authority of the City of Winchester, Virginia (the "Authority") by Resolution adopted on or before June 26, 2013. If such Resolution is not adopted by the Authority on or before June 26, 2013, then and in that event this Agreement shall terminate and be of no further binding force or effect, whereupon the Deposit shall be returned to the Purchaser.
3. Time is of the essence as to all matters set forth in this Agreement.
4. At Purchaser's election, Purchaser shall have the right to have the Property appraised, at Purchaser's sole cost and expense, during the Feasibility Period. In the event that the appraised value of the Property is less than the Purchase Price as set forth in Section 2 of the Agreement, or is otherwise deemed unacceptable to Purchaser, in Purchaser's sole and absolute discretion, Purchaser shall have the right to terminate this Agreement upon notice to Seller given within ten (10) business days after receipt of the written appraisal by Purchaser or, at Purchaser's election, to reduce the Purchase Price as set forth in Section 2 upon written notice to Seller, given within ten (10) business days after receipt of the written appraisal by Seller. Upon receipt of the reduced Purchase Price from Purchaser, Seller shall have the right, within five (5) business days after receipt of the reduced Purchase Price, to either accept the reduced Purchase Price or to terminate this Agreement upon written notice to Purchaser. In the event of termination of this Agreement by either Seller or Purchaser, the Deposit shall be returned to the Purchaser. In no event shall the Purchase Price be increased as a result of the market value as determined by any such appraisal commissioned by the Purchaser.

WITNESS the following duly authorized signatures and seals:

SELLER:


BEN MOJALLAL (Seal)
Peyaon Mojalla
JPM

PURCHASER

**ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF WINCHESTER, VIRGINIA**

By:  (SEAL)
James W. Deskins, Executive Director

MLB/pmm
c:\Contracts\EDA - 215 East Lane Addendum
3/22/13

SCHEDULE B

**CONTRACTS RELATING TO THE PROPERTY
(Not Applicable at WR)**

Tenant lease - Sharon K Brown

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 6/11/13 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE x___ PUBLIC HEARING _x_

ITEM TITLE: Ordinance to declare the property at 414 S. Braddock Street to be a nuisance; and appropriate funds and authorize the City to abate the nuisance and demolish or make emergency repairs to the unsafe structure

STAFF RECOMMENDATION: Approve Ordinance

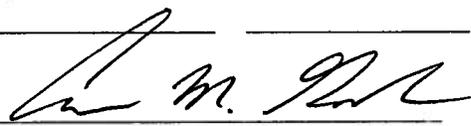
PUBLIC NOTICE AND HEARING: Required

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Included in Ordinance

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda. The Director's initials for approval or disapproval address only the readiness of the issue for Council consideration. This does not address the Director's recommendation for approval or denial of the issue.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. <u>Zoning</u>	<u>AMB</u>		<u>6/6/13</u>
2. _____			
3. _____			
4. _____			
5. City Attorney			
6. City Manager			<u>6-6-13</u>
7. Clerk of Council			
Initiating Department Director's Signature:			<u>6/6/13</u> Date



APPROVED AS TO FORM:


6/6/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Aaron Grisdale
Date: 6/6/13
Re: Ordinance – 414 S. Braddock Street

THE ISSUE: The Code Official has cited the subject property as an “Unsafe Structure”. As such, immediate action must be taken to preserve health, safety, and welfare through demolition or abatement by repair of the unsafe conditions.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2018 #4 - Creating a more livable City for all.

BACKGROUND: The subject property was damaged by fire in 1984 and has continued to deteriorate over time. Zoning and Inspections has cited the property on several occasions and has attempted to work with the property owner to allow him to make the necessary repairs. Recently, the Code Official has cited the subject property as an “Unsafe Structure”. The matter was appealed to the Local Board of Building Code Appeals who unanimously upheld the Code Official’s determination that the property was an “unsafe structure” under the requirements of the Building Code. As such, immediate action must be taken to preserve health, safety, and welfare through demolition or abatement by repair of the unsafe conditions. Council must approve going forward with action and appropriation of funds to demolish the structure or abate the unsafe conditions by repair.

BUDGET IMPACT: Cost of Demolition/Abatement included in Ordinance.

OPTIONS: Demolition or Abatement by Repair – requires implementation of least drastic means to remedy the unsafe conditions/nuisance.

RECOMMENDATIONS: Approval of the Ordinance and appropriation of necessary funds.

**AN ORDINANCE TO DECLARE THE PROPERTY AT 414 S. BRADDOCK STREET TO BE A NUISANCE;
AND APPROPRIATE FUNDS AND AUTHORIZE THE CITY TO ABATE THE NUISANCE AND
DEMOLISH OR MAKE EMERGENCY REPAIRS TO THE UNSAFE STRUCTURE**

WHEREAS, the property located at 414 S. Braddock Street was severely damaged by fire in year 1984; and

WHEREAS, the property owner has failed to initiate any substantial repairs to eliminate the damage caused by the 1984 fire or to mitigate the deterioration of the structure since that time; and

WHEREAS, the property located at 414 S. Braddock Street has and continues to be the subject of numerous Building Code and Zoning Violations including but not limited to those identified in (Exhibit A); and

WHEREAS, numerous photographs of the property including but not limited to those depicted in (Exhibit B) establish that the property is in an extremely dilapidated condition; and

WHEREAS, on March 19, 2013, the Code Official for the City of Winchester issued a Notice of Unsafe Structure and Notice of Building Code Violation (Exhibit C) declaring that the property in its current state constitutes an “unsafe structure” that “there is an immediate danger that the referenced portion of the structure may collapse or fall or endangering the life of occupants or others”; and

WHEREAS, this determination by the Code Official is supported by the structural engineering report of a contractor hired by the owner/occupant of the property (Exhibit D) as well as a structural engineering report of a contractor hired by the City (Exhibit E); and

WHEREAS, on May 22, 2013, the Local Board of Building Code Appeals unanimously affirmed the determination made by the Code Official that the property constitutes an “unsafe structure” (Exhibit F); and

WHEREAS, it is the belief of Common Council that the building identified in the Notice of Unsafe Structure and Notice of Violation (Exhibit C) constitutes a “public nuisance” as defined under §15.2-900 of the Code of Virginia; and

WHEREAS, it is further the belief of Common Council that said public nuisance presents an imminent and immediate threat to life or property; and

WHEREAS, §15.2-900 of the Code of Virginia further provides that a locality may “abate, raze, or remove [a] public nuisance . . . and bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance”; and

WHEREAS, Section 105 of the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code 2009 provides that the Code Official may also initiate demolition and/or emergency repairs to an unsafe structure when it is determined that there is an immediate danger of the structure collapsing or falling and when life is endangered; and

WHEREAS, the Director of Zoning and Inspections for the City of Winchester has obtained a rough estimate of the cost of repairs (**Exhibit G**) which is estimated to be _____; and

WHEREAS, the Director of Zoning and Inspections for the City of Winchester has obtained a rough estimate of the cost of demolition and removal of debris (**Exhibit H**) which is estimated to be _____; and

WHEREAS, due to the nature of the project, it is understood by Council that additional costs may be discovered in the **demolition or** performance of the work required to abate the nuisance and unsafe conditions on the property; **and**

WHEREAS, it is the belief of Common Council that [*insert DEMOLITION OR REPAIR/ABATEMENT*] represents the least drastic remedy and is necessary to abate the nuisance and unsafe condition of the property.

NOW THEREFORE BE IT ORDAINED that Common Council for the City of Winchester hereby declares that the property at 414 S. Braddock Street as identified in (**Exhibit C**) constitutes a “nuisance” and a public nuisance under the provisions of §15.2-900 of the Code of Virginia and that such nuisance presents an immediate danger to life and property and that the property is in imminent danger of collapse, and BE IT FURTHER ORDAINED that Council directs the City Attorney and City Manager to take all steps necessary to abate the nuisance in accordance with §15.2-900 of the Code of Virginia by **repair/abatement or demolition** and take action to recover all costs expended against the responsible party (owner/occupant) and whose acts or negligence cause the public nuisance; and

BE IT FURTHER ORDAINED THAT Common Council further agrees with the determination of the Code Official that the property identified in (**Exhibit C**) constitutes an “unsafe structure” under Section 105 of the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code 2009 and that the property is in immediate danger of collapsing and falling and endangering life and property and directs that the City Attorney and City Manager take all action through the Code Official to ~~initiate emergency repairs~~ **demolish or repair/abate the unsafe conditions**; and

BE IT FURTHER ORDAINED that Common Council hereby appropriates _____ from the City’s General Funds for said emergency repairs and abatement efforts.



Anthony C. Williams, City Attorney
Judy K. Combs, Paralegal
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 667-2259
TDD: (540) 722-0782
Website: www.winchesterva.gov

February 22, 2013

Terry H. Whittle, Clerk
Winchester Circuit Court
5 North Kent Street
Winchester, VA 22601

RE: City of Winchester vs. Martin B. Gavis
Case No: CL12-554

Dear Mr. Whittle:

Please file the enclosed Complaint on behalf of the City and have it served on the defendant, Martin B. Gavis, by the Sheriff's Office.

If you have any questions or ongoing concerns regarding this or any other matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony C. Williams".

Anthony C. Williams
City Attorney

ACW/jc
Enclosure

Cc: Aaron Grisdale
Martin B. Gavis



VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

CITY OF WINCHESTER, VIRGINIA

Plaintiff,

v.

CL12000554-00

MARTIN B. GAVIS
414 S. Braddock Street
Winchester, VA 22601

-(also serve)-

MARTIN B. GAVIS
175 Lee Avenue
Winchester, VA 22601.

Defendant.

COMPLAINT

COMES NOW the City of Winchester, Virginia, by counsel and for its Complaint in this matter says to wit:

1. That at all times herein mentioned, the City of Winchester, Virginia (hereinafter "City") was and remains a municipal corporation formed and operating under the laws of the Commonwealth of Virginia.
2. That at all times herein mentioned, defendant Martin B. Gavis was and remains the owner of the property located at 414 S. Braddock Street in the City of Winchester, Virginia ("the property").
3. Pursuant to Section 18-6-3.5.1(a) of the Winchester Zoning Ordinance:

No person shall park any motor vehicle, trailer, or semi-trailer in the front, corner-side, side, or rear yard of any lot, improved with a single-family dwelling, zoned for residential use, except on an improved surface. (5/13/08, Case TA-07-06, Ord. No. 2008-24)

4. On January 25, 2012, the Zoning Administrator issued a Notice of Violation (Exhibit A) to the defendant identifying a violation of 18-6.3.5.1 of the Winchester Zoning Ordinance for parking a large commercial bucket truck on the front yard of his residential dwelling on an unimproved surface.
5. The Notice of Violation instructed the defendant to abate the violation by removing the truck from the unimproved surface on or before February 9, 2012, and that failure to comply would result in the issuance of civil fines and penalties. The NOV included a zoning determination and the requisite appealable language required pursuant to §2.2-3711 of the Code of Virginia that the failure to file an appeal of determination to the BZA within 30 days of the determination (January 25, 2012) would render the determination "final and unappealable".
6. The defendant made no effort to contest or appeal this determination.
7. On June 20, 2012, the property was re-inspected and the vehicle was found to still be parked in violation of the Zoning Ordinance provisions (Exhibit B).
8. Having failed to comply with the request to abate on or before February 9, 2012, a Notice of Citation (Exhibit C) was issued on June 21, 2012 imposing civil penalties for the violation.
9. On June 29, 2012, the property was re-inspected and the violation was still found to exist. (Exhibit D)
10. Re-inspections on September 11, 2012 and December 20, 2012 revealed that the violation had not been abated (Exhibit E).
11. Pursuant to §2.2-3711 of the Code of Virginia, a Zoning Determination is "final and unappealable" where a party aggrieved by the Zoning Determination fails to appeal the decision to the Board of Zoning Appeals within 30 days of the determination.
12. And it is well settled law in the Commonwealth of Virginia that a landowner may not initiate a direct attack on a Zoning Determination where he has not exhausted all administrative remedies (where he has not followed through with an appeal to the BZA first). Lilly v. Caroline County, 259 Va. 291; 526 S.E.2d 743 (2000). (Exhibit F).
13. Whereas the defendant failed to abate the violation or appeal the Zoning Determination of January 25, 2012, the matter is final and unappealable pursuant to §2.2-3711 of the Code of Virginia and having failed to exhaust his administrative remedies by timely bringing this matter before the BZA, he is

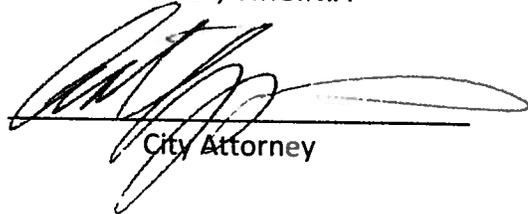
precluded under the laws of the Commonwealth of Virginia from initiating a direct judicial attack on the determination.

14. On November 8, 2012, the General District Court granted judgment in favor of the City in this matter and assessed a civil penalty against the defendant in the amount of \$200.00.
15. The defendant filed an appeal for a trial de novo to Winchester Circuit Court and the matter was scheduled for trial on February 27, 2013.
16. A Motion for Voluntary Nonsuit was filed by the City on February 11, 2013, and an Order granting the City's Motion was entered on February 21, 2013 allowing the City six (6) months to re-file its case in accordance with the requirements of §8.01-380 of the Code of Virginia and releasing the appeal bond heretofore filed by the Plaintiff.

This Complaint constitutes the City's re-filing of this matter in accordance with the Court's February 21, 2013 Order. WHEREAS the defendant has committed a violation of 18-6.3.5.1 of the Winchester Zoning Ordinance by parking a large commercial bucket truck on the front yard of his residential dwelling on an unimproved surface, and WHEREAS, the defendant has failed to timely exhaust administrative remedies by appealing the zoning determination that the parking of the truck in this location constitutes a zoning violation, the City herein prays that this Honorable Court will enter judgment against the defendant for the full amount of TWO HUNDRED and 00/100 dollars (\$200.00) plus costs, interest, and any other relief deemed fair and just.

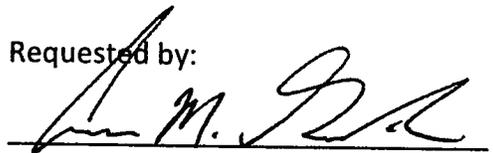
CITY OF WINCHESER, VIRGINIA

By:



City Attorney

Requested by:

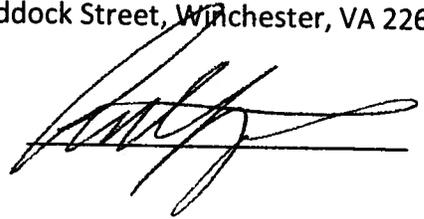


Aaron Grisdale, Zoning Administrator

CITY OF WINCHESTER, VA
Anthony C. Williams,
City Attorney
15 N. Cameron Street
Winchester, VA 22601
Phone: 540-667-1815 x 1433
Facsimile: 540-667-2259

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2013, a true copy of the foregoing Complaint was delivered via First Class Mail in accordance with the Rules of the Supreme Court of Virginia to Petitioner Martin B. Gavis, 414 S. Braddock Street, Winchester, VA 22601 and 175 Lee Avenue, Winchester, VA 22601.





Anthony C. Williams, City Attorney
Judy K. Combs, Paralegal
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 667-2259
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February 22, 2013

Terry H. Whittle, Clerk
Winchester Circuit Court
5 North Kent Street
Winchester, VA 22601

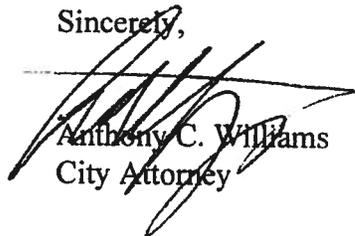
RE: City of Winchester vs. Martin B. Gavis
Case No: CL12-593

Dear Mr. Whittle:

Please file the enclosed Complaint on behalf of the City and have it served on the defendant, Martin B. Gavis, by the Sheriff's Office.

If you have any questions or ongoing concerns regarding this or any other matter, please do not hesitate to contact me.

Sincerely,



Anthony C. Williams
City Attorney

ACW/jc
Enclosure

Cc: Aaron Grisdale
Martin B. Gavis

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

CITY OF WINCHESTER, VIRGINIA

Plaintiff,

v.

CL12000593-00

MARTIN B. GAVIS
414 S. Braddock Street
Winchester, VA 22601

-(also serve)-

MARTIN B. GAVIS
175 Lee Avenue
Winchester, VA 22601.

Defendant.

COMPLAINT

COMES NOW the City of Winchester, Virginia, by counsel and for its Complaint in this matter say to wit:

1. At all times herein mentioned, the City of Winchester, Virginia (hereinafter "City") was and remains a municipal corporation formed and operating under the laws of the Commonwealth of Virginia.
2. At all times herein mentioned, defendant Martin B. Gavis was and remains the owner of the property located at 414 S. Braddock Street in the City of Winchester, Virginia ("the property").
3. On or about August 8, 2007, Winchester Codes and Zoning Inspector David Parker issued a Notice of Violation (Exhibit A) to Defendant Martin B. Gavis for several violations on the property at 414 S. Braddock Street as well as other properties.
4. The violations on the 414 S. Braddock Street property were identified as:
 - a. WCC 11-36: Trash and debris scattered around the Property;

- b. 03 VPMC IPMC 302.7: Accessory Structure has peeling and flaking paint;
 - c. 03 VPMC 304.10: Column missing on front porch on east side of structure
 - d. 03 VMC IPMC 304.13: Several windows on mansard roof at rear of structure have shifted or buckled because of partial collapse of the roof.
 - e. 03 VMC IPMC 304.2: Peeling or flaking paint on the structure
 - f. 03 VMC IPMC 304.6: Breaks / boards missing on entire structure
 - g. 03 VMC IPMC 304.7: Mansard roof has several holes and breaks in the shell and there are also several missing slate roof tiles.
5. On September 10, 2007, Parker conducted a re-inspection of the property and found that although the debris and rubbish had been removed, no further work had been done on the property on the remaining six (6) violations (items 7(b) through (g) above).
 6. Notices of citation were issued on January 3, 2008 and January 17, 2008 as the violations remained uncorrected.
 7. At all times herein mentioned, David Parker has been continuously employed in his position as a Code Compliance Inspector for the City of Winchester.
 8. In following years including but not limited to year 2010, additional re-inspections were conducted by Code and Zoning personnel who determined that "no work of significance [had] been completed and the cited violations still exist" (Exhibit B).
 9. On July 16, 2012, Parker re-inspected the property at 414 South Braddock Street and finding that the conditions described in paragraph 7(e), (f) and (g) still exist on the property and have not been corrected, Parker issued the attached Notices of Citation (Exhibit C).
 10. On August 23, 2012, as the violations remain uncorrected upon the property, Parker issued a Summons for Civil Penalty (Exhibit D).
 11. On November 8, 2012, the General District Court granted judgment in favor of the City in this matter and assessed a civil penalty against the defendant in the amount of \$450.00.

12. The defendant filed an appeal for a trial de novo to Winchester Circuit Court and the matter was scheduled for trial on February 27, 2013.
13. A Motion for Voluntary Nonsuit was filed by the City on February 11, 2013, and an Order granting the City's Motion was entered on February 21, 2013 allowing the City six (6) months to re-file its case in accordance with the requirements of §8.01-380 of the Code of Virginia and releasing the appeal bond heretofore filed by the Plaintiff.

This Complaint constitutes the City's re-filing of this matter in accordance with the Court's February 21, 2013 Order. WHEREAS the foregoing Code Violations were found to exist on said property, and whereas defendant has failed to timely abate said violations, the City herein prays that this Honorable Court will enter judgment against the defendant for the full amount of FOUR HUNDRED - FIFTY and 00/100 dollars (\$450.00) plus costs, interest, and any other relief deemed fair and just.

CITY OF WINCHESTER, VIRGINIA

By: _____

City Attorney

Requested by:



Aaron Grisdale, Zoning Administrator

CITY OF WINCHESTER, VA

Anthony C. Williams,

City Attorney

15 N. Cameron Street

Winchester, VA 22601

Phone: 540-667-1815 x 1433

Facsimile: 540-667-2259

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February, 2013, a true copy of the foregoing Complaint was delivered via First Class Mail in accordance with the Rules of the Supreme Court of Virginia to Petitioner Martin B. Gavis, 414 S. Braddock Street, Winchester, VA 22601 and 175 Lee Avenue, Winchester, VA 22601.

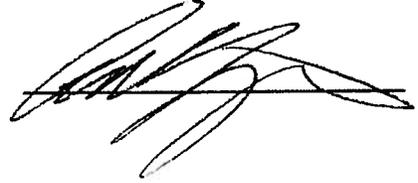
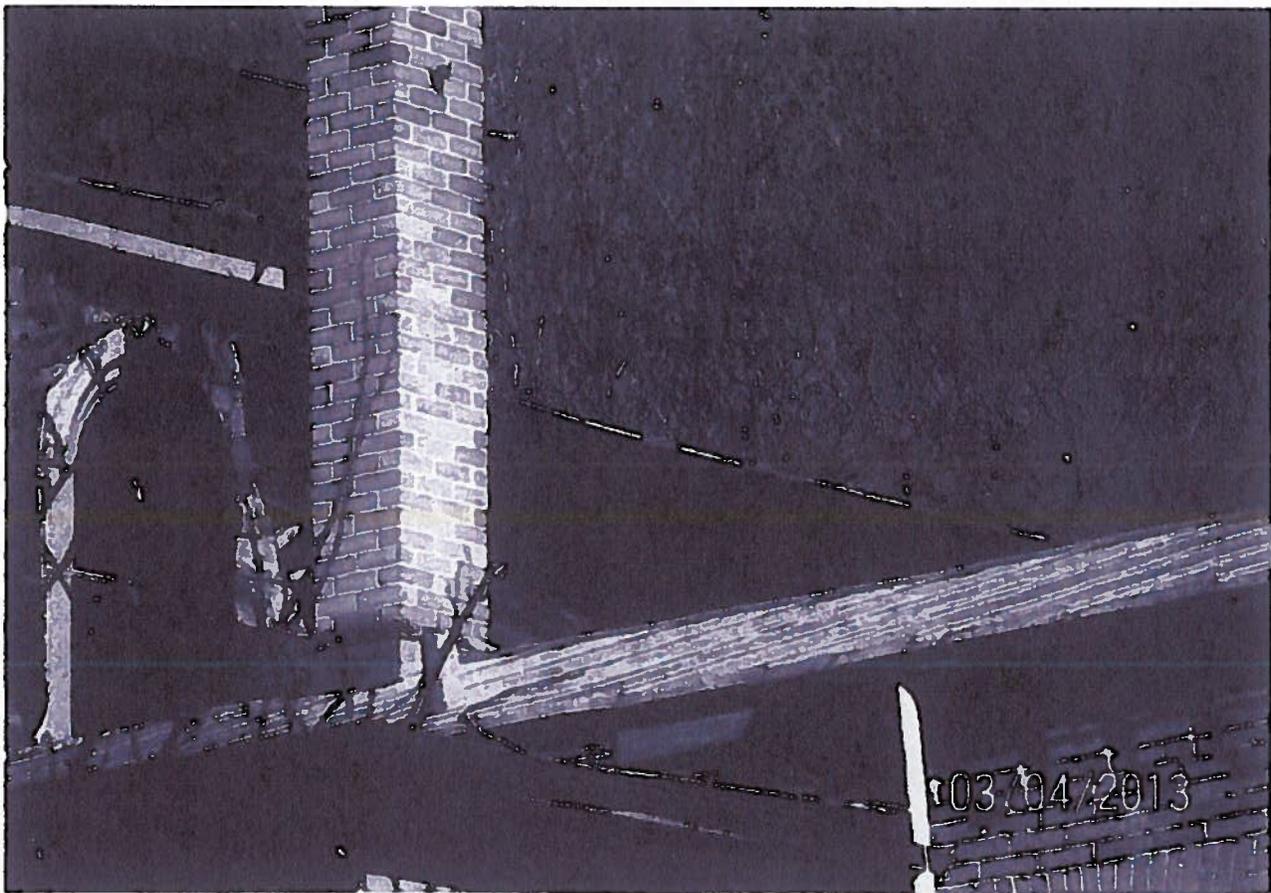
A handwritten signature in black ink, appearing to be 'Anthony C. Williams', written over a horizontal line.

EXHIBIT
R



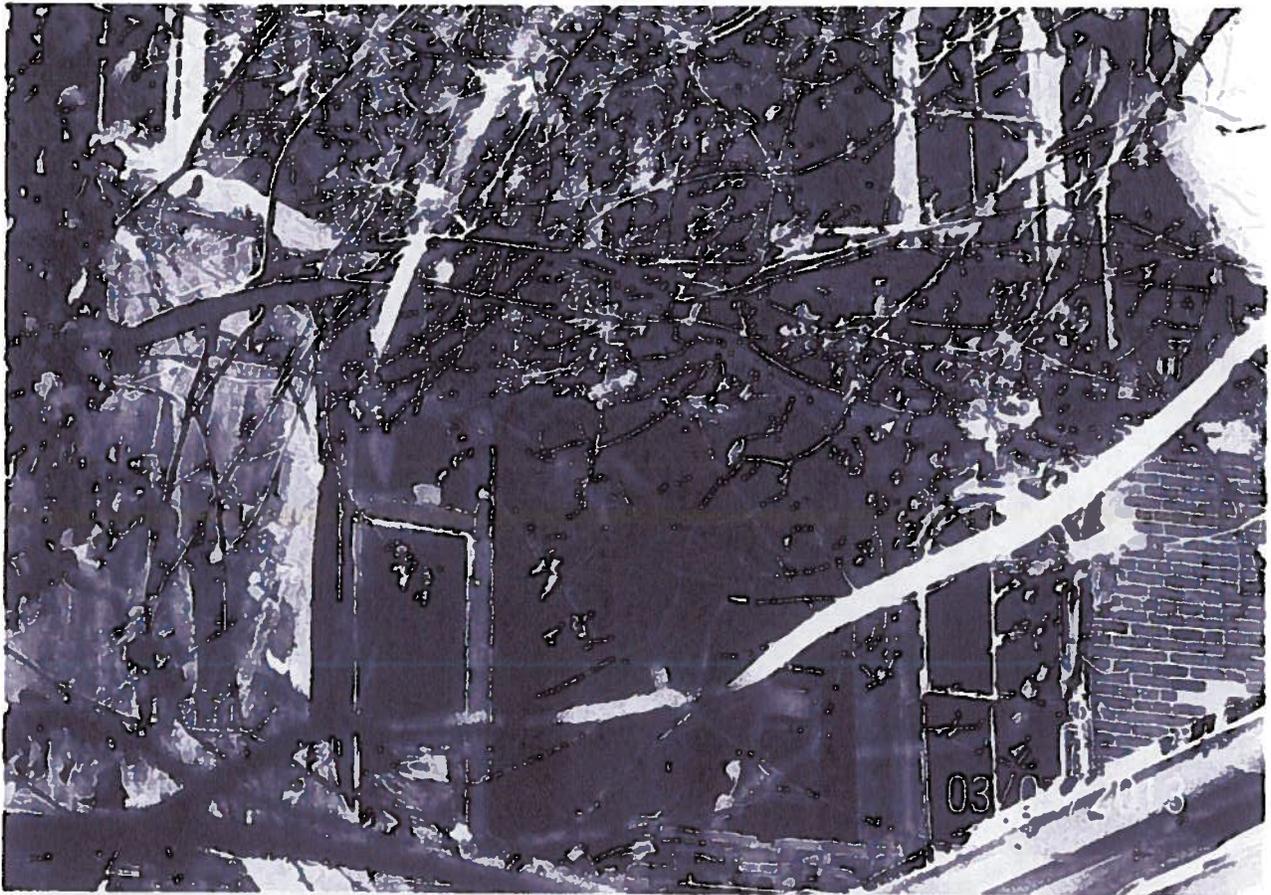


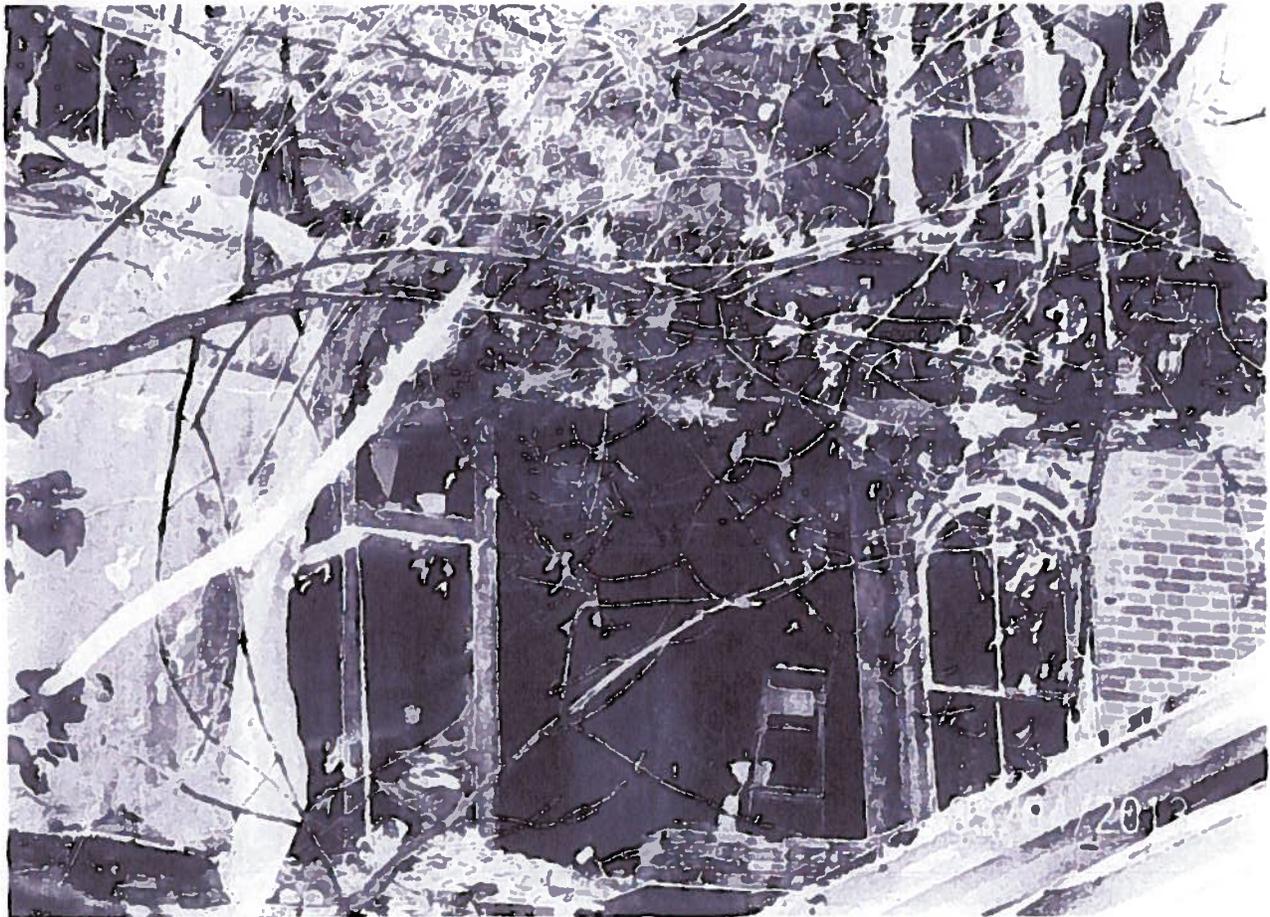
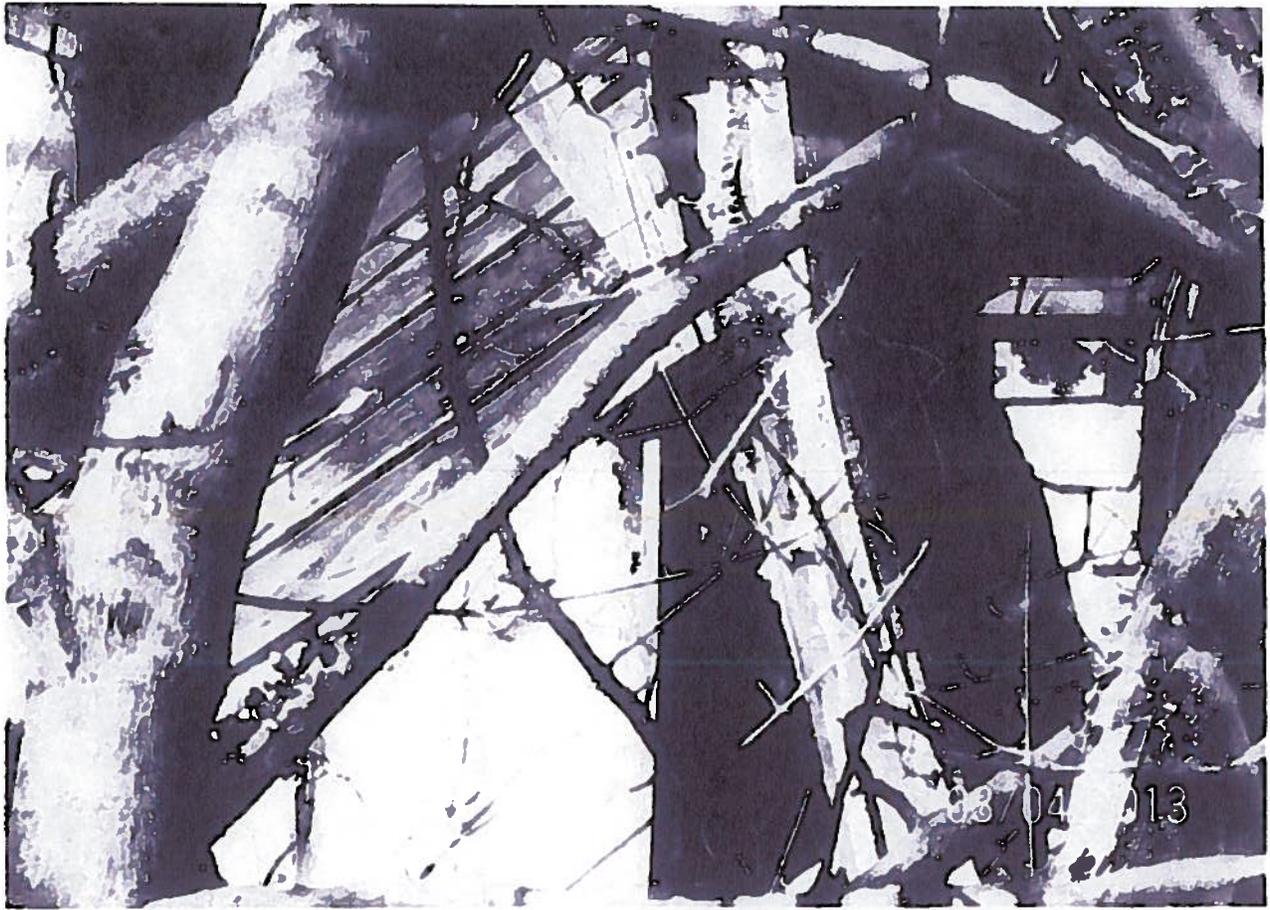


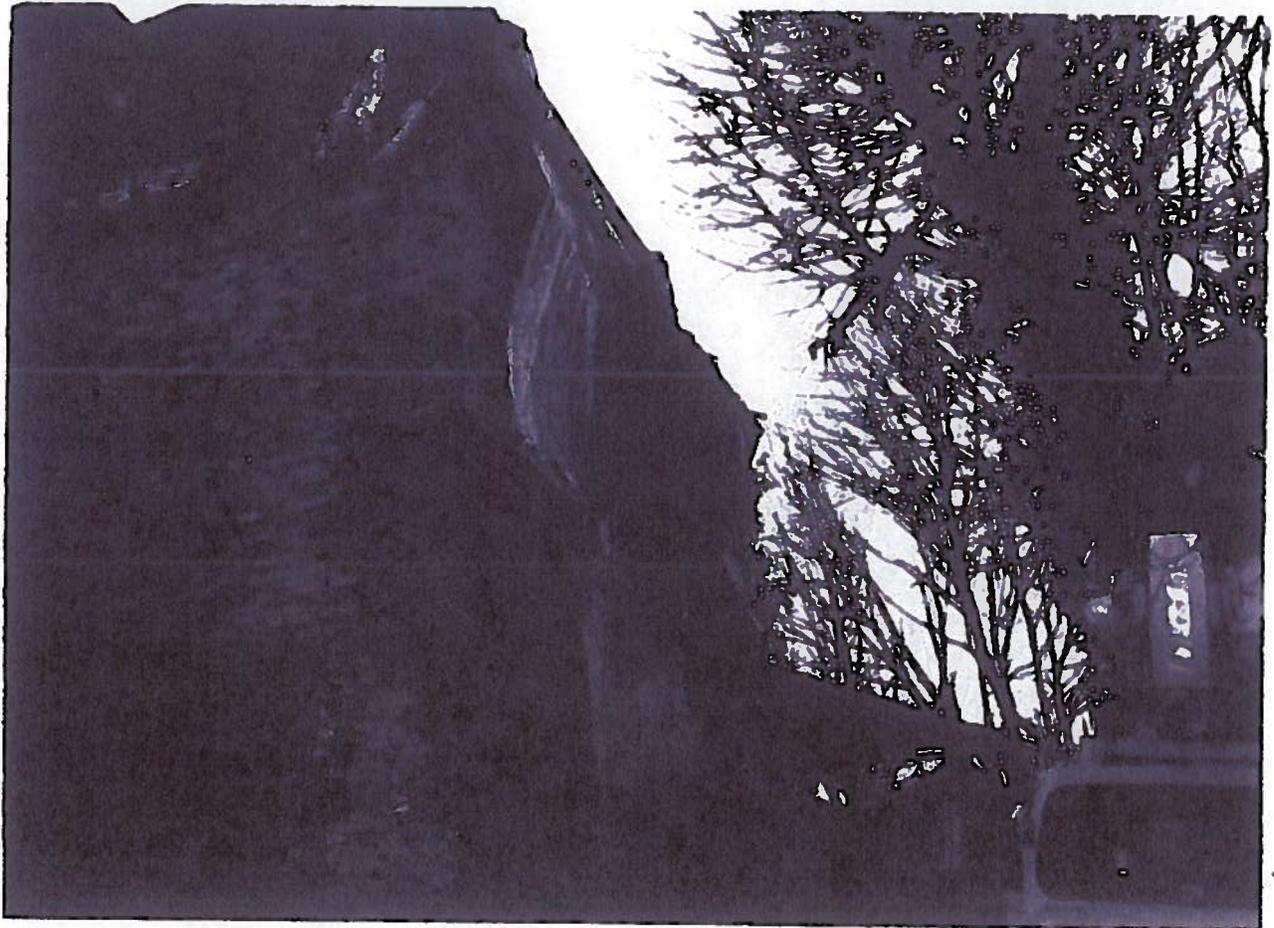










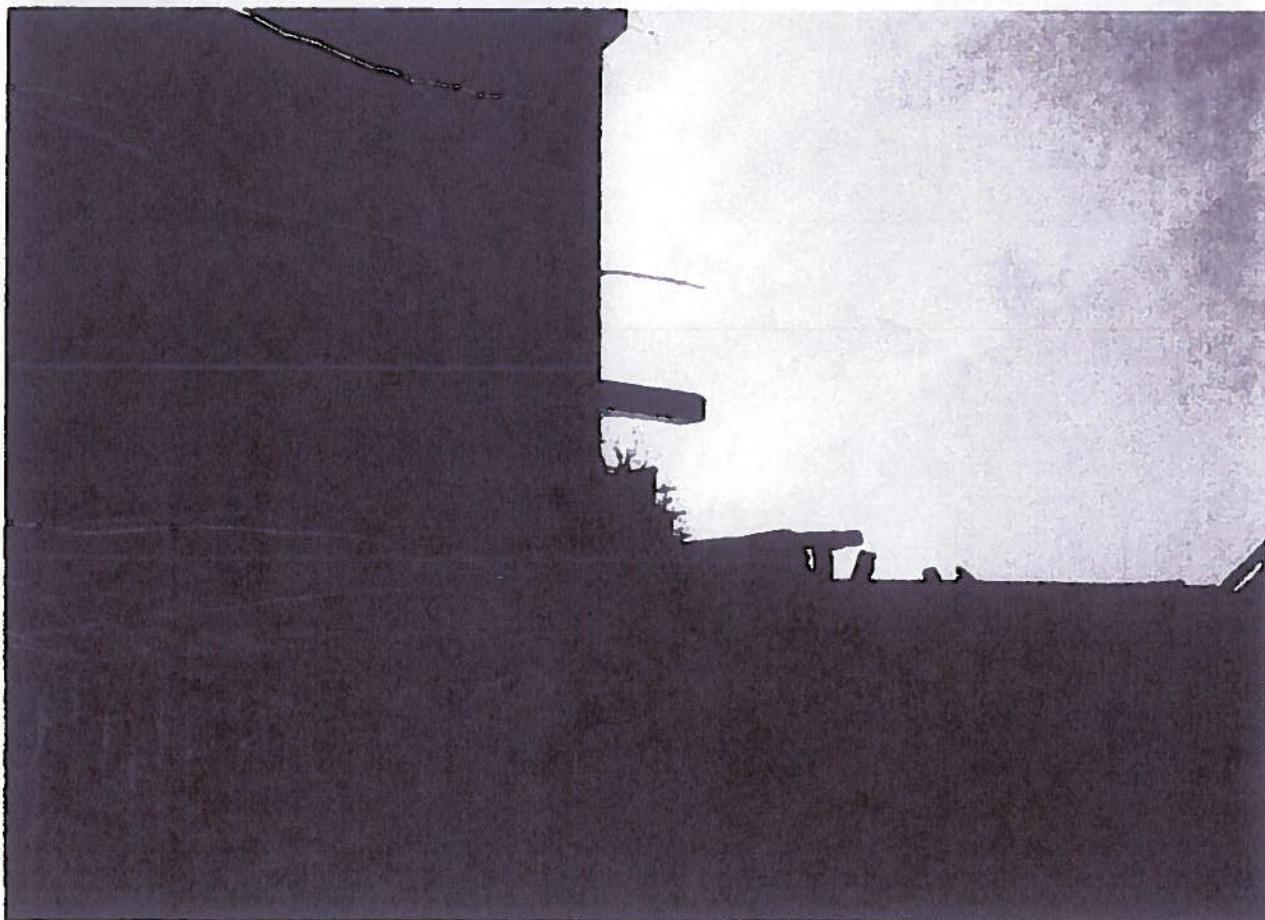
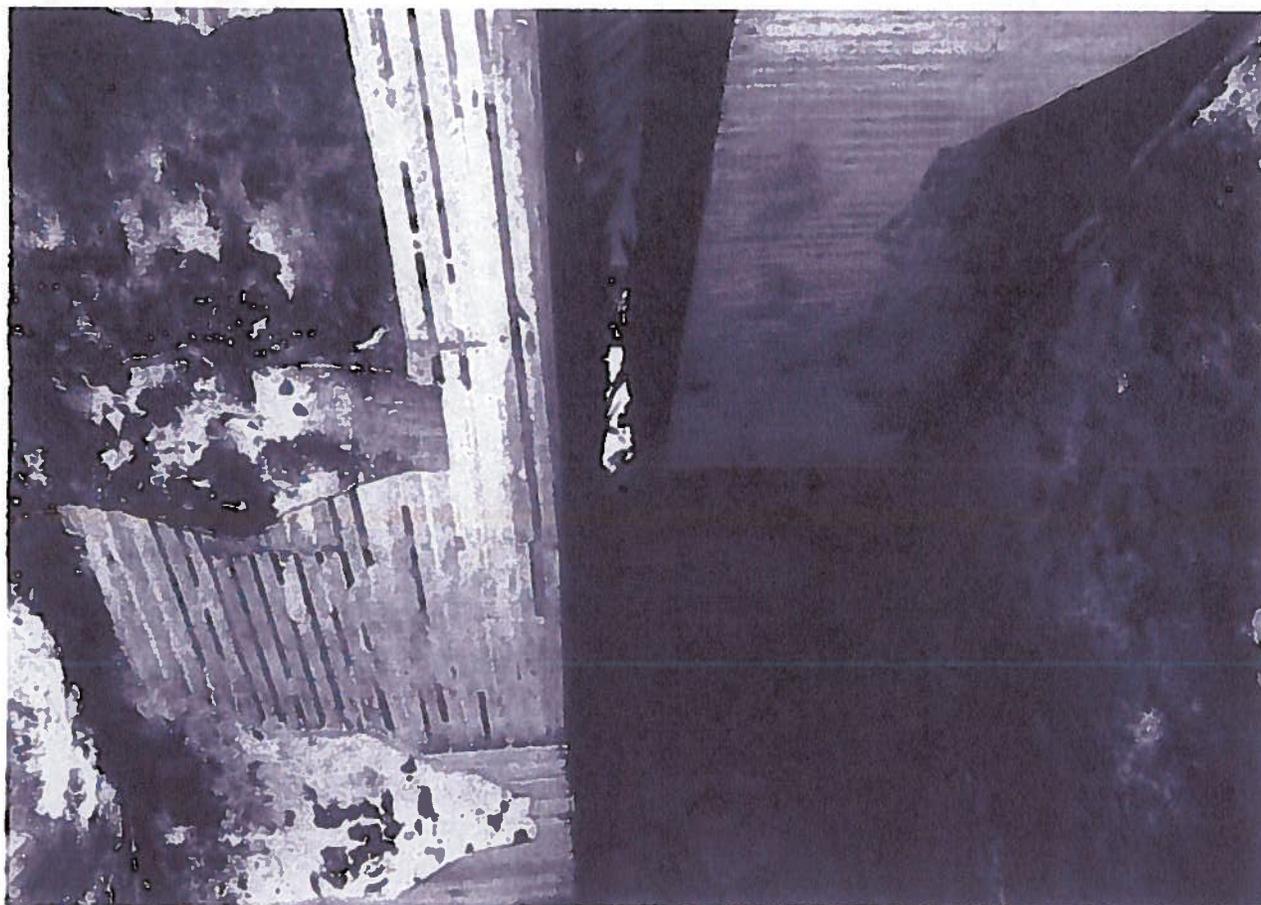


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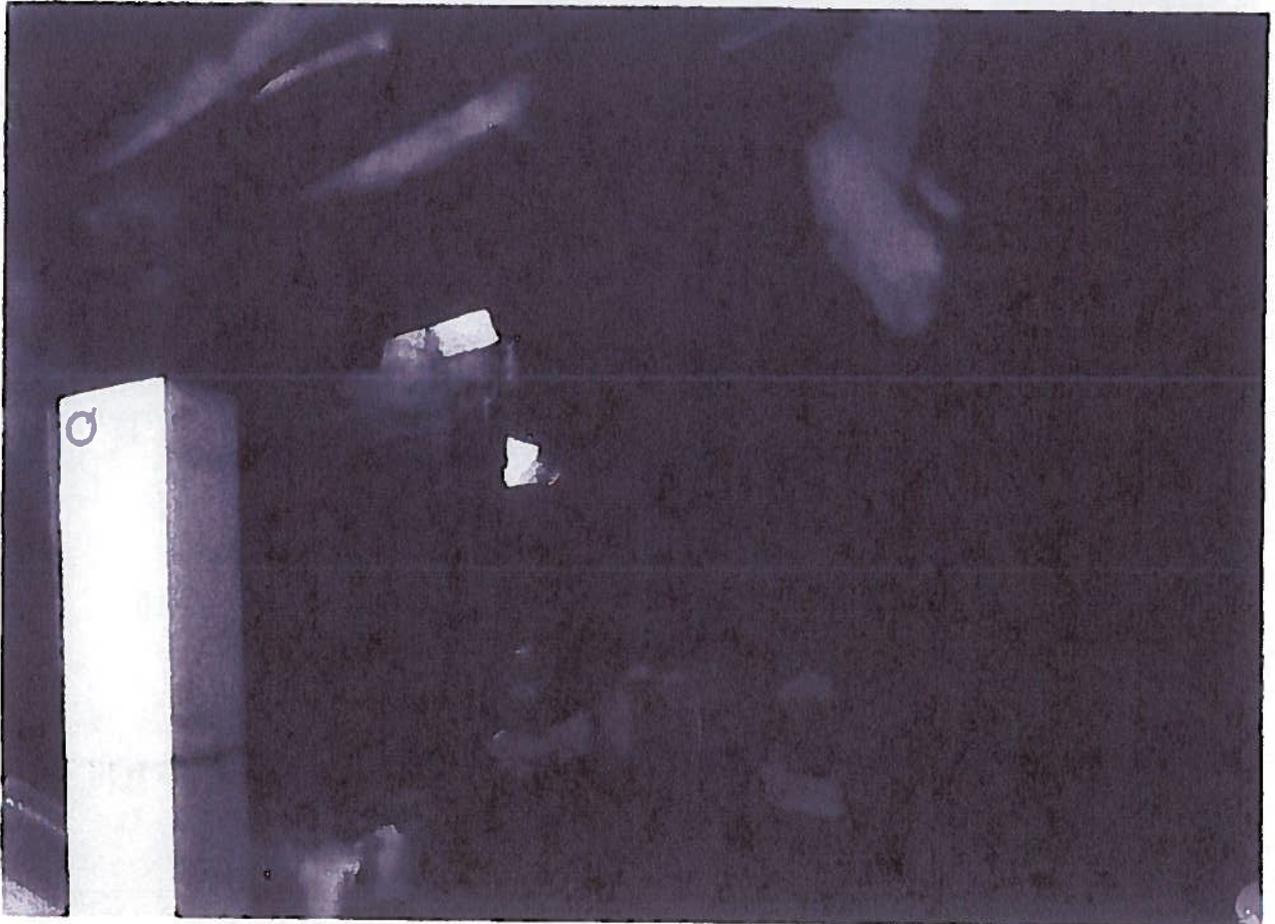
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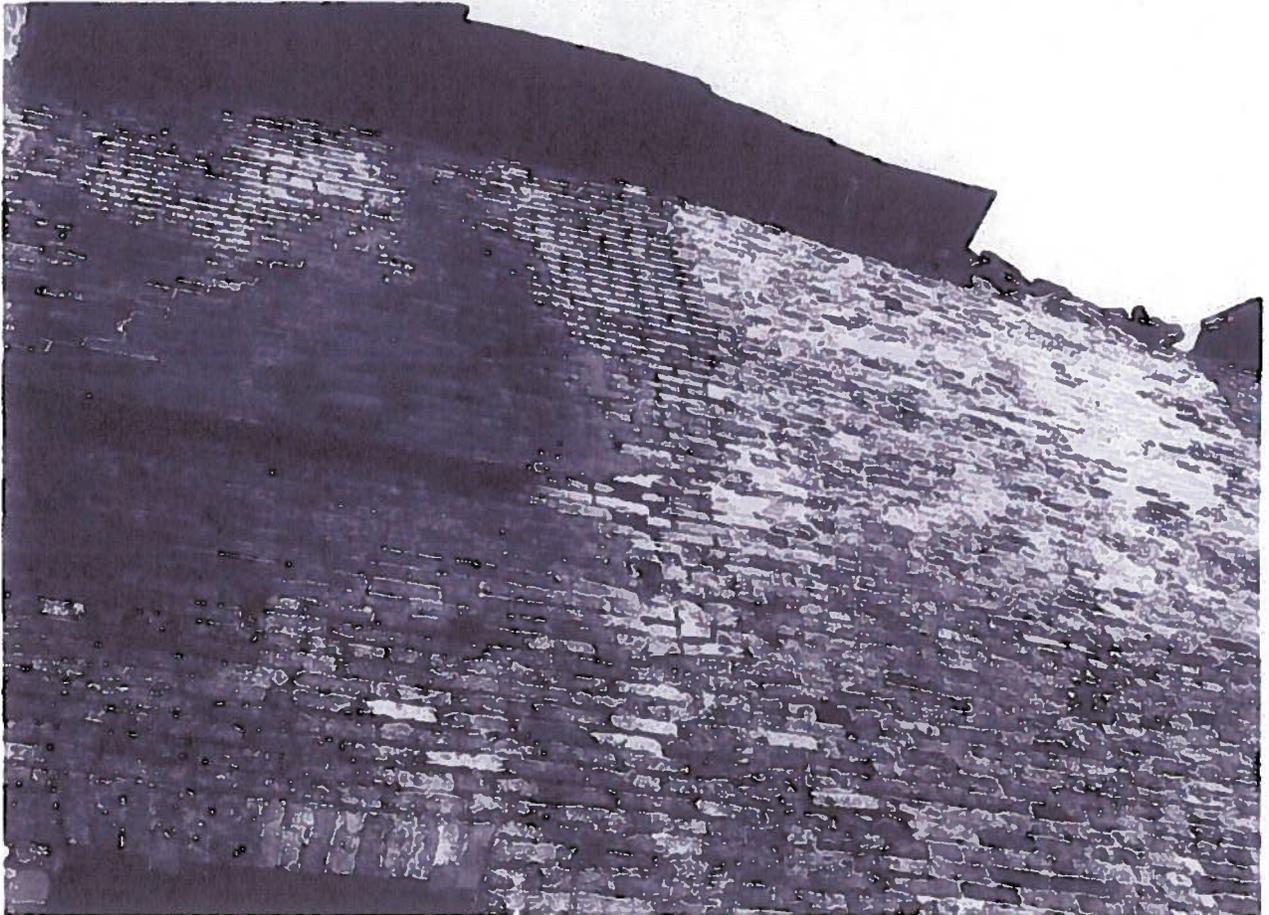
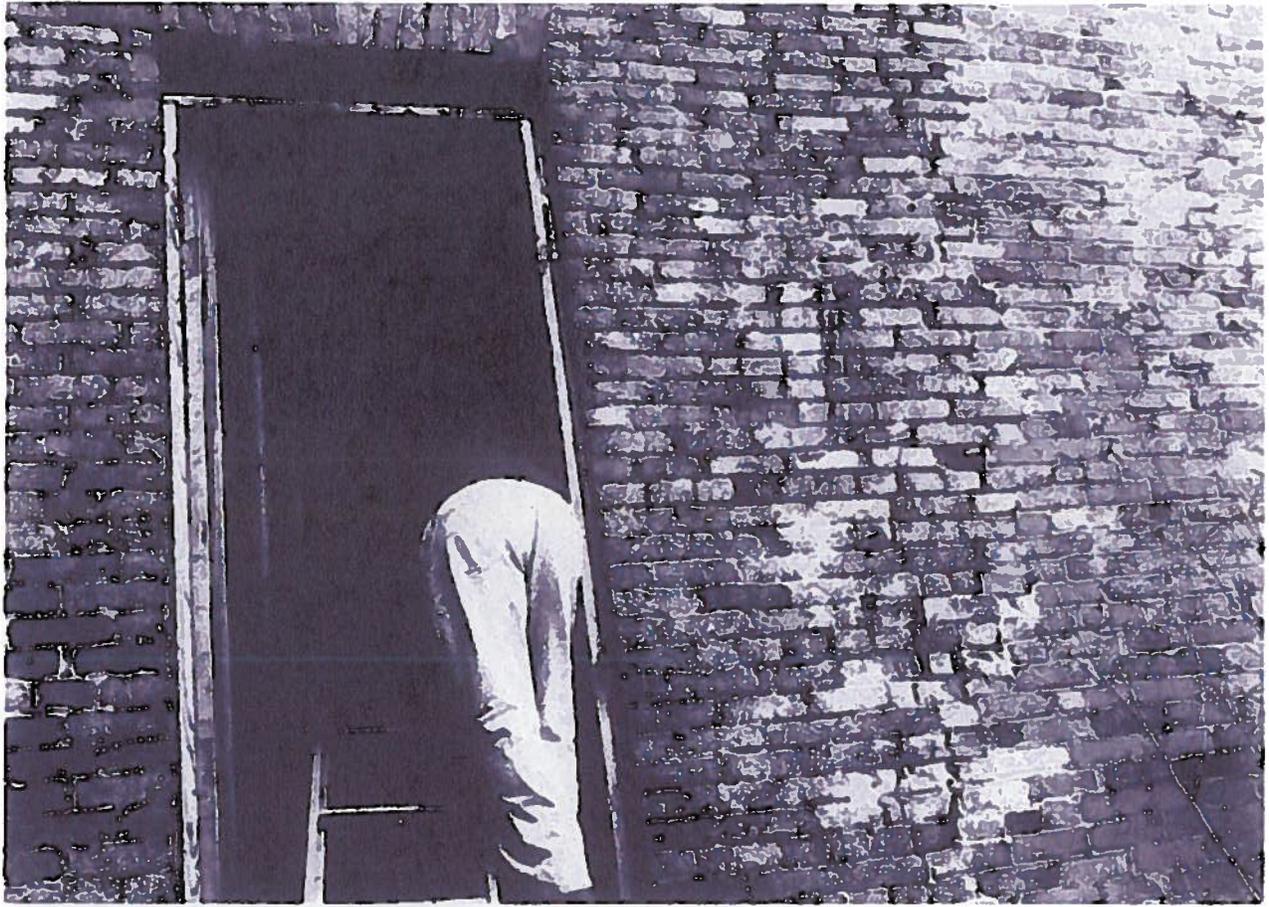


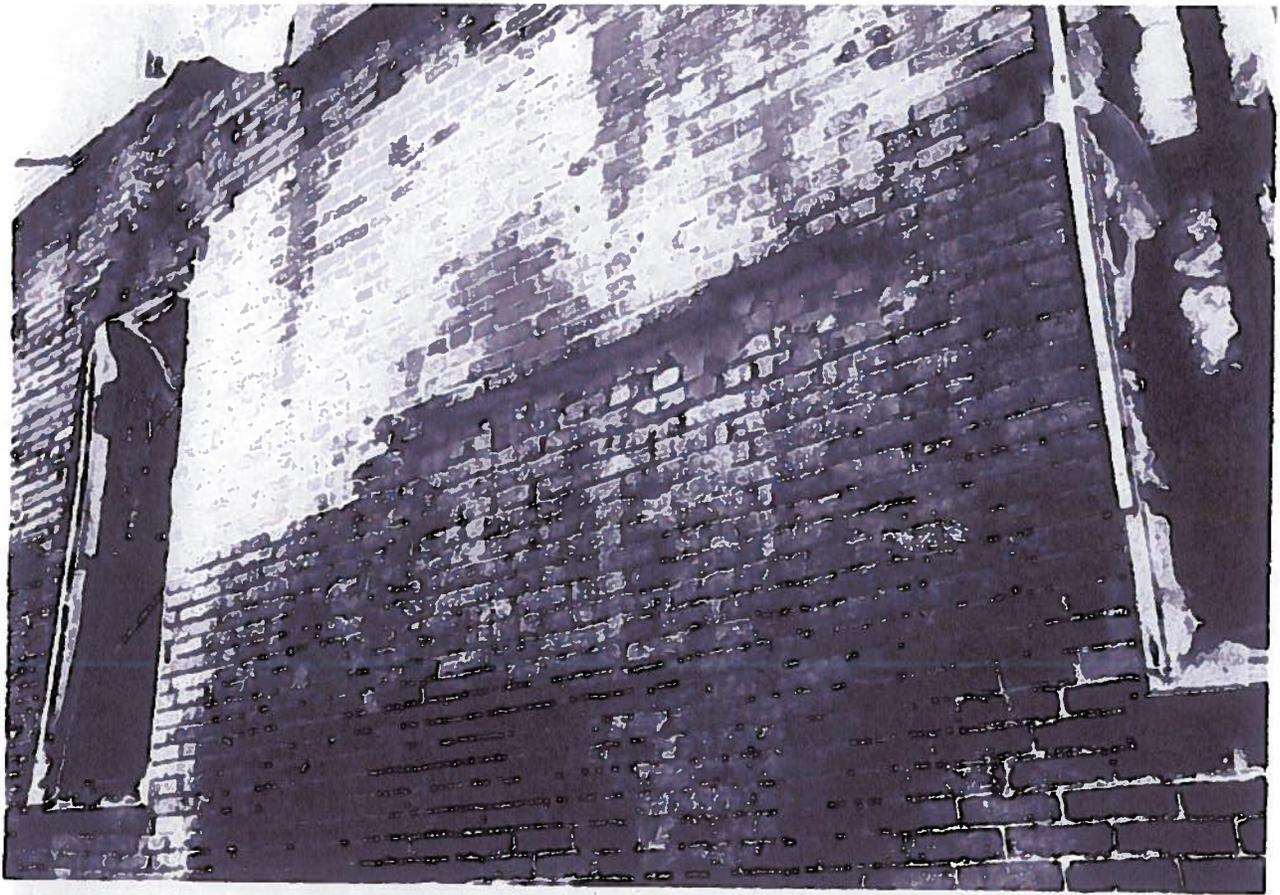


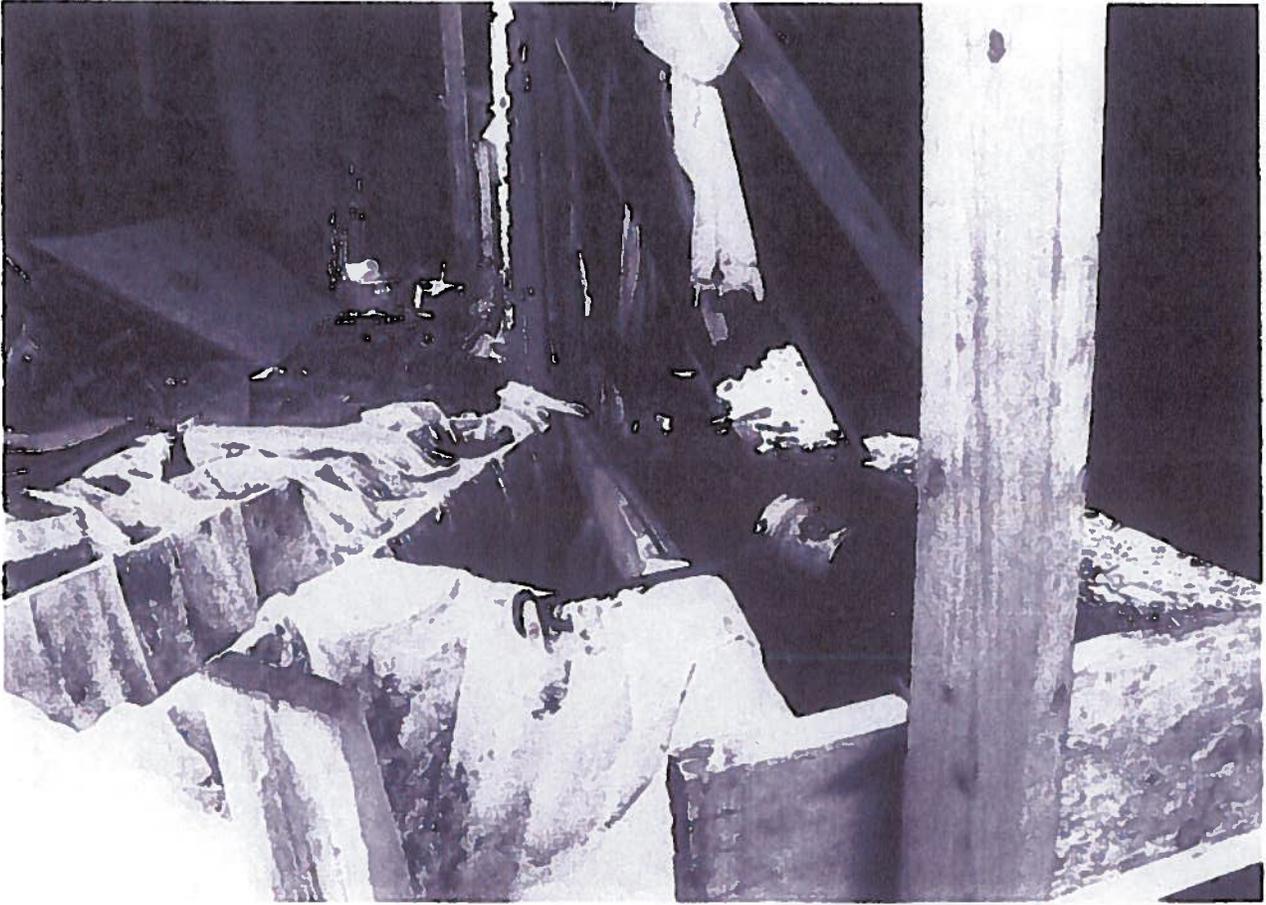


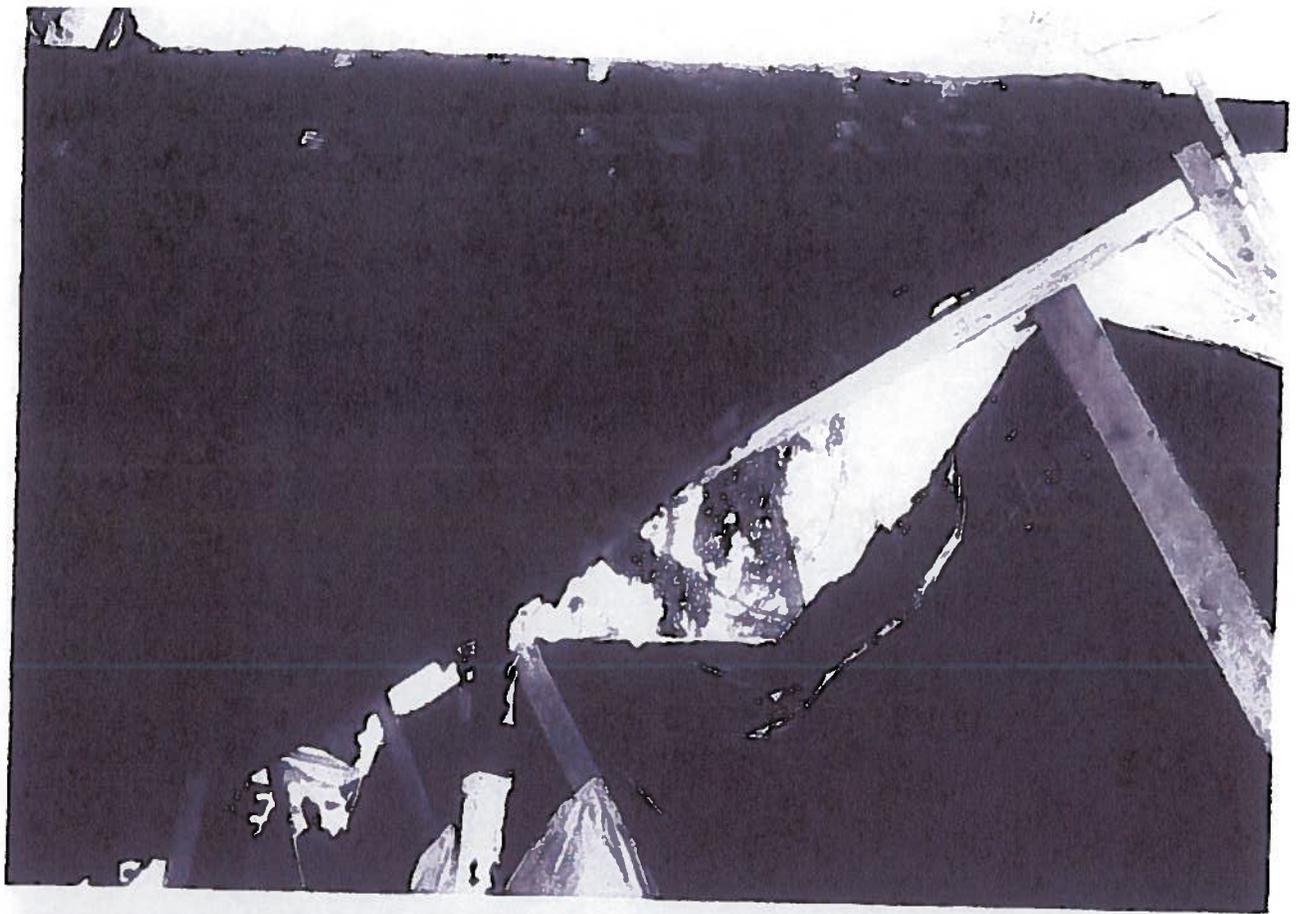




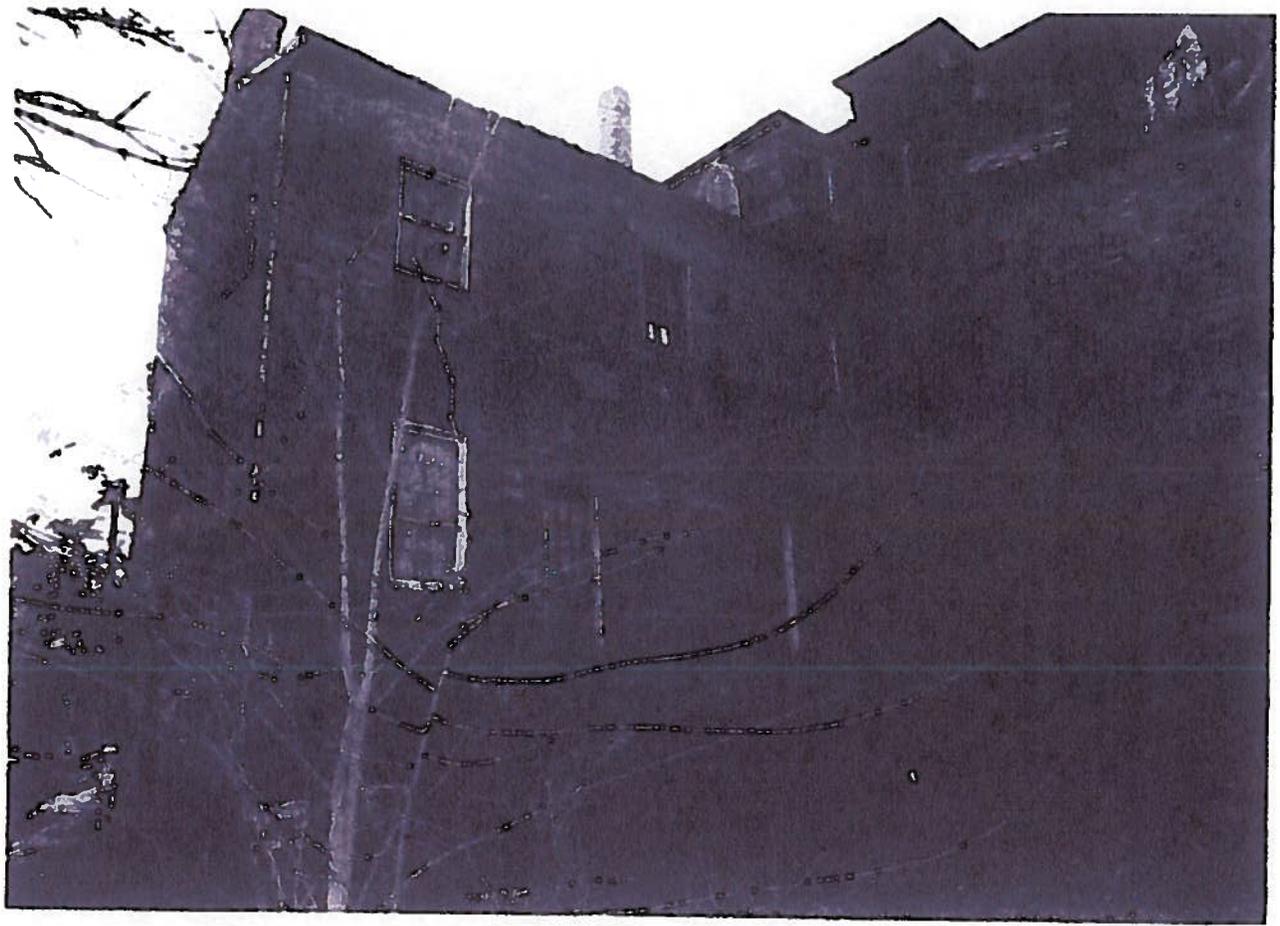




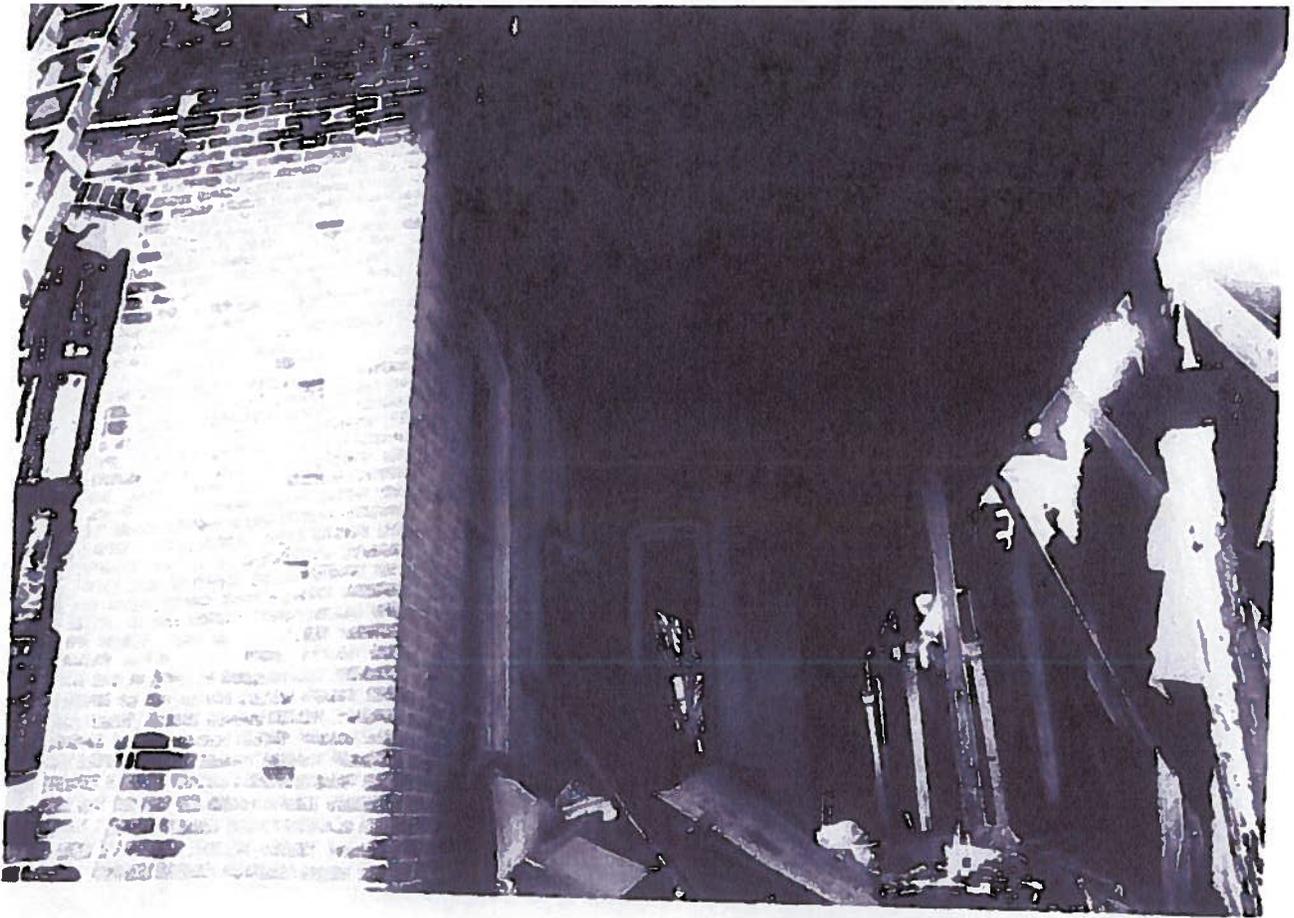




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Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

Telephone: (540) 667-1815
FAX: (540) 722-3618
TDD: (540) 722-0782
Website: www.winchesterva.gov

NOTICE OF UNSAFE STRUCTURE
And Notice of Building Code Violation

March 19, 2013

Mr. Martin B. Gavis
414 S Braddock St.
Winchester VA 22601

RE: 414 South Braddock

Dear Mr. Gavis,

Pursuant to Section 105.4 of the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code, this letter shall serve as a Notice of Unsafe Structure for the structure located at 414 S Braddock Street.

On March 5, 2013, with your permission, an inspection was conducted by Building Official John Knight and Code Enforcement Inspector Danny Mowery. The inspection was prompted by the collapse of a section of the north wall of the main structure. The area of the collapse measured approximately 10 feet by 10 feet and located in the center of the second floor. It is noted that this is a load bearing wall. During the inspection the following conditions were noted.

- The wall in question in addition to the missing 10x10 foot section, has other missing and/or loose brick on the north wall and areas of the second floor west wall in violation of Section(s) 304.1 / 304.5 / 304.6.
- Areas of deterioration of the brick mortar joints in violation of Section(s) 304.1 / 304.6.
- There appears to be further deterioration of the previously structurally damaged roof. The damaged roof is not protecting the structure including the brick walls in violation of Section(s) 304.4 / 304.7.

The areas in question are located to the north of the front entrance and central hallway stairwell, from the front wall of the structure to the rear wall.

Because of the conditions listed above, the Building Official has declared this structure to be Unsafe and has ordered the following corrections:



- Repair the damaged areas including the roof and exterior walls to a safe and stable condition.
- Or remove the damaged areas resulting in a safe and stable condition and provide approved methods to protect the remaining portions of the structure.

Repairs and/or demolition of the structure will require a building permit with the following information:

- Plans and a scope of work prepared by a Virginia Licensed Design Professional.
- A detailed timeline for completion including milestones for stabilization and completion of the project within the time parameters outlined in this Notice. This timeline shall be subject to approval of the Building Official.

The Building Official has determined that there is an immediate danger that the referenced portion of the structure may collapse or fall endangering the life of occupants and others. Unless the forgoing corrections are commenced within 14 days from receipt of this Notice and completed within 90 days from receipt of this Notice, the structure shall be deemed unfit for human occupancy requiring you to vacate the structure.

Further action including but not limited to revocation of any Certificate of Occupancy associated with this structure and emergency repairs and/or demolition pursuant to Section 105.9 of the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code shall also be commenced. The Building Official may exercise options to supply emergency temporary safeguards, repairs, street closings or public removal and may initiate legal action to recover necessary costs incurred in the performance of emergency work in accordance with Sections 105.9 and 105.10 of the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code.

In accordance with Section 105.4 of the Virginia Maintenance Code, Part III of the Virginia Uniform Statewide Building Code, please signify your acceptance or rejection of the terms of this Notice by checking the applicable block below, signing and dating the document, and returning the document to me at the return address on this letter.

_____ *As the owner of the structure that is the subject of this Notice of Unsafe Structure, I hereby accept the terms of this Notice.*

_____ *As the owner of the structure that is the subject of this Notice of Unsafe Structure, I hereby reject the terms of this Notice.*

Martin B. Gavis

Date

Your failure to indicate your acceptance or rejection of the terms of this Notice by returning a signed copy of this Notice to me within 14 days the date this Notice was issued shall be deemed a rejection of its terms and further action by the City as described above shall be commenced.

If you have any questions or comments please feel free to contact me at:
540.667.1815 x 1417
knightj@winchester.va.us

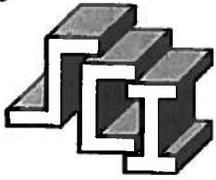
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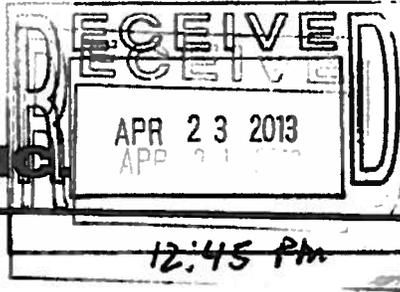
John C. Knight
Building Official
City of Winchester

Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of the code may appeal to the Local Board of Building Code Appeals (LBBCA). The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted with the application for appeal and maintained as part of the record. The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision. ----

Applicable Code(s)
2009 Virginia Uniform Statewide Building Code Virginia Maintenance Code. Section 105



**STRUCTURAL
CONCEPTS, INC.**

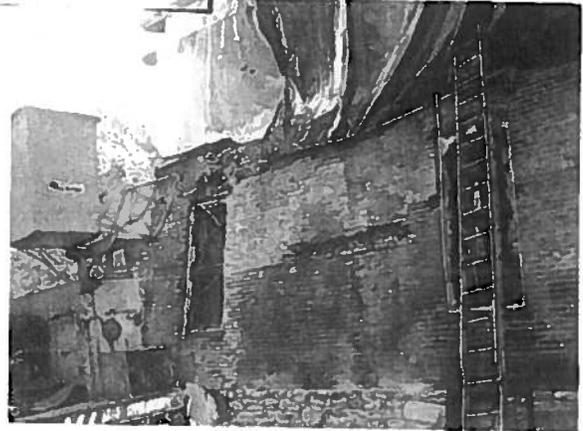


**STRUCTURAL ENGINEERING
INVESTIGATIONS
BUILDING INSPECTIONS**

April 23, 2013

Martin Gavis
414 South Braddock Street
Winchester, Virginia 22601

Re: Collapsed Wall Section Investigation
414 South Braddock Street, Winchester, Virginia
SCI No: 2013.028



Dear Mr. Gavis,

On April 23, 2013 a representative of Structural Concepts, Inc. visited the above referenced project to evaluate the condition and possibility of repairing a fire damaged and partially collapsed wall on the north side of the home. The collapsed section of the wall is located near the center of the second floor and is approximately 10 feet high by 10 wide. The back porch burned sometime in the 1980's subjecting the outside of the exterior brick walls to heat from the fire. The burned areas of the porch have been completely removed. The home owner reported that the roof has been temporarily shored in the area of the collapse. Only the exterior of the home was accessible for a visual inspection at the time of the site visit.

The home is a two level structure with attic space built in the later part of the 19th century. All of the exterior bearing walls are solid brick, approximately 13" thick, and extend to the attic floor level. The interior floor and attic levels of the home are assumed to be framed with wood joists that bear on the exterior brick walls. The exterior wood framed bearing walls enclosing the attic and providing support for the roof are supported on top of the exterior brick walls at the attic floor level. These walls are in poor condition and are in need of repair.

The fire damage to the walls consists of spalling of the brick in localized areas, damaged mortar on the exterior of the wall and some discoloration from heat and soot stains. All of the exterior bricks that can be visually identified as spalled or otherwise deteriorated will require replacement. Lightly tap all the bricks that can not be visually identified as needing replacement, with a hammer, to locate any other areas of spalling or deterioration. All of the bricks where the surface crumbles from the light hammer tapping will also require replacement. The stains shall be cleaned with a non-chloride containing cleaning agent designed for brick.

The brick bearing walls are constructed with layers of brick that are tied together by soldier bricks placed every sixth or seventh course. These soldier courses consist of bricks placed in the wall perpendicular to the main coursing for the purpose of tying the layers of brick together. If



**Re: Collapsed Wall Section Investigation
414 South Braddock Street, Winchester, Virginia
SCI No: 2013.028**

any of these soldier bricks require replacement, it will be acceptable to replace only the outer layer provided there is no more than a 24 inch space between each soldier brick in each soldier course. If the replacement area of the outer layer exceeds 24 inches between soldier bricks, pins equivalent to Powers Heli-Pins shall be installed in the soldier coarse mortar joint. The pins shall be perpendicular to the wall and the full thickness of the wall, spaced at 16 inches.

The brick wall can be repaired and/or rebuilt to be structurally sound. Any areas of the existing framing that will become unsupported during the wall repairs shall be shored until the wall repairs are complete. The appropriate repairs based on the condition of the wall sections are listed below:

1. The sections of the wall that are currently plumb and intact will require repointing of the interior and exterior mortar joints. The mortar joints shall be removed and replaced with new mortar to a depth of 1¾ inches.
2. Sections of the wall where the existing brick has shifted and the collapsed area of the wall will need to be reconstructed the full width of the wall. A mixture of modern brick and the existing salvageable brick can be used provided a soft mortar is used. The proper mortar will be discussed below. The soldier coursing shall match the pattern of the existing wall.
3. The entire wall can be removed and rebuilt to match the existing conditions. The soldier coursing shall match the pattern of the existing wall. Utilizing salvaged original bricks on the exterior brick layer is acceptable.

The mortar typically used to construct a home of this age was a lime/sand mix that did not contain any Portland cement. This lime/sand mortar is typically weak and has poor resistance to erosion. The existing mortar is also soft when compared to the mortar typically used in modern construction. The older brick used in the home is also softer than brick used today. Since the existing mortar in the interior portions of the wall is soft it is important to use a soft mortar such as type O mortar for re-pointing. If pre-mixed type O mortar can not be located it can be created by mixing 1 part Portland cement, 2 parts lime and 7½ parts sand, or 5½ parts type N mortar, 1 part lime and 2 parts sand. Using a hard mortar in the wall could result in rapid deterioration of the old soft brick that could be structurally detrimental.

Multi story masonry walls require bracing at the floor levels to stabilize the walls. The floor and roof framing were likely tied to the walls when the home was originally constructed to provide the bracing. If these ties originally existed they will need to be restored to the original condition while the wall is repaired.

If there is not a system attaching the framed levels to the wall a new system to stabilize the walls, such as masonry stars, will need to be installed. New masonry stars shall be installed with a maximum of 7 feet spacing on all the exterior walls of the home at the second and attic floor level framing. These masonry stars shall be connected to a rod that extends through the house to an opposing star or the rods shall be firmly anchored to the floor framing. These stars shall be installed as the wall is repaired.

Re: Collapsed Wall Section Investigation
414 South Braddock Street, Winchester, Virginia
SCI No: 2013.028

Brick typically used on the interior portions of walls from this era had limited resistance to water and deterioration from moisture. The inner layers of these older brick walls can severely deteriorate resulting in structural instabilities. There were a few areas where the inner layer of brick could be seen at the time of the site visit and they were in satisfactory condition. If there is any deterioration of the walls inner layers discovered while repairing the walls, the entire thickness of the wall will need to be rebuilt.

The north wall of the home will be structurally stable provided the repairs discussed are implemented. The attic walls will also need to be repaired to prevent a possible roof collapse and future water damage to the exterior wall.

SCI's scope of service is limited to a visual inspection of the above referenced structure. A structural condition is hidden if concealed by existing finishes or is not capable of investigation by reasonable visual observation. SCI is not responsible for hidden conditions as defined herein. The client is responsible for all risks associated with these hidden conditions. SCI shall not be responsible for the existing hidden conditions nor any resulting damages to persons or property.

Please contact our office with any questions you may have regarding these issues.

Sincerely,



Hans Stamberg, PE
Project Engineer





RUCKMAN ENGINEERING, PLC

Structural + Geotechnical + Dams + Inspections

May 13, 2013

Mr. John Knight, Building Official
City of Winchester
15 North Cameron Street
Winchester, VA 22601

RE: Structural Inspection
North End of Gavis Residence
414 South Braddock Street
Winchester, Virginia

Dear Mr. Knight,

This report summarizes our findings with regard to the cursory structural inspection of the north end of the Gavis residence on South Braddock Street. It is our understanding that the Gavis residence was damaged due to a fire in 1984 and that minimal repair and upkeep have been performed since our previous inspection in April 2010. The fire damage was reportedly limited to the north end of the dwelling. As a result, the north end of the dwelling was the primary focus of our walk-through structural inspection.

SITE INSPECTION

Our site inspection of the north end of the Gavis residence was performed on May 7, 2013. Representatives from the City of Winchester and Mr. Gavis were present during this inspection. The following is a summary of our site observations from that inspection:

1. The Gavis residence is a relatively large historic brick home, constructed in 1881, which faces in a westerly direction along Braddock Street. The exterior brick walls of the residence are solid brick construction with limestone foundation walls. The interior floors and roof are all wood frame construction. Overall views of the residence are seen in photographs 1, 2, and 4. The north (left) end of the residence did experience significant fire damage in 1984.
2. On the exterior of the residence, the third floor rear wall and the second floor left wall have partially collapsed, as seen in photographs 4 through 7. Portions of the wood framing are still suspended at the third floor level. Portions of the collapsed brick wall are located on the ground below, adjacent to the left wall of the residence. Tarps and plastic have been installed to help prevent water infiltration into the residence in the areas of collapse. The majority of the wrap around porch had been removed from the residence. The front portion of the wrap around porch is still in place. Water was observed to be saturating the exterior brick beneath the front porch roof, as seen in photograph 8. The front b



Winchester City/Gavis Res.

May 13, 2013

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roof framing was observed to be exposed to the elements, as seen in photograph 3.

3. On the interior of the third floor, approximately 60-percent of the rear wall was observed to have collapsed and/or pulled away from the structure, leaving the interior and structural framing exposed to the elements, as seen in photographs 9 and 13. The front and left wall framing in the left portion of the residence's third floor were observed to have shifted significantly inward, as seen in photographs 14 through 16. It should be noted that the front wall framing was observed to not be connected to the residence's roof framing, as seen in photograph 14.

4. Newer drywall material has been installed throughout the majority of the third floor, replacing the original plaster and lathe finishing and likely concealing charred wood framing from the 1984 fire. Water leaks and staining are present in the third floor ceiling and walls, as seen in photograph 10. Several areas on the left and middle portions of the residence's third floor were observed to have charred wood framing, as seen in photographs 11, 14, and 16. The right portion of the residence was also observed to have some charred wood framing, located in the exposed window dormers. Water leaks and holes were observed at several of the window dormers, as seen in photographs 17 through 19. These windows also appeared to have come loose from their framing. The wall and roof framing of the front bump-out also appeared to be exposed to the elements, as seen in photographs 11 and 12, with sheets of plywood having been placed above the framing.

5. On the interior of the second floor, approximately 40 to 50-percent of the left brick wall was observed to have collapsed, leaving the interior and structural framing exposed to the elements, as seen in photographs 21 and 25. The third floor floor joists, which were supported by this exterior brick wall, are being temporarily supported by several 4x4 wood posts, as seen in photographs 20 and 25. Cracking was observed in the plaster finishing on the interior wall between the two rooms on the left portion of the residence, as seen in photograph 24. On the interior of the front second floor room, approximately 25-percent of the front brick wall was observed to have collapsed, as seen in photograph 23. Portions of the collapsed brick wall are piled in the front left room. In the areas of the collapsed brick wall, the third floor framing and some portions of the second floor framing were observed to be saturated, water stained and deteriorated, with some signs of mold growth present, as seen in photographs 22, 23, 25, and 26.

6. Approximately one third of the rear wall has been replaced, on the rear left portion of the residence with a masonry block wall with a brick veneer, as seen in photographs 27, 28, 29, 34, and 35. It could not be directly determined at the time of our inspection as to how the newer masonry wall had been tied in and connected with the surrounding, older brick walls. The top of the masonry wall was observed to be exposed to the elements with the blocks and the wood framing being completely saturated, as seen in photograph 29. At the time of our inspection, rain water was visibly pouring into the residence at this location.

Winchester City/Gavis Res.

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7. On the interior of the first floor, cracking was present in the brick wall between the left room and the hallway. The cracking was fairly significant in size and appeared to be present on both sides of the wall, as seen in photographs 32 through 34. Water dripping and staining was observed on the interior of the left room on the first floor of the residence, as seen in photograph 35. The front window lintel, on left room on the first floor of the residence, was observed to be crushed and deflecting under the brick wall above, as seen in photograph 36.

8. The residence's main stairway, located in the middle of the structure was observed to have been damaged by the fire, with charred material present, as seen in photographs 30 and 31. During our inspection, the most of the stair framing was found to be fire and water damaged to the point of being unstable. The stairway landings also appeared to be unstable with large holes present. Lastly the stairway's railing was found to be unstable and easily shifted, or missing altogether.

CONCLUSIONS AND RECOMMENDATIONS

Based on the observations from our recent site inspection and past experience with similar situations, we offer the following conclusions and recommendations:

1. The north end of the residence did experience significant fire damage in 1984. It is possible that the structural collapse of the third floor rear wall could have occurred as a result of the fire. However very little work has been performed to stabilize the structure or to protect it from the elements and it is likely that the collapse resulted from a weakened structural integrity of the structure's framing due to prolonged exposure to the elements. The collapse has exacerbated the residence's exposure to the elements, subjecting more of the third floor framing and the second floor framing below to moisture and thermal related conditions. Furthermore, with the extent of our inspection limited by the newer drywall present on the interior of the residence, it is questionable how much of the original fire damage was repaired or the framing replaced. Based on the conditions visible in the third floor front wall of the left half of the residence, it should be noted that an additional collapse of the third floor framing is likely. The drywall throughout the third floor should be removed to expose the framing for further inspection. It is likely that the entire left half of the third floor and roof framing should be replaced as a means to properly support the roof of the structure and protect the remainder of the residence from exposure to the elements. Depending on the results of further inspection upon the removal of the third floor drywall, it may be necessary for repairs or replacement of the right half of the third floor framing and roof as well. Care should be taken to repair any water leaks or infiltration present to prevent further deterioration of the residence's structural framing.

2. It is not likely that the structural collapses of the second floor front and left walls could have occurred as a result of the fire. However, similarly to the third floor collapse, it is likely that the collapse resulted from a weakened structural integrity of the structure's framing due to prolonged exposure to the elements. The collapse of the left wall was not present at the time of our previous inspection in April 2010. Additionally, with the left collapsed wall having been a load bearing wall, and the third floor framing now being supported by posts that are bearing on water damaged second floor framing, a further significant

Winchester City/Gavis Res.

May 13, 2013

Page 4

structural collapse is likely. Given the condition of the large cracking observed in the plaster finishing of the interior wall between the two left rooms, it is likely that deflections have occurred in the second floor floor framing. Furthermore the collapses, on both the front and left walls, have exacerbated the residence's exposure to the elements, subjecting more of the second floor framing and the first floor framing below to moisture and thermal related conditions. The exterior brick walls should be replaced or repaired as a means to properly support the third floor framing and roof framing of the structure and protect the remainder of the residence from exposure to the elements. It will be necessary to replace portions of the third floor and second floor floor framing due as a result of water damages that have occurred due to their exposure to the elements.

3. The rear wall was likely replaced as a result of the fire or deteriorating conditions due to prolonged exposure to the elements. It is questionable as to how the replaced section of the wall was secured to the previously existing solid brick walls. It will be necessary to perform additional repairs to the replaced portion of the wall to properly anchor the block to the surrounding brick exterior walls. The repairs should coincide with the repairs to the third floor framing to prevent any water infiltration and possible further deterioration of the residence's rear wall.

4. The cracking in the interior brick wall on the first floor of the residence, given its location near the rear wall of the residence, is likely a result of deterioration of the brick, water infiltration, and differential expansion and contraction between the masonry exposed to the elements and the masonry protected from the elements. As this is a structural (load bearing) wall, this wall should be replaced. The window lintels observed to be deteriorated and crushed should be replaced to properly support the brick wall loading above. As stated previously, water infiltration has occurred on the first floor level due to the collapsed portions of the second floor front and left walls and the third floor rear wall.

5. The residence's main stairway, located in the middle of the structure was observed to have been originally damaged by the fire. However, it was also in a deteriorated condition due to the prolonged exposure to the elements. The stairway framing should be repaired or replaced to provide a structurally sound access to the upper floors of the residence.

6. It should be noted that given the conditions of the structure and the personal property stored within the structure our structural inspection was limited. It is our recommendation that the damaged portions of the residence be further exposed in order to perform a more in depth review of the structural integrity of the residence.

In summary, as similarly stated in our April 2010 report, the north end of the Gavis residence has experienced significant deterioration and damage. The extent of the structure's deterioration has become greater than was previously observed in our April 2010 cursory inspection. Significant structural repairs to the floors, roof, and walls need to be completed to stabilize this portion of the residence. The structural repairs must occur as soon as possible to prevent a collapse of the roof and/or an overall collapse of the north end of the structure. Until those structural repairs are completed and approved by your office, we do

Winchester City/Gavis Res.

May 13, 2013

Page 5

not recommend that the original front section of the dwelling be occupied. All of the structural repairs or replacement should be in accordance with the recommendations provided by a licensed structural engineer.

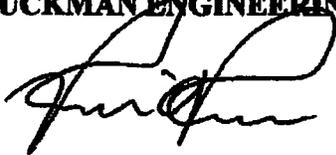
If the Gavis's are to remain in the newer southeast addition to the dwelling, we would recommend that the roof and third floor wall framing, which has been covered with drywall on the south end of the original house, be completely examined to insure its overall structural stability. After the drywall is removed and the structural elements evaluated for damage, repairs should be performed as necessary to restore the overall structural integrity of the home. In addition, the roof and third floor walls on the south end need to be enclosed/waterproofed on the exterior to prevent further deterioration and damage due to exposure to the elements.

LIMITATIONS

This engineering letter report has been prepared by Ruckman Engineering, PLC for the exclusive use of the City of Winchester Building Department for specific application to the evaluation of the structural conditions present at the Gavis residence, 414 South Braddock Street, Winchester, Virginia 22601. The work on the project has been carried out in accordance with reasonable and acceptable engineering practices. No other warranty, either written or implied, is applicable to this project. The opinions and conclusions in this letter report are based solely on the information available at the time the letter report was prepared.

I hope the information provided meets your needs at this time. If I can be of any further assistance in this matter, please do not hesitate to call.

Sincerely,
RUCKMAN ENGINEERING, PLC



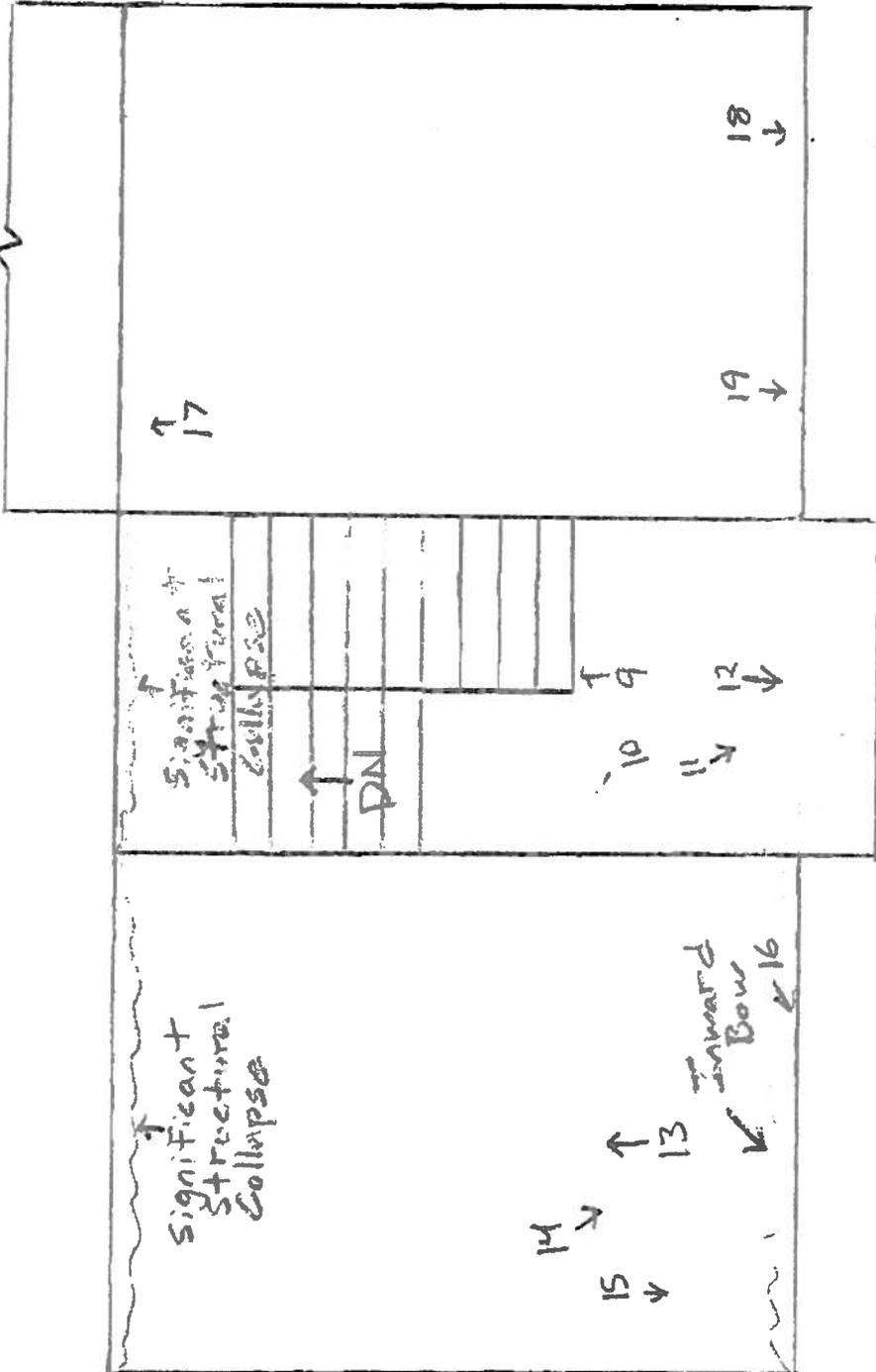
Richard A. Ruckman, P.E.



Enclosures:

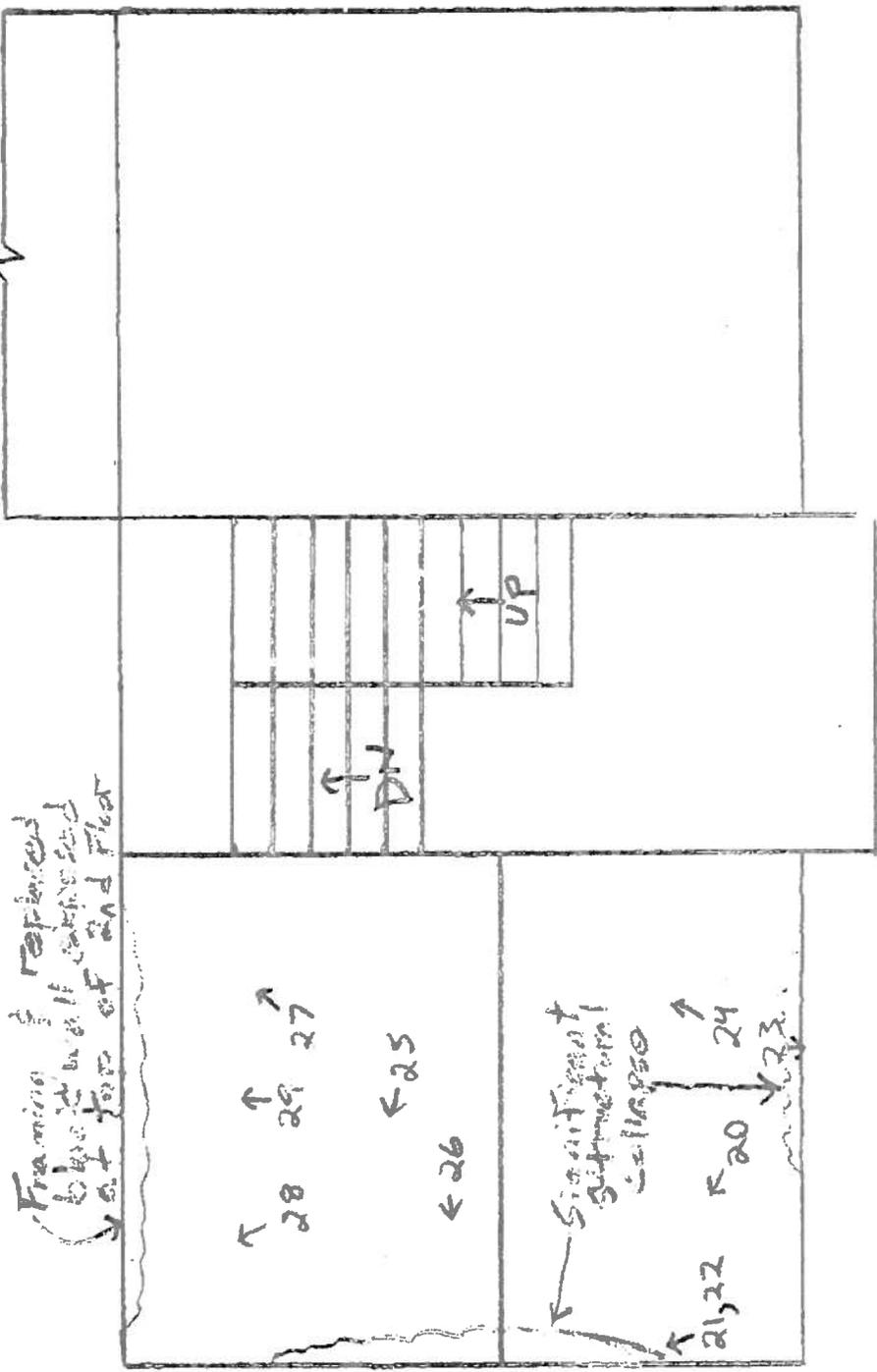
1. Photograph Location Plan – 3 sheets
2. 36 Photographs – 9 sheets
3. Key to Photographs – 3 sheets

W. Leicester St.



S. Braddock St.

W. Leicester St



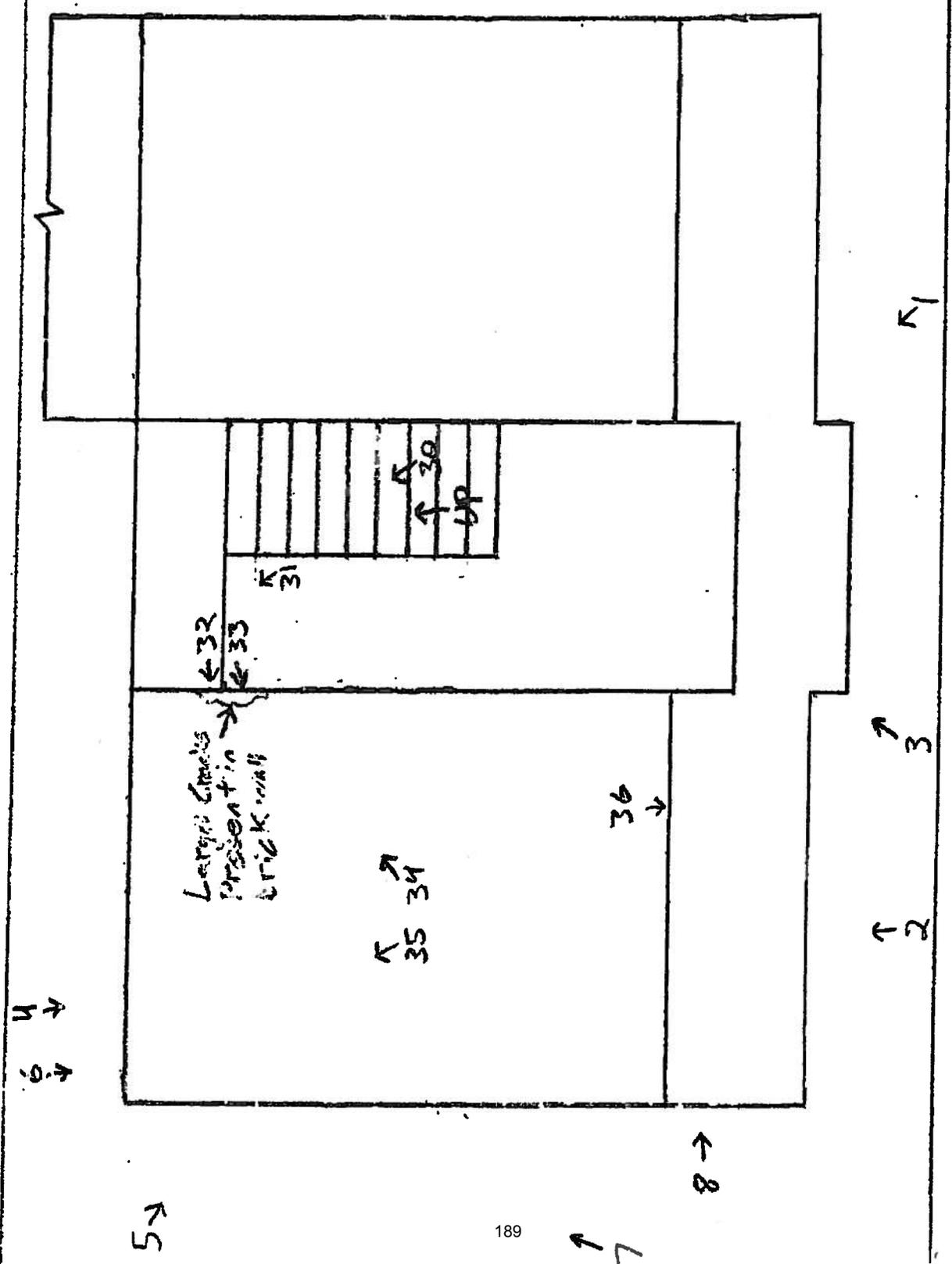
Framing & Replaced
block wall collapsed
at top of 2nd floor

Significant
Structural
Collapse

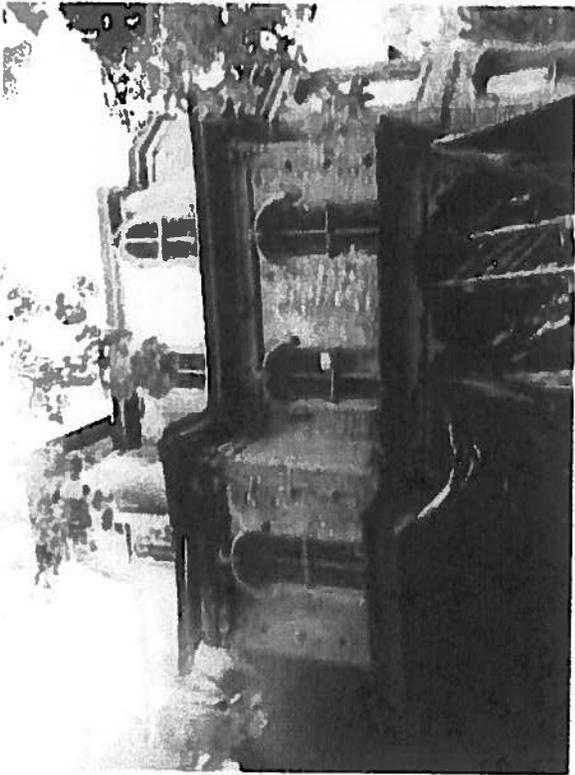
5. Braddock St.

W. Leicester St

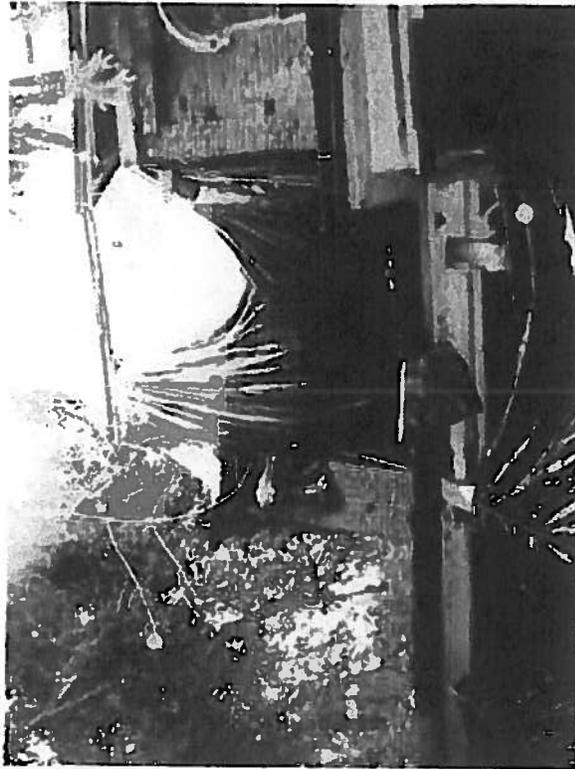
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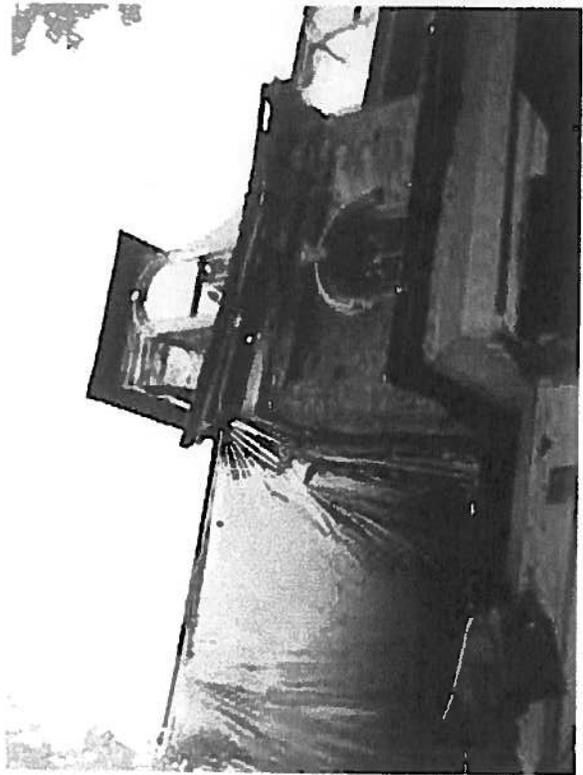
Photographs



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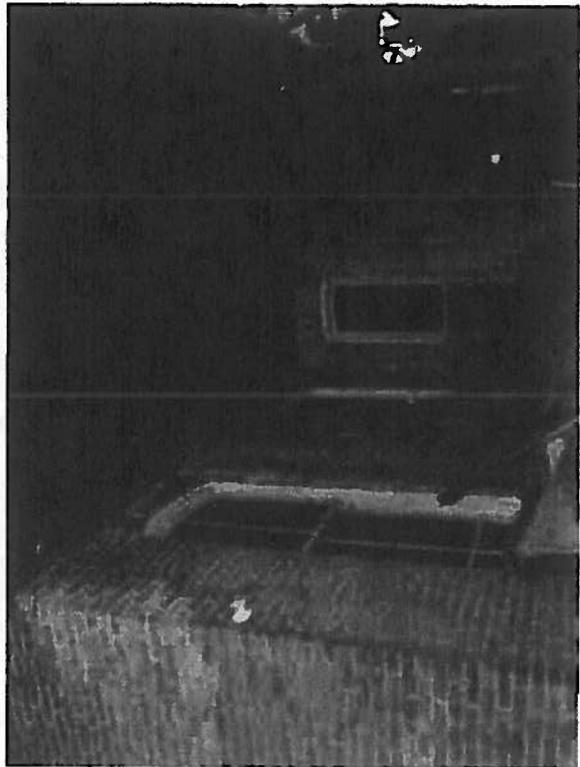
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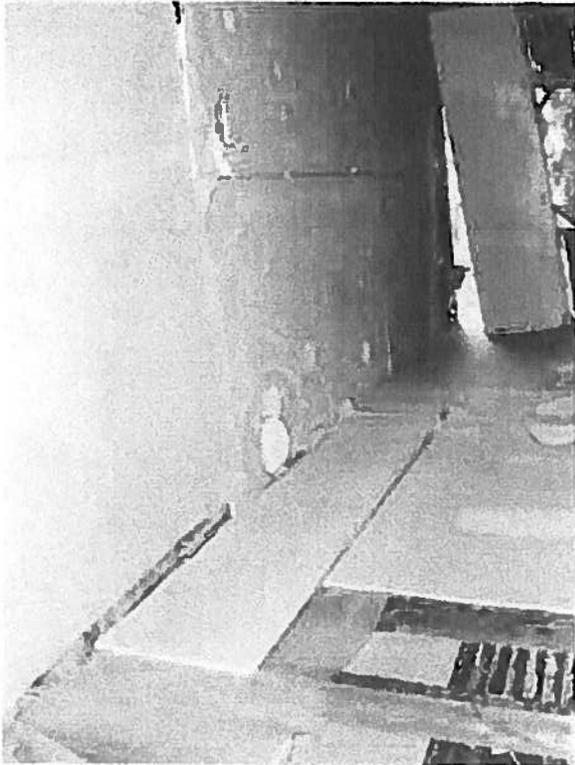
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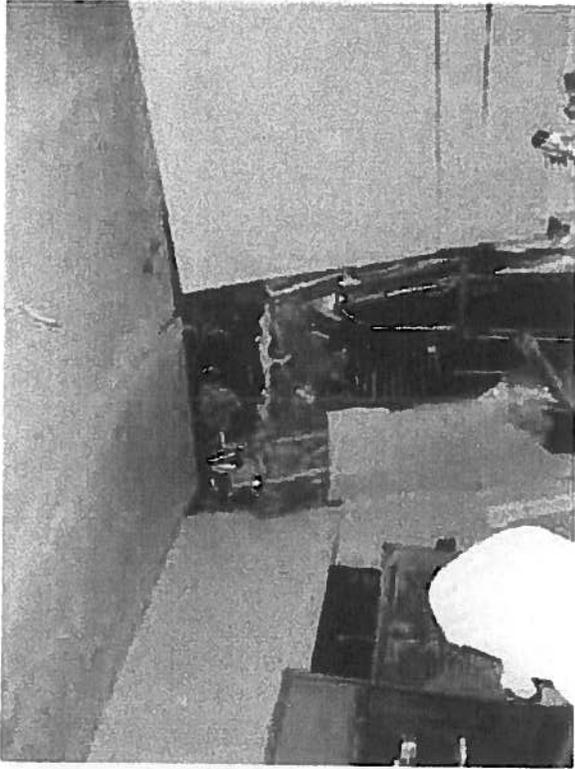
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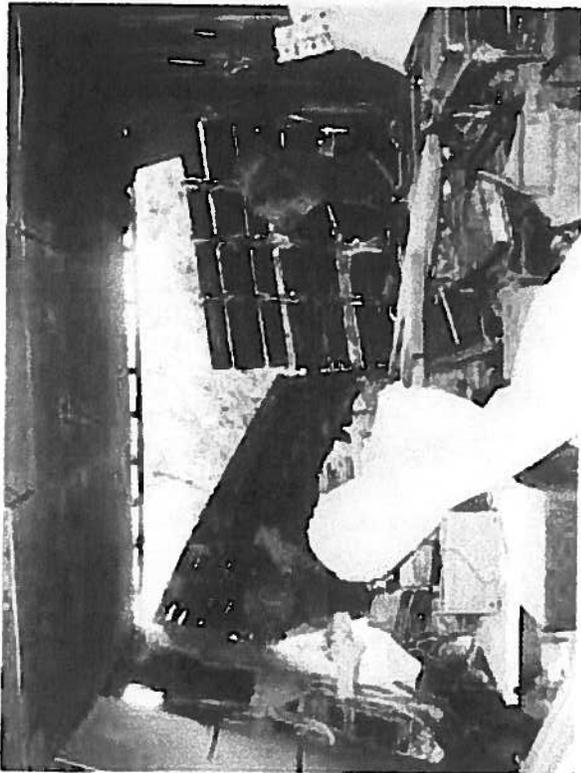
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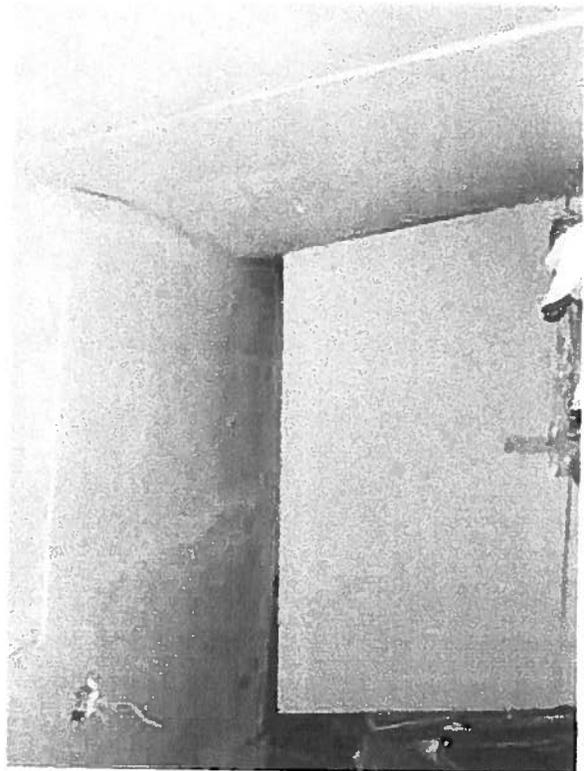
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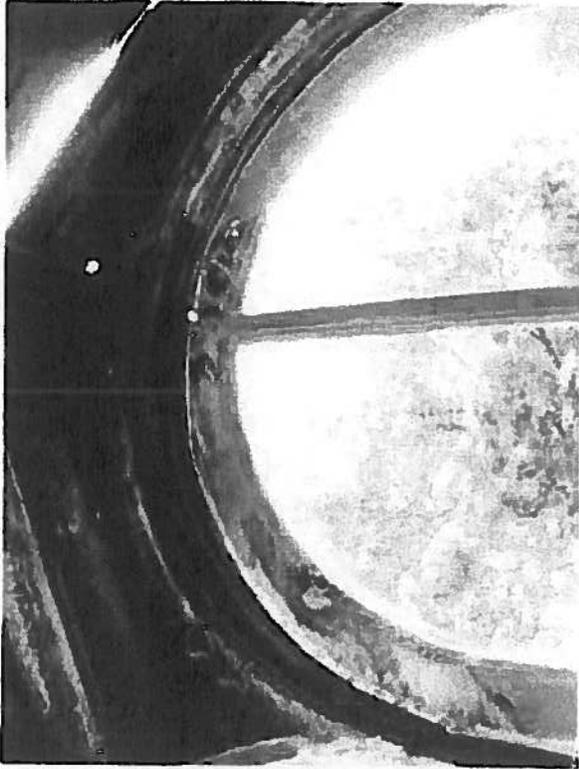
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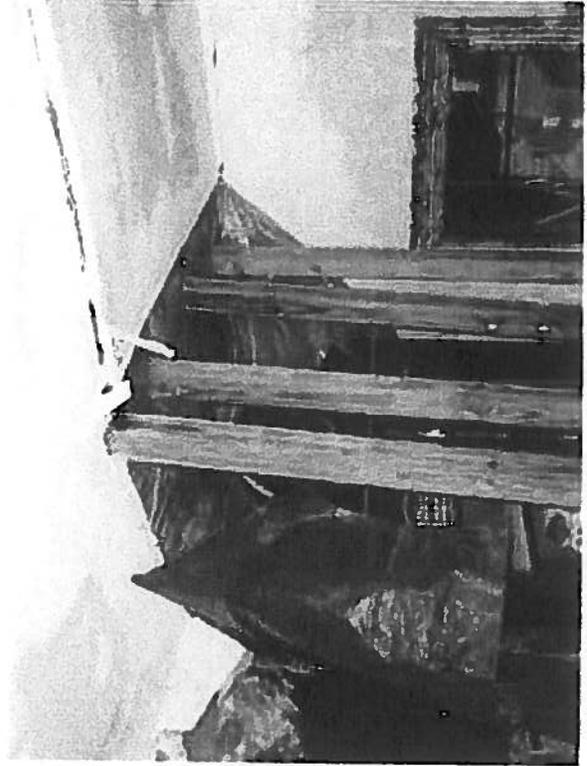
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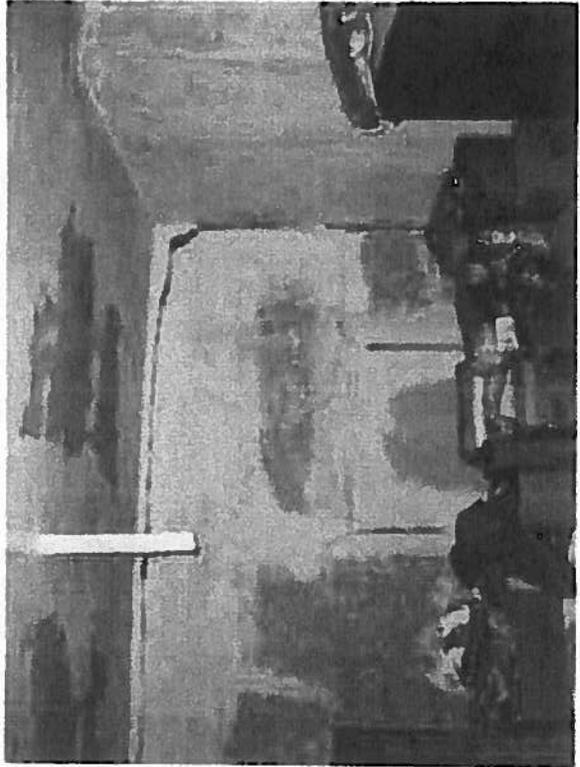
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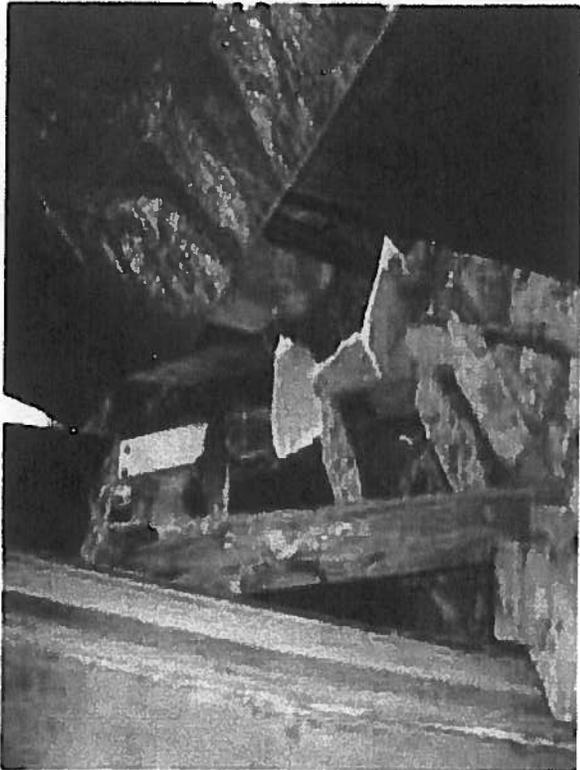
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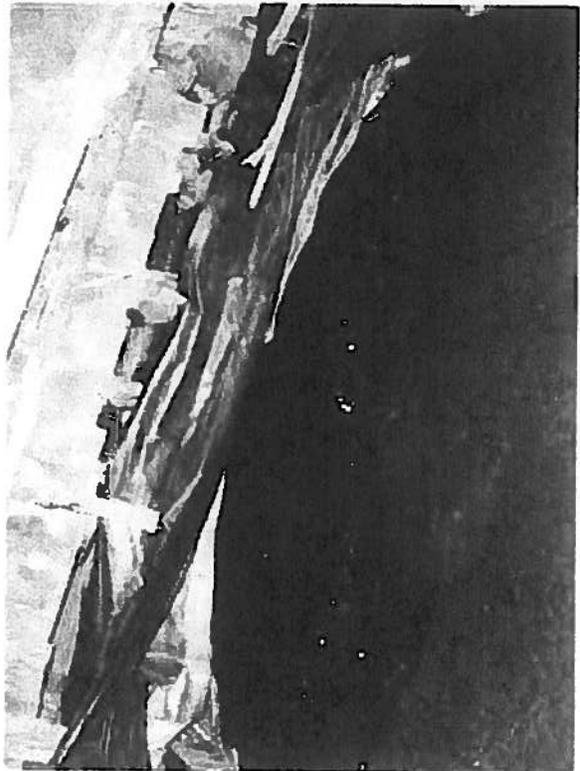
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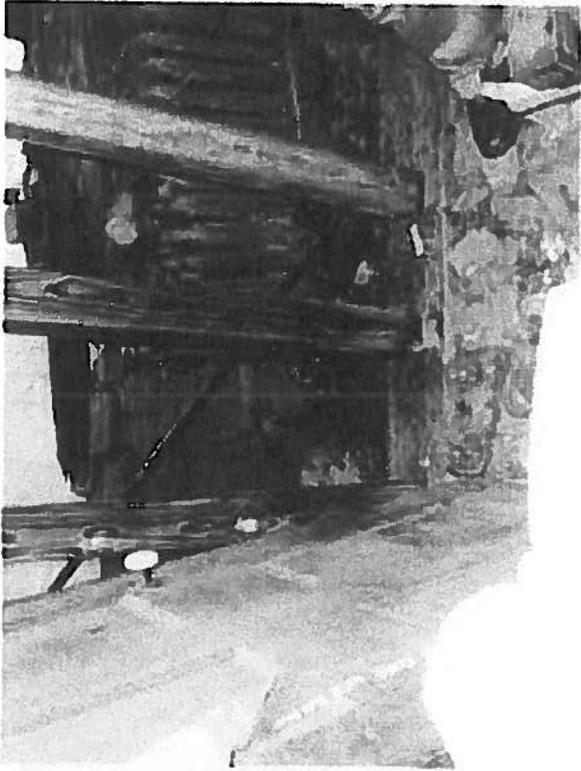
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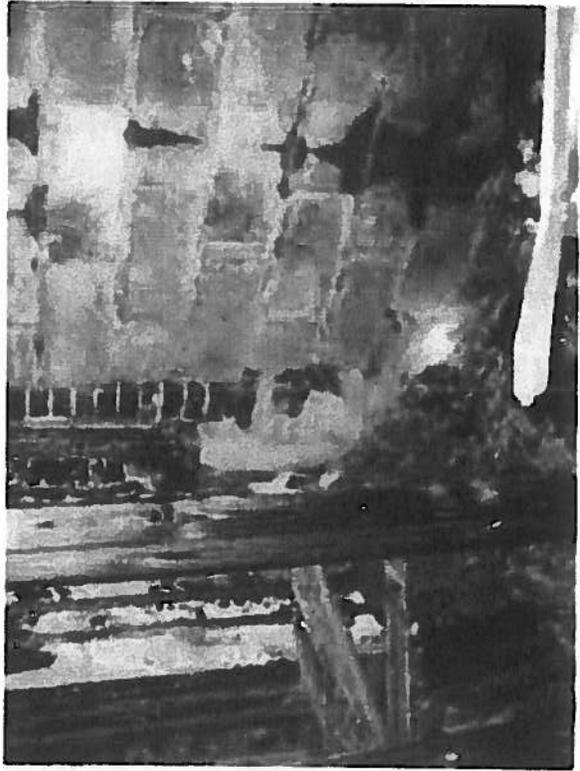
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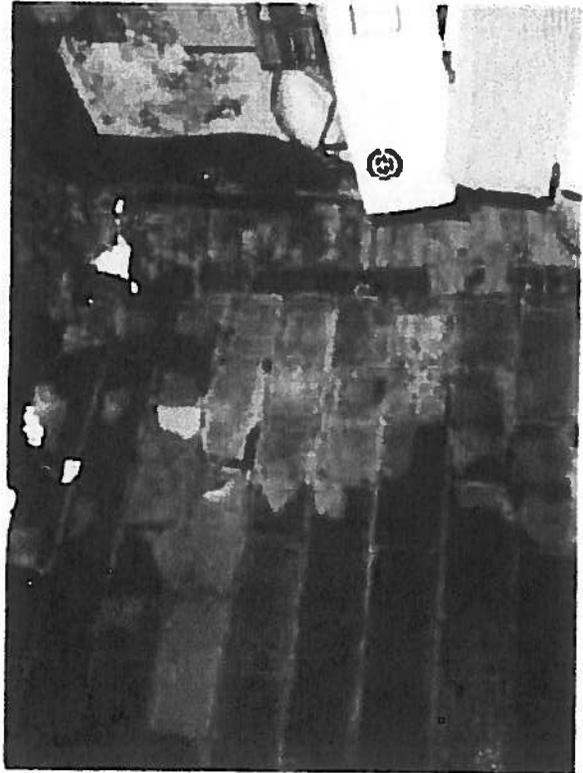
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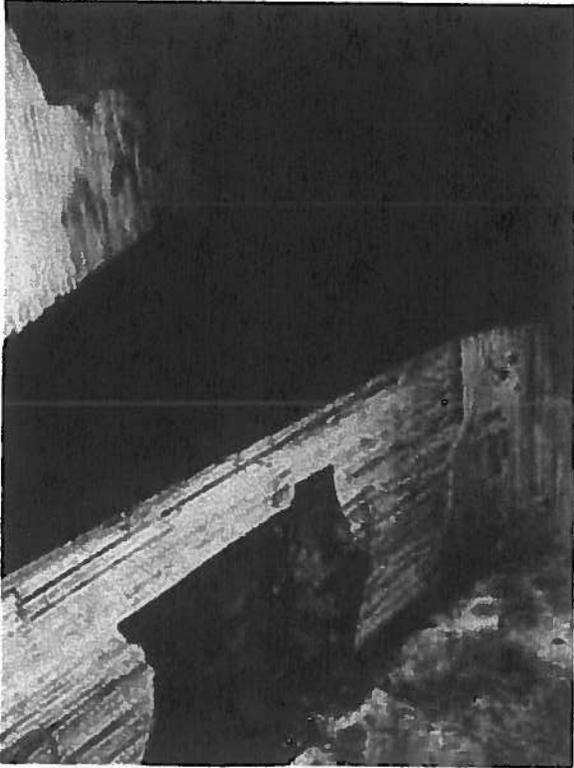
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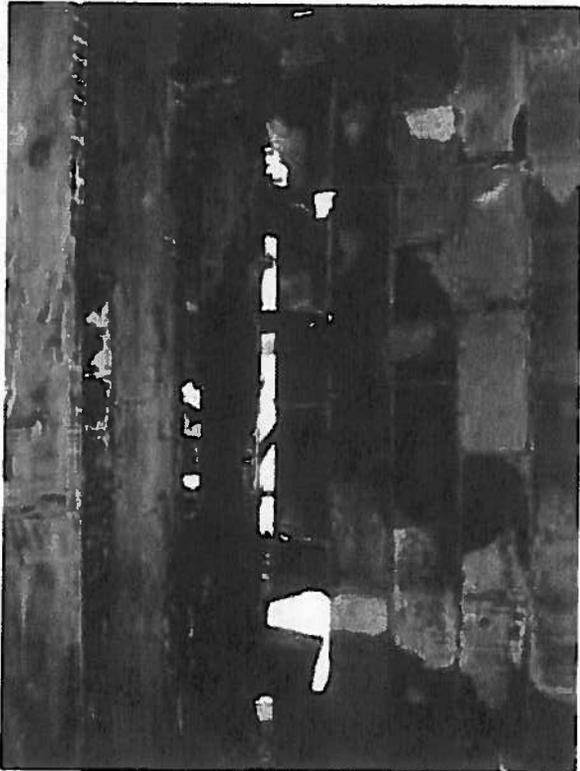
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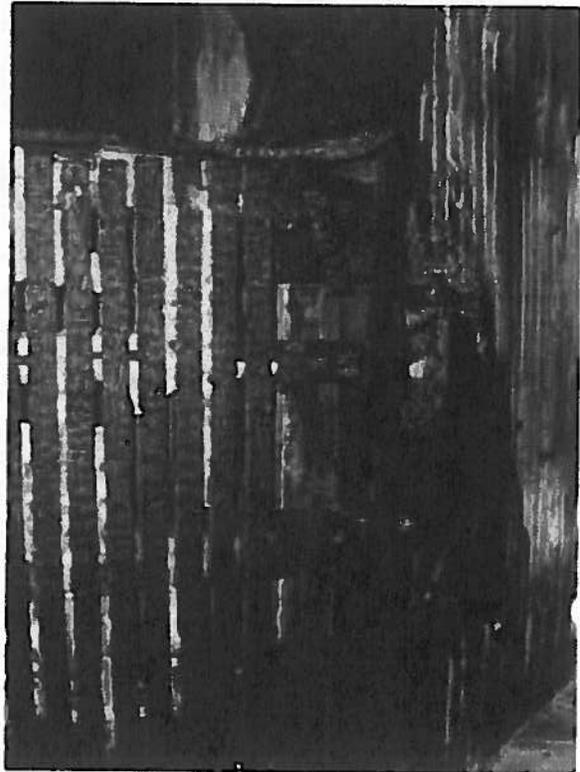
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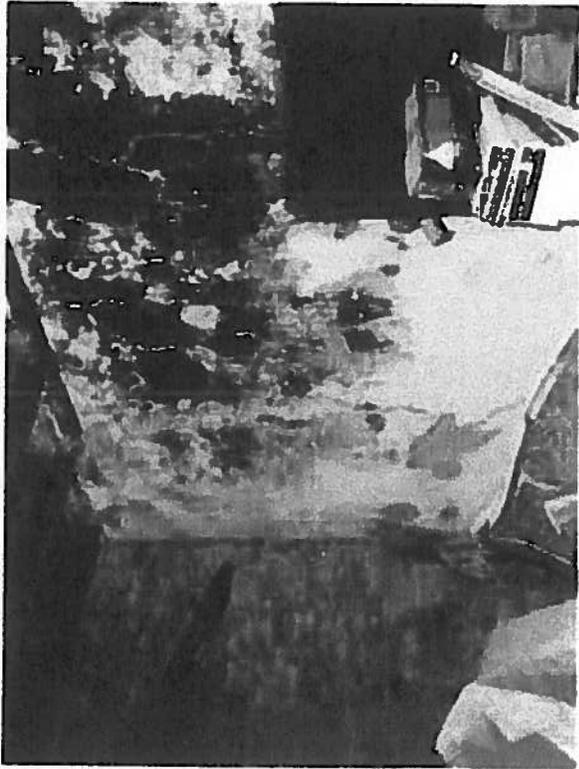
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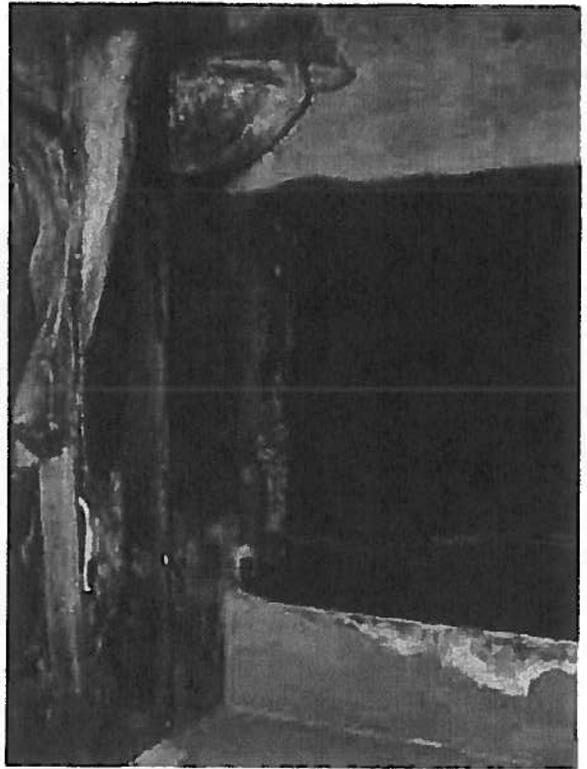
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Key to Photographs

- 1) An overall view of the front right corner of the residence.**
- 2) An overall view of the front left corner of the residence. Note the collapse of the front wall is covered by tarps and plastic. This area has been exposed to the elements for a number of years and has significantly deteriorated.**
- 3) A close up of the exposed roof framing at the front middle portion of the roof.**
- 4) An overall view of the rear left corner of the residence. Note the significant damage to the third floor rear wall. This area has been exposed to the elements for a number of years and has significantly deteriorated.**
- 5) A close up of the left wall of the residence. Note the collapse of the left wall is covered by tarps and plastic. This area has been exposed to the elements for a number of years and has significantly deteriorated.**
- 6) A close up of the collapsed third floor rear wall.**
- 7) A close up of the left wall, crumbling and missing brick, collapsed section of the left wall covered by tarps and plastic.**
- 8) A close up of the front porch, with damp brick beneath the porch roof present.**
- 9) A view of the significantly damaged rear wall in the middle portion of the residence, with structural framing sagging to the left. Note the newer drywall installed.**
- 10) A view of water staining and leaks present in the middle portion of the residence on the third floor. Note the charred wall framing beneath the drywall with plastic present between the drywall and framing.**
- 11) A view of charred and fire damaged stud framing in the front middle portion of the residence on the third floor. Note the missing roofing in the third floor bump-out portion, which has been filled with plywood.**
- 12) A view of gaps in the exterior framing in the front middle portion of the residence on the third floor, exposing the framing to exterior.**
- 13) A view of the significantly damaged rear wall in the left portion of the residence. Note the exposed ceiling framing to the rear of the room is slightly sagging at its mid span.**
- 14) A view of significant inward bowing and lack of connections present in the front left wall of the residence's third floor framing. Note that charred and fire damaged material is present beneath the newer drywall.**

15) A view of significant inward bowing present in the front left wall of the residence's third floor framing.

16) A view of significant inward bowing present in the front left wall of the residence's third floor. Note the charred framing present in the front wall.

17) A close up of water leakage and staining to the window framing and the newer roof trusses of the rear right addition below the window.

18) A close up of a window in the third floor front right wall separating from framing, with a hole in the dormer roofing, with some charring present. Note that charring is present at other third floor windows on the right end of house as well.

19) A close up of a window in the third floor front right wall. Note the water staining and the hole in dormer roofing.

20) A view of the collapsed section of the second floor left wall. Tarps and plastic have been installed to help stop water infiltration. The third floor framing supported with 4 new wood posts, which are being supported by the second floor floor joists. Note that water is still entering the residence despite the tarps and plastic present.

21) A close up of the collapsed section of the second floor left wall. The tarps and plastic present are not preventing water infiltration

22) A close up of the third floor framing above the collapsed section of the second floor left wall. Note the third floor framing is saturated, discolored, and rotting, with some mold growth present.

23) A close up of the third floor framing above the collapsed section of the second floor front wall. Note that some mold growth is present.

24) A view of the large (1½" to 2" wide) crack present in second floor interior wall, up middle wall and along the ceiling to the left wall. Several smaller cracks also present in the plaster.

25) A view of the collapsed section of the second floor left wall. Note the deteriorated third floor framing. The third floor framing is supported with 5 wood posts, which are being supported by the second floor floor joists. Note that water is still entering the residence despite the tarps and plastic present.

26) A close up of the collapsed section of the second floor left wall. The bottoms of the 5 wood posts are bearing on the second floor floor joists. Note the deterioration of flooring from water saturation and the movements of the floor mounted radiator visible.

27) A close up of the second floor rear brick wall replaced with newer block wall on the left portion of the residence. Note that the newer block does not appear to be connected to the older brick walls.

28) A close up of the second floor rear brick wall replaced with newer block wall on the left portion of the residence. Note that the newer block does not appear to be connected to the older brick walls.

29) A close up of the top of the second floor rear brick wall replaced with newer block wall on the left portion of the residence. The block and adjacent floor framing are exposed to the exterior at the top of the wall, with significant water infiltration. The wood framing and block wall are significantly saturated and stained.

30) A view of the deteriorated and charred stairway framing. The stairway railing is fire damaged and unstable. Note that the stairway landings are deteriorated with holes present. The stairway framing overall is unstable.

31) A view of the deteriorated and charred stairway framing.

32) A close up of a large (1½" to 2" wide) crack present in the left interior brick wall.

33) A close up of large cracks present in the left interior brick wall.

34) A view of large cracks present in the left interior brick wall, corresponding to the cracks seen in the hallway

35) A view of the first floor rear brick wall replaced with newer block wall on the left portion of the residence. The block wall is saturated and stained with signs of some mold growth present in the older portion of the wall.

36) A close up of the shifting brick wall above a deteriorating first floor front wall window/lintel. Sounds of dripping water and water infiltration were evident at this location.

Resolution

WHEREAS, the Winchester Local Board of Appeals is duly appointed to resolve disputes arising out of enforcement of the Virginia Maintenance code; and

WHEREAS, an appeal has been filed and brought to the attention of the board of appeals; and

WHEREAS, a hearing has been held to consider the aforementioned appeal; and

WHEREAS, the board has fully deliberated this matter; now, therefore be it

RESOLVED, That in the matter of

Appeal No. 13-01

IN RE: Martin B. Gavis v. City of Winchester

The appeal is hereby denied, for the reasons set out below:

1. The Code Official has presented testimony and photographic evidence to support his determination that the building that is the subject of this appeal (414 S. Braddock Street, Winchester, Virginia, hereinafter "the property") is an unsafe structure under Section 105 of the Virginia Maintenance Code; Part III of the Virginia Uniform Statewide Building Code ("Virginia Maintenance Code").
2. In support of this determination, the Board has reviewed all of the materials provided in the Board's Agenda Package for this case (Exhibit A) the materials in the Agenda Package previously issued on April 23, 2013 (Exhibit B); additional materials submitted by the parties at the Board Meeting on May 22, 2013 (Exhibit C), and has received further testimony and/or argument as reflected the Board's Meeting Minutes.
3. Upon through review of the information, evidence, and argument presented, the Board hereby finds that:
 - a. The Code Official and the City of Winchester have fully complied with all requirements concerning proper notification and citation of the property as an "unsafe structure" under the Virginia Maintenance Code.
 - b. The property constitutes an "unsafe structure" in accordance with the determination made by the Code Official and such determination is reasonable and strongly supported the evidence and facts of the case.
 - c. That numerous violations exist upon the property which contribute to the finding by the Code official that the property constitutes an unsafe structure, including



to the collapse of the north wall and numerous missing bricks along the north wall which are a clear violation of Sections 304.1, 304.5, and 304.6 of the Virginia Maintenance Code; the areas of exterior deterioration and missing bricks which constitute a clear violation of Sections 304.1 and 304.6 of the Virginia Maintenance Code; and, the collapsed mansard roof is allowing rain and other weather elements to penetrate the building in clear violation of Sections 304.4 and 304.7 of the Virginia Maintenance Code.

4. The Board has also reviewed the Engineering Report submitted by the Property Owner (Exhibit D) which supports the Code Official's determination that the property is not structurally sound and hence an "unsafe structure" as well as the extensive Engineering Report submitted by the City's contracted engineering firm (Exhibit D) which not only emphasizes the lack of structural integrity of the property, but expressly states that "The structural repairs must occur as soon as possible to prevent a collapse of the roof and/or an overall collapse of the north end of the structure".
5. All of these facts taken together result in the conclusion that the Code Official's determination that structure at 414 South Braddock Street an unsafe condition is reasonable, accurate, and should be upheld by this board; and,
6. The appellant, Mr. Martin Gavis, did not any compelling information as to why the determination of unsafe structure and notice of violation should be modified or overturned.

For the foregoing reasons, this Board hereby DENIES the appeal filed by owner Martin Gavis and affirms the determination made by the Code Official that the property constitutes an "unsafe structure" under the Virginia Maintenance Code and that the violations identified in the Notice of Unsafe Structure and Notice of Building Code Violation dated March 19, 2013 exist on the property, are properly cited, and are contributing factors to the Code Official's determination that the property constitutes an Unsafe Structure.

Date: May 22, 2013

Signature:


Charles Worthington, Chairman of Local Board of Appeals

Note: Any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to such board within 21 calendar days upon receipt by certified mail of this resolution. Application forms are available from the Office of State Review Board, 600 East Main Street, Richmond, VA 23219, (804) 371-7150.

EXHIBIT G – PENDING

EXHIBIT H - PENDING

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 5/28/13 (work session), CUT OFF DATE: 5/22/13
6/11/13 (regular mtg)

RESOLUTION X ORDINANCE ___ PUBLIC HEARING

ITEM TITLE:

A RESOLUTION TO APPROVE AN APPLICATION FOR CLG GRANT FUNDING THROUGH THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES FOR THE PURPOSES OF AMENDING AND EXPANDING THE NATIONALLY-DESIGNATED WINCHESTER HISTORIC DISTRICT AND AMENDING THE PERIOD OF SIGNIFICANCE

STAFF RECOMMENDATION:

Approval to apply for 2nd round CLG grant funding to hire consultant to prepare nomination proposal.

PUBLIC NOTICE AND HEARING:

N/A

ADVISORY BOARD RECOMMENDATION:

Will seek BAR endorsement.

FUNDING DATA: The grant proposal includes up to a \$5,000 local match of which up to \$3,000 would be City funds and up to \$2,000 would be provided by PHW.

INSURANCE: N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	AMG		5/22/13
2. City Attorney	<i>[Signature]</i>		5/22/2013
3. City Manager	<i>[Signature]</i>		5-23-13
4. Clerk of Council			



Initiating Department Director's Signature:

[Signature] 5/22/13



APPROVED AS TO FORM:

[Signature] 5/22/13

**REQUEST FOR APPLICATIONS – 2013-14 CLG Sub-grant Program
Second Round -- May 2013**

Applications will be received until **4:00 pm, Monday, June 10, 2013**. Applicants must submit **two (2) copies** of each application--**one** typed original application (with original signatures) **and one (1) electronic copy by email or disc**. Receipt of the electronic copy by the deadline will suffice for eligibility, provided that the hard copy with original section arrives by close of business, Friday, June 14, 2013. All inquiries for information should be directed as follows:

Pamela A. Schenian 757-886-2818
Pam.schenian@dhr.virginia.gov

Hard copy applications should be mailed or hand delivered to: Pamela. A. Schenian, Virginia Department of Historic Resources, Tidewater Regional Preservation Office, 14415 Old Courthouse Way, Second Floor, Newport News, VA 23608 (Please waive the need for signature if UPS or FedEx delivery. Call 757-886-2818 to ensure that someone will be in the office to accept delivery of parcels.)

By submitting an application, the undersigned agrees to comply with all terms and conditions set forth in this Request for Applications or as mutually agreed upon by subsequent negotiation.

Name of Project:

Grant Period: **Date of Execution of Grant Agreement** Ending Date: **June 30, 2014**

Amount of Award Requested	Matching Share Offered	Total Project Cost
\$13,000	\$5,000	\$18,000

Name and Address of Applicant

Name: City of Winchester
Address: 15 N. Cameron St
Winchester, VA 22601
FEI/FIN #: 546001683
Telephone #: 540 667-1815
Fax Number: 540 722-3618

Local Project Coordinator

Name: Timothy A. Youmans
Title: Planning Director
Address: 15 N. Cameron St
Winchester, VA 22601
Telephone #: 540 667-1815
E-mail Address: 540 722-3618

Authorized Applicant's Signature: _____

Printed Name and Title: Timothy A. Youmans, Planning Director

Date: June 7, 2013

A RESOLUTION TO APPROVE AN APPLICATION FOR CLG GRANT FUNDING THROUGH THE VIRGINIA DEPARTMENT OF HISTORIC RESOURCES FOR THE PURPOSES OF AMENDING AND EXPANDING THE NATIONALLY-DESIGNATED WINCHESTER HISTORIC DISTRICT AND AMENDING THE PERIOD OF SIGNIFICANCE

WHEREAS, in accordance with §15.2-2306 of the Code of Virginia (1950), et seq., the City of Winchester is enabled to preserve historical sites and architectural areas as defined within §15.2-2201 of the Code of Virginia (1950), et seq.; and,

WHEREAS, a committee appointed by the Common Council of the City of Winchester, known as the Historic Winchester District Design Guidelines Review Committee reviewed the current standards, practices, procedures, and district boundaries; and, within a report of their findings dated February 1, 2010, recommended that the City Council approve funding for the completion of an expansion to the nationally-designated Winchester Historic District; and,

WHEREAS, the City has recently utilized CLG grant funds to undertake a thorough survey of resources within the existing nationally-designated Winchester Historic District, as well as within potential expansion areas, and has completed a Preliminary Information Form recommending a change in the Period of Significance; and,

WHEREAS, the City of Winchester is recognized as a Certified Local Government within the Commonwealth of Virginia; and, as such, is eligible to apply for and receive grant funding through the Virginia Department of Historic Resources for the expressed purposes of cultural resource surveys, among other projects; and,

WHEREAS, the Preservation of Historic Winchester, Inc., a local non-profit organization committed to preserving Winchester's historical and architectural resources has indicated a willingness to cooperate with the City for a cost-share of this grant opportunity; and,

WHEREAS, the City Manager or his designee will not formally submit the grant application without authorization from the Common Council, and the financial support and cost-share commitment from Preservation of Historic Winchester, Inc., amounting to no more than \$2,000, with a local match of not more than \$3,000 appropriated by the City of Winchester.

NOW THEREFORE BE IT RESOLVED by the Common Council of the City of Winchester that the City Manager or his designee apply for a CLG grant through the Department of Historic Resources to receive an award of up to \$13,000 for the expressed purposes of amending the existing nationally-designated Winchester Historic District, expanding the boundaries, and amending the Period of Significance.

BE IT FURTHER RESOLVED Common Council hereby authorizes the President of Council to execute any documents requiring execution by an elected official on behalf of the City of Winchester in furtherance of said grant application.

0-2013-16

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: May 14, 2013 **CUT OFF DATE:** 4/16/13

RESOLUTION __ **ORDINANCE XX** **PUBLIC HEARING** __

ITEM TITLE: Photo Monitoring System to Enforce Traffic Light Signals

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

The initiating Department Director will place below, in sequence of transmittal, the names of each department that must initial their review in order for this item to be placed on the City Council agenda.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Public Works Administrator	<i>F.E.</i>		<i>4/28/13</i>
2. Director of Finance	<i>T</i>		<i>4/29/13</i>
3. _____			
4. _____			
5. City Attorney	<i>[Signature]</i>		<i>5/8/2013</i>
6. City Manager	<i>[Signature]</i>		
7. Clerk of Council			
Initiating Department Director's Signature:	<i>[Signature]</i>		<i>4/24/13</i>
			Date



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY *5/8/2013*

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Chief Kevin L. Sanzenbacher 
Date: April 15, 2013
Re: Re Light Enforcement System

THE ISSUE: Red light violations can be one of the most dangerous traffic infractions facing any community. These infractions can also be one of the most difficult for police officers to enforce. Modern technology has provided a way to electronically monitor and take enforcement action on these violations. This system, known as photo-monitoring, digitally records violations when they occur and then passes these photo files onto law enforcement for review and issuance of citations, if warranted. We would like to implement one of these systems in Winchester.

RELATIONSHIP TO STRATEGIC PLAN: Develop a High-Performing City Organization

BACKGROUND: Red light violations can be very difficult to enforce because judges want officers to be able to testify that they observed the light indicating red for the travel lane of the violator. Unless the officer is behind the violator, or can see the signal from the side, judges will not convict without this testimony. This makes it very difficult for officers to target problem intersections with stationary patrol. Even if enforcement were easier there is only so much time officers can dedicate to red light enforcement. Of the violations written over the last five (5) years only about 4% were red light violations.

The photo-monitoring systems, which operates 24/7/365, photographs and videos vehicles both at the time the light changes from yellow to red and fractions of a second after the light turns red in their lane. The violation is captured when someone enters the intersection .5 seconds (per Virginia law) after the light changes. These captured violations are then reviewed by the vendor to make sure they are in compliance with pre-established business rules. These files are then transmitted to the police to be reviewed by a sworn officer. The officer then applies their own business rules to each violation to determine if a summons is issued to the owner of the vehicle. This process, as well as the \$50 fine, are all regulated by VA state law. There are a number of communities in Virginia and throughout the country using similar systems at this time.

State law only allows one intersection per 10,000 population to be monitored. Winchester would be eligible to have 2 intersections monitored under this standard. We have looked at crash data from various intersections throughout the City and decided to conduct tests on the capture system at several locations based on that data. A prospective vendor, without obligation to the City, then conducted a survey of those intersections. From that survey it was determined that the following intersections would be the most appropriate location for the initial deployment of cameras:

Pleasant Valley and Berryville
Pleasant Valley and Jubal Early.

This selection was based on the high number of violations for both "through" violations and "right turn on red" violations. These two intersections accounted for over 300 violations in a 12 hour period.

A vendor for this system has been identified and can be employed by the City by bridging onto a contract with another jurisdiction in compliance with Virginia procurement law. This vendor, Redflex, currently has contracts and is operating in a number of jurisdictions throughout the country. Some of their Virginia clients include Newport News, Albemarle County, Petersburg and Virginia Beach. This vendor would execute a contract with the City that would be cost neutral.

BUDGET IMPACT: This action requires no funds to be expended by the City. The vendor would recapture their costs through the imposition of fines. Any fines collected in excess of the monthly fee charged by the vendor would be passed on to the City each month. If fines did not cover the monthly expense to the vendor then the deficit would be carried forward to be charged off the next month's proceeds, if any. If the City ended the contract in a deficit situation the deficit would be cleared by the vendor, therefore the expense of the system would be cost neutral to the City.

DISCUSSION: These camera systems have resulted in a negative community perception in other locales as they have been seen as an unfair means of taxing the citizenry and an invasion of privacy. We do not feel this would occur in Winchester. This is due to the fact that unlike other states, Virginia limits the number of cameras and the amount of fines. The maximum allowable fine is \$50.00. This is considered a civil penalty, and does not include any points to be issued against the driver's motor vehicle record or car insurance. Although not cheap, this is far less than fines in other jurisdictions and compatible with fines associated with other moving violations. The State of Virginia also limits the number of intersections in which a jurisdiction may deploy cameras. Winchester is limited to two (2) intersections.

Also by focusing on high accident intersections our emphasis is on making the streets of Winchester safer- not in raising revenue. Finally, the State has prohibited the capture of images of drivers, only the rear of the violating vehicle and its tag will be captured. There are also penalties included for the release of any information captured by the system. These safeguards should protect the privacy rights of our citizens and alleviate concerns.

RECOMMENDATIONS: Staff recommends that the Common Council adopt the ordinance as proposed.

AN ORDINANCE TO CREATE CITY CODE
SECTION 14-15 - PHOTO MONITORING SYSTEMS
TO ENFORCE TRAFFIC LIGHT SIGNALS

WHEREAS, the City of Winchester is committed to promoting driver safety in the City; and

WHEREAS, the Common Council recognizes the importance to public safety in regulating potentially harmful activity; and

WHEREAS, technology solutions can be an effective and efficient way of enforcing red light violations; and

WHEREAS, the proposed change will facilitate the installation of red light monitoring systems according to State law; and;

WHEREAS, the City of Winchester's primary concern is the protection of life and property for the citizens and employees.

NOW THEREFORE BE IT ORDAINED, that the Common Council of the City of Winchester, Virginia adopts City Code, Section 14-15, to allow the City Manager or his designee to have the authority to implement the provisions of this section, promulgate the rules and regulations necessary to administer the traffic signal enforcement program in compliance with all requirements of Code of Virginia § 15.2-968.1 and this section, and be responsible for the compliance of all aspects of the traffic signal enforcement program with applicable state law, and contract negotiations as outlined below.

**SECTION 14-15 PHOTO MONITORING SYSTEMS TO ENFORCE TRAFFIC
LIGHT SIGNALS**

- (a) *Establishment.* There is hereby established a traffic signal enforcement program pursuant to and in accordance with Code of Virginia § 15.2-968.1. The program shall include the installation and operation of traffic light signal violation monitoring systems in a number up to the maximum number permitted by state law. No traffic light signal violation monitoring system shall be operated for enforcement purposes at an intersection until all prerequisites for such operation have been fulfilled.
- (b) *Implementation.* The city manager or his designee shall (i) have the authority to implement the provisions of this section, (ii) promulgate the rules and regulations necessary to administer the traffic signal enforcement program in

compliance with all requirements of Code of Virginia § 15.2-968.1 and this section, and (iii) be responsible for the compliance of all aspects of the traffic signal enforcement program with applicable state law.

(c) *Private contractor.* The city may enter into an agreement with a private entity for the installation and operation of traffic light signal violation monitoring systems and related services as permitted by and subject to the restrictions imposed by Code of Virginia § 15.2-968.1(I).

(d) *Penalties.*

(1) For failure to comply with traffic light signal. The operator of a vehicle shall be liable for a monetary penalty of fifty dollars (\$50.00) if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within the city. Any person found liable under this ordinance may contest the summons as provided by Code of Virginia § 15.2-968.1.

(2) For disclosure of personal information. Any person who discloses personal information collected by a traffic light signal violation monitoring system in violation of the provisions of Code of Virginia § 15.2-968.1(H) shall be subject to a civil penalty of one thousand dollars (\$1,000.00).



REDFLEX
TRAFFIC SYSTEMS

Winchester, VA Video Survey Results 03/11/13

12 hour survey

City	Date	Cross Street	Approach	LT	Through	RT	Total	Comments
Winchester, VA	2/12/13	Pleasant Valley Rd & Featherbed Rd	NB	4	9	10	23	
		Pleasant Valley Rd & Featherbed Rd	SB	0	0	64	64	
		Pleasant Valley Rd & Featherbed Rd	EB	0	1	90	91	
		Pleasant Valley Rd & Featherbed Rd	WB	1	1	27	29	
		Pleasant Valley Rd & Jubal Earl Dr	NB	0	2	21	23	
		Pleasant Valley Rd & Jubal Earl Dr	SB	0	1	77	78	
		Pleasant Valley Rd & Jubal Earl Dr	EB	1	3	36	40	7 Hr Survey
		Pleasant Valley Rd & Jubal Earl Dr	WB	7	9	6	22	
		Pleasant Valley Rd & Berryville-National	NB	0	2	90	92	
		Pleasant Valley Rd & Berryville-National	SB	0	3	38	41	
		Pleasant Valley Rd & Berryville-National	EB	0	15	10	25	
		Pleasant Valley Rd & Berryville-National	WB	5	1	8	14	
		Baker Ln & Berryville Ave	SB	3	0	37	40	
		Baker Ln & Berryville Ave	EB	3	10	0	13	
Baker Ln & Berryville Ave	WB	0	2	8	10			

For further information, please contact:
 David Samuel, Regional Sales Manager
 (201) 912-4418
 dsamuel@redflex.com



SCOTT MASON/The Winchester Star

Emergency personnel respond to an overturned SUV at the intersection of Pleasant Valley Road and Berryville Avenue on Tuesday afternoon.

Woman charged in crash

Star staff report

WINCHESTER — A Stephens City woman was charged with failure to obey a traffic signal after her vehicle overturned at the intersection of Pleasant Valley Road and Berryville Avenue on Tuesday afternoon.

Holly Braithwaite, 28,

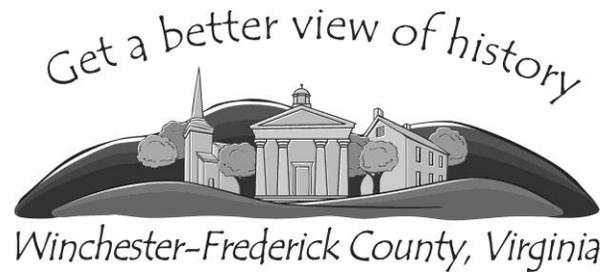
was traveling north on Pleasant Valley Road about 3:45 p.m. when she ran a red light and struck a 1995 Ford Escort that was proceeding through the intersection, according to Winchester Police Department spokeswoman Lauren Cummings.

The 2011 Nissan Xterra that Braithwaite was driving

overturned and landed on its top as a result of the crash, Cummings said.

The driver of the Ford Escort was transported to Winchester Medical Center with injuries that were not considered life-threatening, she said.

Both drivers were wearing their seat belts.



May 21, 2013

To: Frederick County Board of Supervisors & Winchester City Council
From: Sally Coates, Executive Director, Winchester-Frederick County Convention & Visitors Bureau

Subject: Winchester-Frederick County Tourism Board Nominations

The Winchester-Frederick County Tourism Board respectfully submits Sharon Farinholt as the nominee to represent the private sector, and replace Dario Savarese, whose second term ends 6/30/2013. Sharon lives in Frederick County, and owns a business - Crown Trophy - in Winchester. Her first term will expire 6/30/2016, at which time she will be eligible for a second term.

The Board also recommends the re-appointment of Rebecca Ebert, whose first term as a non-profit sector representative expires on 6/30/2013. According to the bylaws, Rebecca is eligible for re-appointment, and her second term will expire on 6/30/2016. Rebecca is Archivist with the Handley Regional Library and the Winchester-Frederick County Historical Society.

The Board also recommends the re-appointment of Bill Hottel, whose first term as a private sector representative, expires on 6/30/2013. Bill is with Hottel & Willis P.C. Tax/Accounting, and his second term will expire on 6/30/2016.

These members will join: Dan Martin, private sector lodging representative with Courtyard by Marriott; John Marker, private/business representative with Marker-Miller Orchards & Farm Market; Sue Robinson, public/non-profit representative with Shenandoah Summer Music Theatre; Renee Simpson, private lodging representative with Holiday Inn Historic Gateway; Tootie Rinker, representative of the non-profit sector with Newtown Heritage Festival, and Eric Campbell, public/non-profit representative with the Cedar Creek/Belle Grove National Historic Park. With approval of the new nomination and the re-appointments, the board will consist of five private-sector representatives, two of whom represent lodging, and four public/non-profit sector representatives, as outlined in the Winchester-Frederick County Tourism Bylaws.

Winchester-Frederick County Convention and Visitors Bureau
1400 South Pleasant Valley Road, Winchester, VA 22601 • 540.542.1326 phone • 540.450.0099
fax • www.VisitWinchesterVa.com

Get a better view of history



CANDIDATE APPLICATION FORM FOR CITY COUNCIL-APPOINTED BOARDS & COMMISSIONS

A City Council Sub-Committee will conduct interviews of applicants interested in serving on a City Board and/or Commission. These interviews are generally conducted prior to a committee meeting during an executive session.

Candidate for position on:

1. Winchester-Frederick Co Board ^{Tourism} 2. _____

Name: Sharon Farinholt Home Phone: 540-247-1097

Home Address: 136 Homestead Place, Stephenson VA 22656

Home Email: Sharon@Crownwinchester.com

Home FAX: 540 Winchester resident for _____ years

Profession: Business owner Business Name: Crown Trophy

Business Address: 1850 South Landon St, Winchester

Business Telephone: 540-665-4485 Business FAX: 540-665-9888

Business E-mail: Sharon@Crownwinchester.com

Why do you wish to serve the City?

It would be an honor to serve both the city & county in this capacity. We live in a great community & I would be happy to show it off!

What experience or education have you had relative to this field of concern?

I have lived & worked in our community for 23 years & am active in many organizations.

What are your major interests or concerns in the City's programs?

To help bring people to our area which helps to stimulate our ~~economy~~ economy.

What other interests or concerns do you have regarding the community?

Please list any previous or present involvement, such as city council, board or commission member, citizens committee, etc. in Winchester or elsewhere:

Signature: Sharon Farinholt Date: 5-20-13

Please Return Completed Application along with your resume to the
City Manager's Office • Rouss City Hall • 15 N. Cameron St Winchester, VA 22601
E-mail: citymanager@ci.winchester.va.us • Tel: (540) 667-1815 • Fax: (540) 722-3618