WINCHESTER COMMON COUNCIL
DECEMBER 10, 2013
AGENDA
7:00 P.M.

CALL TO ORDER AND ROLL CALL

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – November 8, 2013 Special Emergency Meeting, November 12, 2013 Special Meeting, November 19, 2013 Special Meeting, November 19, 2013 Work Session, November 26, 2013 Special Meeting, and November 26, 2013 Work Session

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

1.0 PUBLIC HEARINGS

1.1 O-2013-37: Second Reading – AN ORDINANCE TO AMEND AND REENACT SECTION 22-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO REFERRAL TO AND ACTION BY THE PLANNING COMMISSION ON REZONINGS AND ZONING TEXT AMENDMENTS TA-13-488 *(Defines Referral and extends time limit to 100 days)* **(REQUIRES ROLL-CALL VOTE)(pages 4-8)**

1.2 O-2013-38: Second Reading – AN ORDINANCE TO AMEND AND REENACT SECTIONS 30-49, 30-51, 30-52 AND 11-38 OF THE WINCHESTER CITY CODE PERTAINING TO NOTICE REQUIREMENTS FOR GRASS, WEEDS, AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY AND FEES FOR ABATEMENT OF TRASH AND TALL GRASS AND WEEDS BY THE CITY. (*Changes notice requirements for tall grass violations to once per growing season and creation of abatement fee)* **(REQUIRES ROLL-CALL VOTE)(pages 9-16)**

1.3 O-2013-39: Second Reading **–** AN ORDINANCE TO AMEND AND REENACT SECTIONS 6-8, 6-9, AND 6-144 OF THE WINCHESTER CITY CODE PERTAINING TO VACANT BUILDING REGISTRATIONS, FEES AND PENALTIES, AND CIVIL PENALTIES FOR VIOLATIONS OF THE VIRGINIA MAINTENANCE CODE. (*Vacant buildings required to be registered must also be derelict and increases registration fee and penalty)* **(REQUIRES ROLL-CALL VOTE)(pages 17-25)**

1.4 **O-2013-36:** Second Reading – AN ORDINANCE TO CONDITIONALLY REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE *(Map Number 249-01-2)* FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY RZ-13-500 *(PUD Rezoning for Cedar Creek Place)* **(REQUIRES ROLL-CALL VOTE)(pages 26-42)**

2.0 PUBLIC COMMENTS

3.0 AGENDA

3.1 Motion to remove from the table CU-13-372 regarding a telecommunications tower at 700 Jefferson Street (tabled at October 8, 2013 Council Meeting)

3.2 **CU-13-372:** Conditional Use Permit – Request of Morris & Ritchie Associates on behalf of the City of Winchester for a conditional use permit to construct a telecommunications tower at 700 Jefferson Street *(Map Number 190-01-3)* zoned Education, Institution and Public Use (EIP) District. (Public Hearing closed at September 10, 2013 Council Meeting)**(REQUIRES ROLL-CALL VOTE)(pages 43-120)**

3.3 Motion to remove from the table O-2013-14 regarding a Temporary Sign Provisions and Permit Requirements (tabled at October 8, 2013 Council Meeting)

3.4 **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 (*Revision to temporary sign provisions and permit requirements*)(Public Hearing closed at the October 22, 2013 Special Meeting)**(REQUIRES ROLL-CALL VOTE)(pages 121-140)**

3.5 **R-2013-56:** Resolution – Consent for the Construction and Financing of a Waste-to-Energy Project by the Frederick Winchester Service Authority (pages 141-150)

3.6 **R-2013-59:** Resolution – Adoption of the 2014 State Legislative Agenda (pages 151-220)

3.7 Motion to remove Juvenile Detention Center Agreement from the table. (Tabled November 12, 2013 until the next Council Meeting)

3.8 Motion to authorize the adoption of the Juvenile Detention Center Agreement (pages 221-231)

4.0 CONSENT AGENDA

4.1 **O-2013-41:** First Reading – AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT **TA-13-493** (*Proposal to allow home occupations in accessory structures with a conditional use permit)*(pages 232-240)

4.2 Motion to reappoint Kevin McKannan and Stephen Slaughter, Jr., as members of the Planning Commission each to serve a four year term expiring December 31, 2017

4.3 Motion to direct the Clerk of Council to prepare Certificates of Appreciation for Kim Burke, Stan Corneal, and Brenda Adams for their service as members of the Old Town Development Board

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 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 PURSUANT TO §2.2-3711(A) (7) OF THE CODE OF VIRGINIA FOR THE PURPOSE OF DISCUSSION AND CONSIDERATION OF INFORMATION REGARDING THE SUBJECT OF THE EMPLOYMENT, ASSIGNMENT, APPOINTMENT, AND PERFORMANCE OF SPECIFIC PUBLIC OFFICERS APPOINTEES, AND EMPLOYEES OF THE CITY OF WINCHESTER INCLUDING THE APPOINTMENT OF OR PROSPECTIVE APPOINTMENT OF MEMBERS TO CERTAIN BOARDS AND COMMISSIONS.

6.0 ADJOURNMENT

O-2013-37

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/22/13 (work session), 11/12/13 (1st Reading) 12/10/13 (2nd Reading/Public Hearing) **CUT OFF DATE:** 10/16/13

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

ITEM TITLE:
TA-13-488 AN ORDINANCE TO AMEND AND RE-ENACT SECTION 22-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO REFERRAL TO AND ACTION BY THE PLANNING COMMISSION ON REZONINGS AND ZONING TEXT AMENDMENTS

STAFF RECOMMENDATION:
Approval.

PUBLIC NOTICE AND HEARING:
Public hearing for 12/10/13 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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Zoning and Inspections	AMG		10/16/13
2. City Attorney			10/17/2013
3. City Manager			10-16-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 10/16/13
(Planning)

APPROVED AS TO FORM:

CITY ATTORNEY

CITY ATTORNEY'S OFFICE Received OCT 16 2013 WINCHESTER, VA

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: October 16, 2013

Re: TA-13-488

THE ISSUE:
The ordinance clarifies the means by which referral of a rezoning or text amendment request to the Planning Commission is handled as required by State Code. The ordinance also amends the maximum time allowed for Commission recommendation to be forwarded to Council by 10 days.

RELATIONSHIP TO STRATEGIC PLAN:
Goal 4: Create a more liveable city for all
Policy Agenda- Zoning Ordinance Rewrite

BACKGROUND:
See attached staff report

BUDGET IMPACT:
NA

OPTIONS:
- Approve
- Deny

RECOMMENDATIONS:
Planning Commission recommended approval.

Council Work Session
October 22, 2013

TA-13-488 AN ORDINANCE TO AMEND AND REENACT SECTION 22-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO REFERRAL TO AND ACTION BY THE PLANNING COMMISSION ON REZONINGS AND ZONING TEXT AMENDMENTS

REQUEST DESCRIPTION
The request is to bring language in Section 22-2 of the Zoning Ordinance pertaining to the procedures for Commission review of rezonings and text amendments into compliance with State Code. Specifically, the amended language addresses the referral of a case from City Council (i.e. the elected body) to the Commission. This referral is defined as the determination by the Planning Commission that the application for rezoning or zoning text amendment is complete. The amendment also changes the maximum limit on the time period in which the Commission must report a recommendation to City Council. The proposed amendment changes the timeframe from the current limit of 90 days to instead be 100 days consistent with the maximum period identified in State Code.

STAFF COMMENTS
The proposed ordinance clarifies provisions of Winchester's local zoning ordinance in order to better define when the clock starts ticking for the Planning Commission to complete review of rezonings and zoning text amendments prior to forwarding a recommendation on to City Council.

Effectively, the change from 90 days to 100 days will allow the Commission to table a request for rezoning or text amendment up to two times before having to forward it on to City Council regardless of uncertainties with the proposal. To illustrate how this works, the following example is provided:

Application for rezoning or text amendment submitted-	Sept 6th
Application Determined Complete (i.e. 'Referral by Council')-	Sept 9th
Nearest Planning Commission meeting to 'Referral' date-	Sept 17th
Public Hearing opened at Planning Commission-	Oct 15th (28 days after Sept 17th)
Public Hearing continued to next Commission meeting-	Nov 19th (63 days after Sept 17th)
Public Hearing closed, decision tabled until next Comm mtg-	Dec 17th (91 days after Sept 17th)

In the example above, under the present 90-day limit, the Commission would not be able to table action beyond the Nov 19th meeting because the Dec 17th meeting would be more than 90 days out. Under the proposed 100-day limit, the Commission would not be able to table action beyond the Dec 17th meeting because the next Commission meeting would be more than 100 days out.

RECOMMENDATION
At is October 15, 2013 meeting, the Planning Commission forwarded T**A-13-488** to Council recommending approval because it represents good planning practice by more clearly ensuring compliance with State Code and allowing a more reasonable upper limit of time for the Commission to make a recommendation to City Council.

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 22-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO REFERRAL TO AND ACTION BY THE PLANNING COMMISSION ON REZONINGS AND ZONING TEXT AMENDMENTS

TA-13-488

WHEREAS, the Code of Virginia codifies how amendments and reenactments of the Zoning Ordinance are to be handled; and,

WHEREAS, the Code of Virginia requires that amendments and reenactments be referred to the Planning Commission and acted upon in a prescribed timeframe; and,

WHEREAS; the Winchester Zoning Ordinance currently is silent on referral by City Council and provides for a referral period shorter than that permissible under current State Code; and,

WHEREAS, the Planning Commission of the City of Winchester initiated public sponsorship of a text amendment to ensure compliance with State Code; and,

WHEREAS, the Planning Commission has considered the aforesaid amendment and, at its meeting of October 15, 2013, forwarded said amendment to City Council recommending approval as identified in "Draft 1 – 9/4/13" because it represents good planning practice by more clearly ensuring compliance with State Code and allowing a more reasonable upper limit of time for the Commission to make a recommendation to City Council; 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 amendment represents good planning practice.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that the Winchester Zoning Ordinance of 1976, as amended, be further amended to read as follows:

AN ORDINANCE TO AMEND AND REENACT SECTION 22-2 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO REFERRAL TO AND ACTION BY THE PLANNING COMMISSION ON REZONINGS AND ZONING TEXT AMENDMENTS

TA-13-488

Draft 1 – 9/4/13

Ed. Note: The following text represents an excerpt of Article 22 that is subject to change. Words with strikethrough are proposed for repeal. Words that are boldfaced and underlined are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.

Section 22-2. <u>REFERRAL TO AND</u> ACTION BY PLANNING COMMISSION.

22-2-1 **<u>All applications to amend or reenact the Zoning Ordinance, or to amend the Zoning Map, which have been determined by the Winchester Planning Department to be complete shall be considered to be referred to the Planning Commission by City Council.</u>** No amendment **<u>or reenactment</u>** shall be acted upon unless the proposal has been reviewed by the Commission. The Commission shall hold at least one (1) public hearing on such proposed amendment **<u>or reenactment after required notice.</u>** For ~~in~~ any amendment of the Zoning Map, the public notice shall include the statement of the general usage and density range of the proposed amendment and the general usage and density range of the applicable part of the Comprehensive Plan. Following the hearing, the Commission may include changes in the original proposal resulting from the hearing, and shall transmit such recommendations, together with any explanatory matter, to the City Council. Failure of the Commission to report within ~~ninety (90)~~ **<u>one hundred (100)</u>** days after the first meeting of the Commission after the completed amendment application has been referred to the Commission shall be deemed approval, unless such proposed amendment **<u>or reenactment</u>** has been withdrawn by the applicant **<u>prior to the expiration of the time period</u>**. (11/13/79, Ord. No. 024-19; 2/9/88, Case TA-87-13, Ord. No. 008-88; 12/11/90, Case TA-90-06, Ord. No. 043-90; 10/13/92, Case TA-92-02, Ord. No. 016-92)

O-2013-38

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/22/13 (Work Session), 11/12/13 (First Reading) 12/10/13 (2nd Reading/Public Hearing) **CUT OFF DATE:** 10/15/13

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

ITEM TITLE:
AN ORDINANCE TO AMEND AND REENACT SECTIONS 30-49, 30-51, 30-52 AND 11-38 OF THE WINCHESTER CITY CODE PERTAINING TO NOTICE REQUIREMENTS FOR GRASS, WEEDS, AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY AND FEES FOR ABATEMENT OF TRASH AND TALL GRASS AND WEEDS BY THE CITY.

STAFF RECOMMENDATION:
Approval.

PUBLIC NOTICE AND HEARING:
Public Hearing Required – 12/10/13.

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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. City Attorney			10/9/2013
2. City Manager			10-16-2013
3. Clerk of Council			

Initiating Department Director's Signature: _____ 10/9/13
(Zoning and Inspections)

CITY ATTORNEY'S OFFICE Received OCT 9 2013 WINCHESTER, VA

APPROVED AS TO FORM:
10/9/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

AMG **From:** Aaron Grisdale, Director of Zoning and Inspections

Date: October 22, 2013

Re: Changes to Notice Requirements for Tall Grass and Weeds Violations

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THE ISSUE:
Proposed modifications to City Code to reflect recent changes in the General Assembly regarding notice requirements for tall grass and weeds violations.

RELATIONSHIP TO STRATEGIC PLAN:
This text amendment correlates to the Goal #2 of "Develop a High Performing Organization" and Goal #4 "Create a More Livable City For All" by improving the tools available for code enforcement staff to correct and abate tall grass and weeds violations throughout the City.

BACKGROUND:
During the 2013 session of the General Assembly, changes were made to amend and reenact §15.2-901 of the Code of Virginia to amend the provisions pertaining notice requirements for violations of excessive grass height. The change states that one notice per growing season shall constitute reasonable notice for properties that exceed the maximum allowable height for grass violations. Additionally, an abatement fee is proposed in cases where City staff must hire a contractor to abate the violation in order to cover the administrative costs of this abatement. (Full staff report attached).

BUDGET IMPACT:
No funding is required.

OPTIONS:
- Adopt the proposed changes which include:
  - Modifying the written notice requirements for tall grass and weeds violations to once per growing season
  - Adopt a $50 abatement fee to cover administrative costs associated with the abatement.
- Make no changes to existing code

RECOMMENDATIONS:
The Director of Zoning and Inspections recommends adoption.

City Council Work Session
October 22, 2013

AN ORDINANCE TO AMEND AND REENACT SECTIONS 30-49, 30-51, 30-52 AND 11-38 OF THE WINCHESTER CITY CODE PERTAINING TO NOTICE REQUIREMENTS FOR GRASS, WEEDS, AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY AND FEES FOR ABATEMENT OF TRASH AND TALL GRASS AND WEEDS BY THE CITY.

REQUEST DESCRIPTION

This ordinance to amend City Code is to maintain compliance with the Code of Virginia, following the adoption of some bills recently in the General Assembly. Specifically revisions were adopted pertaining to the notice requirements for violations of tall grass provisions.

STAFF COMMENTS

During the 2013 session of the General Assembly, changes were made to amend and reenact §15.2-901 of the Code of Virginia to amend the provisions pertaining notice requirements for violations of excessive grass height. The change states that one notice per growing season shall constitute reasonable notice for properties that exceed the maximum allowable height for grass violations.

Currently the City Code requirements involve the drafting and sending of a written notice each time the vegetation on private property reached height in excess of ten inches. In a majority of cases it can take two weeks for the required certified return receipt to be returned to staff to confirm that the property owner has received the notice, meanwhile the grass or weed violation continues to get worse. With properties involving absentee landowners or foreclosure the time required can increase. If the property owner does not abate the violation, then the Zoning and Inspections department typically hires a contractor to abate the violation and then sends a bill to the property owner. If the bill is not paid, then the amount due is added to the City real estate tax bill for the subject property and will constitute a lien on such property to the same extent and effect as real estate tax. Staff anticipates a small reduction in postage costs as there would be a minor reduction in the number of second and additional notices sent to property owners (the current price for staff to send a notice of violation with certified return receipt is $6.11).

This proposal will dramatically improve Zoning and Inspections efforts to proactively address tall grass and weeds violations throughout the City. Rather than having to send out a notice of violation several times throughout the growing season, staff will need to send a notice of violation once at the beginning of the season at the first observation of a violation, rather than repeatedly throughout the year. The growing season dates are based on first and last frost dates for our location as provided by the Virginia Cooperative Extension for the local area General guidance is that although the dates are an average the frost can generally occur within 10 days on either side of the given dates.

Lastly, the proposed ordinance includes a provision for an administrative abatement fee to be charged each time the City is required to utilize a contractor to abate a tall grass or trash violation. These administrative fees would cover the costs of certified mailings, re-inspections of the property by staff, administrative work with receiving an estimate with the contractor, paying the contractor, billing the

property owner, and if no payment then working with the necessary City departments to place a lien on the property.

RECOMMENDATION

Staff recommends approval of this ordinance amendment.

AN ORDINANCE TO AMEND AND REENACT SECTIONS 30-49, 30-51, 30-52 AND 11-38 OF THE WINCHESTER CITY CODE PERTAINING TO NOTICE REQUIREMENTS FOR GRASS, WEEDS, AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY AND FEES FOR ABATEMENT OF TRASH AND TALL GRASS AND WEEDS BY THE CITY.

WHEREAS, the Winchester City Code presently contains a requirement for property owners to maintain their grass at a height of no higher than ten inches and a separate written notification must be sent for each violation that occurs throughout the year; and,

WHEREAS, the Code of Virginia was amended during the 2013 General Assembly session to alter the notice requirements, for tall grass and weeds violations, allowing for one written notification to serve as notice for the entire growing season; and,

WHEREAS, in situations where City code enforcement staff must hire a contractor to abate a trash or tall grass violation, an abatement fee is proposed in order to cover the administrative costs associated with the abatement process;

WHEREAS, the proposed Ordinance will expedite Code Enforcement staff's ability to address tall grass and weeds violations in a timely manner, thereby resulting in a "High Performing Organization" in line with Goal #2 of the 2013 City Strategic Plan;

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that Sections 30-49, 30-51, 30-52, and 11-38 of the Winchester City Code are hereby amended.

AN ORDINANCE TO AMEND AND REENACT SECTIONS 30-49, 30-51, 30-52 AND 11-38 OF THE WINCHESTER CITY CODE PERTAINING TO NOTICE REQUIREMENTS FOR GRASS, WEEDS, AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY AND FEES FOR ABATEMENT OF TRASH AND TALL GRASS AND WEEDS BY THE CITY.

*Ed. Note: The following text represents excerpts of City Code that are subject to change. Words with ~~strikethrough~~ are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

CHAPTER 30

VEGETATION

ARTICLE III. GRASS, WEEDS AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY

SECTION 30-49. DEFINITIONS.

For the purpose of this article, the following words shall have the meanings respectively ascribed to them by this section:

Growing Season: **Time period beginning April 20th and ending October 29th. Source; Vegetable Planting Guide and Recommended Planting Dates, Virginia Cooperative Extension Publication 426-331**

Owners: Persons holding title to any land or lot in the City; lessees, tenants and principal occupants of any land or lot in the City or agents of persons holding title to such lands or lots, and agents of persons having care, custody, control or management of the land or lot; and fiduciaries holding title to or having the care, custody, control or management of land or lots in the City for others.

Weeds: Wild or uncontrolled growth or vegetation of every kind standing on land, other than trees, ornamental shrubbery, flowers and garden vegetables.

(Code 1959, §1-5; Ord. No. 049-95, 10-17-95)

SECTION 30-51. NOTICE TO CUT.

Where grass, weeds or other foreign growth in excess of ten (10) inches in height are found upon property, the code enforcement officer, as defined in section 11-2 shall immediately notify the owner of such property to cut such grass, weeds, or other foreign growth down to a height not to exceed three (3) inches. **One written** ~~N~~ notifications **per growing season to the owner shall be considered reasonable notice for this article provided** ~~shall be~~ it is made by the same procedure as set forth in Section 11-37 of this Code.

(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91; 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97)

SECTION 30-52. CUTTING BY THE CITY.

(a) If grass, weeds, or other foreign growth have not been cut within ten (10) days from the date the notice provided for in Section 30-51 is sent, the code enforcement officer, as defined in section 11-2 shall cause the cutting by the City's forces or the City's agent of such grass, weeds or other foreign growth forthwith.

(b) Where grass, weeds or other foreign growth have been cut by order of the code enforcement officer pursuant to the provisions of this section, the cost of such cutting **and a Fifty Dollar ($50) fee to offset the administrative expenses** shall be billed to the owner of the property. If such bill is not paid, it shall be added to the City real estate tax bill on such property and shall be a lien on such property to the same extent and effect as such real estate tax is.
(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91, 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97)

State Law References--Authority of city to require cutting or removal of weeds and other foreign growth, Code of Virginia, §§15.1-11, 15.1-867, §15.1-901(penalty).

CHAPTER 11
GARBAGE AND REFUSE

ARTICLE III. ACCUMULATIONS OF GARBAGE AND REFUSE

SECTION 11-38. REMOVAL BY THE CITY.

(a) If the substances referred to in Section 11-36 have not been removed from the property by the owner within seven (7) days from the date the letter has been mailed or the notice posted pursuant to Section 11-37, or, in the case of personal property subject to §11-36(b), within the time prescribed in that subsection, the Code Enforcement Officer may cause the removal by the City's forces or the City's agent of such substances from such property forthwith. (Ord. No. 020-94, 06-14-94; Ord. No. 028-97, 10-14-97)

(b) Where substances have been removed from property by order of the Code Enforcement Officer pursuant to the provisions of this section, the cost of such removal **and a Fifty Dollar ($50) fee to offset the administrative expenses** shall be billed to the owner of the property. If such bill is not paid, it shall be added to the City real estate tax on such property and shall be a lien on such property to the same extent and effect as such real estate tax is. (Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 028-91, 6-11-91; Ord. No. 005-93, 02-09-93; Ord. No. 028-97, 10-14-97)

Ordinance No. _____

ADOPTED by the Common Council of the City of Winchester on the ____ day of _____, 2013.

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

Deputy Clerk of the Common Council

O-2013-39

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/22/13 (Work Session), 11/12/13 (First Reading) 12/10/13 (2nd Reading/Public Hearing) **CUT OFF DATE:** 10/15/13

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

ITEM TITLE:
AN ORDINANCE TO AMEND AND REENACT SECTIONS 6-8, 6-9, AND 6-144 OF THE WINCHESTER CITY CODE PERTAINING TO VACANT BUILDING REGISTRATIONS, FEES AND PENALTIES, AND CIVIL PENALTIES FOR VIOLATIONS OF THE VIRGINIA MAINTENANCE CODE.

STAFF RECOMMENDATION:
Approval.

PUBLIC NOTICE AND HEARING:
Public Hearing Required – 12/10/13.

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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. City Attorney			10/10/2013
2. City Manager			10-16-2013
3. Clerk of Council			

Initiating Department Director's Signature: _____ 10/9/13
(Zoning and Inspections)

CITY ATTORNEY'S OFFICE Received OCT 9 2013 WINCHESTER, VA

APPROVED AS TO FORM:
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

Ans **From:** Aaron Grisdale, Director of Zoning and Inspections

Date: October 22, 2013

Re: Changes to Registration Requirements for Vacant Buildings and Increase Penalties for Virginia Maintenance Code Violations

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THE ISSUE:
Proposed modifications to City Code to reflect recent changes in the General Assembly regarding registration requirements, fees, and penalties for vacant buildings. Additionally, increase the assessed penalties for violations of the Virginia Maintenance Code.

RELATIONSHIP TO STRATEGIC PLAN:
This text amendment correlates to the Goal #4 "Create a More Livable City For All" by addressing the tools available for code enforcement staff to identify vacant buildings and improve the tools to help correct property maintenance violations throughout the City.

BACKGROUND:
During the 2013 session of the General Assembly, changes were made to amend and reenact §15.2-1127 of the Code of Virginia to amend the provisions pertaining to vacant buildings. The change requires that vacant buildings subject to registration must also meet the definition of derelict building, as defined in §15.2-907.1, and Chapter 6, Section 132 of City Code. Additionally, the proposed ordinance would incorporate increases to the schedule of civil penalties for violations of the Virginia Maintenance Code in line with increases in the enabling legislation in the Code of Virginia. (Full staff report attached).

BUDGET IMPACT:
No funding is required.

OPTIONS:
- Adopt the proposed changes which include:
  - Modify the requirement for vacant buildings to register with the Building Official to only vacant buildings that also are derelict, as defined.
  - Increase both the registration fee for vacant buildings and penalty for failing to register.
  - Increase the penalties for violations of the Virginia Maintenance Code.
- Make no changes to existing code

RECOMMENDATIONS:
The Director of Zoning and Inspections recommends adoption.

City Council Work Session
October 22, 2013

AN ORDINANCE TO AMEND AND REENACT SECTIONS 6-8, 6-9, AND 6-144 OF THE WINCHESTER CITY CODE PERTAINING TO VACANT BUILDING REGISTRATIONS, FEES AND PENALTIES, AND CIVIL PENALTIES FOR VIOLATIONS OF THE VIRGINIA MAINTENANCE CODE.

REQUEST DESCRIPTION

This ordinance to amend City Code is to maintain compliance with the Code of Virginia, following the adoption of some bills recently in the General Assembly. Specifically revisions were adopted pertaining to the City's Vacant Building registration requirement and fees, as well as the maximum amounts that localities can issue as part of civil penalties for violations of the Virginia Maintenance Code.

STAFF COMMENTS

During the 2013 session of the General Assembly, changes were made to amend and reenact §15.2-1127 of the Code of Virginia to amend the provisions pertaining to vacant buildings. The change requires that vacant buildings subject to registration must also meet the definition of derelict building, as defined in §15.2-907.1, and Chapter 6, Section 132 of City Code.

A derelict building is defined as a residential or nonresidential building or structure, whether or not construction has been completed, that might endanger the public's health, safety, or welfare and for a continuous period in excess of six months, it has been (i) vacant, (ii) boarded up in accordance with the building code, and (iii) not lawfully connected to electric service from a utility service provider or not lawfully connected to any required water or sewer service from a utility service provider. Not being lawfully connected as used in this definition would be the ability to use the service provided, instead of a lack of physical connection. Boarded up in accordance with the building code is achieved by securing the property from public entry. Actual boarding of buildings is usually ordered as a result of the doors, windows being damaged or by City code officials finding repeated unauthorized entry points. An uninhabitable or unsafe building would be considered boarded or secure if all windows and doors were secured and undamaged and capable from preventing unauthorized entry by the general public.

There is likely to be a reduction of the number of vacant buildings registered with the City, due to some property owners having maintained utility connections even though they are vacant. Buildings currently registered as vacant would be reviewed during the annual renewal and the owners made aware of the changes of the registry requirements. The properties that are currently registered that do not meet the new requirements would then not be required to register.

Additionally, the General Assembly has increased the fees authorized to cover costs associated with maintaining the registry from $25 to $100 and increase the civil penalty for failing to register from $50 to $200. These changes have been incorporated with the proposed City Code ordinance. These fees, which are set by the enabling legislation, have not been increased since when the ordinance was first adopted in 2005.

Lastly, the proposed ordinance would incorporate increases to the schedule of civil penalties for violations of the Virginia Maintenance Code in line with increases in the enabling legislation in the Code of Virginia. These increases include changes to the first civil penalty from $75 to $100, and for second and subsequent penalties from $150 to $350. These fees have not been revisited or adjusted since 2005.

RECOMMENDATION

Staff recommends approval of this ordinance amendment.

AN ORDINANCE TO AMEND AND REENACT SECTIONS 6-8, 6-9, AND 6-144 OF THE WINCHESTER CITY CODE PERTAINING TO VACANT BUILDING REGISTRATIONS, FEES AND PENALTIES, AND CIVIL PENALTIES FOR VIOLATIONS OF THE VIRGINIA MAINTENANCE CODE.

WHEREAS, the Winchester City Code presently contains a requirement for buildings that have been vacant for at least one year to be registered with the Building Official and pay a fee; and,

WHEREAS, the Code of Virginia was amended during the 2013 General Assembly session to alter the requirements, penalties and fees of vacant properties that must be registered with the City; and,

WHEREAS, the vacant building registry requirement in an important tool in ensuring that vacant properties throughout the City are monitored to prevent deterioration of the property and loss of the quality of life in the surrounding neighborhood; and,

WHEREAS, the Code of Virginia has been amended to increase the penalties that municipalities may issue for violations of the Virginia Maintenance Code;

NOW THEREFORE BE IT ORDAINED by the Common Council of the City of Winchester, Virginia, that Sections 6-8, 6-9 and 6-1444 of the Winchester City Code are hereby amended.

AN ORDINANCE TO AMEND AND REENACT SECTIONS 6-8, 6-9, AND 6-144 OF THE WINCHESTER CITY CODE PERTAINING TO VACANT BUILDING REGISTRATIONS, FEES AND PENALTIES, AND CIVIL PENALTIES FOR VIOLATIONS OF THE VIRGINIA MAINTENANCE CODE.

*Ed. Note: The following text represents excerpts of City Code that are subject to change. Words with ~~strikethrough~~ are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

CHAPTER 6

BUILDING REGULATIONS

SECTION 6-9. VACANT BUILDING REGISTRATION; PENALTY

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section:

Owner means the person shown on the current real estate assessment books or current real estate assessment records.

Vacant ~~Building~~ means ~~a building that~~:

- No person or persons actually, currently conducts a lawfully licensed business; or,
- No person or person(s) lawfully resides or lives in the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, non-transient basis; or,
- All residential and business activity has ceased; or,
- Has been declared unsafe or unfit for human habitation as defined in the Virginia Maintenance Code and ordered vacated by the Building Official and or his designee; and,
- Does not include buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

(a) The owner of a vacant building which has been continuously vacant for a period of twelve (12) months or more **and which meet the definition of "derelict building" under Section 6-132 of the City code,** must register the building annually with the Building Official. Such registration shall be on a form prescribed by the Building Official. A building shall be deemed "continuously vacant", as that term is used in this subsection, even if it is sporadically or intermittently occupied during the twelve (12) month period.

(b) The annual fee for such registration shall be **One Hundred Dollars ($100)** ~~Twenty-Five Dollars ($25.00)~~. The fee shall be paid at the time that the building is initially registered. For each subsequent year, or any part of such year, that the building remains continuously vacant, an annual and non-

refundable fee of **One Hundred Dollars ($100)** ~~Twenty-Five Dollars ($25.00)~~ shall be paid within fifteen (15) days of the anniversary date of the building's initial registration.

(c) Failure to register a vacant building as required by this section shall be punishable by a civil penalty not exceeding **Two Hundred Dollars ($200)** ~~Fifty Dollars ($50.00)~~. ~~Failure to register in conservation and rehabilitation districts designated by the Common Council for the City of Winchester, or other areas designated as blighted pursuant to section 36-49.1:1 of the Code of Virginia, 1950, as amended, shall be punishable by a civil penalty not exceeding Two Hundred Fifty Dollars ($250.00).~~

(d) The Building Official, or his or her designee, shall mail a Notice of violation to the owner(s) of the vacant building, at the address to which property tax notices are sent, at least thirty (30) days prior to the assessment of the civil penalty.

(Ord. No. 028-2005, 9-13-05; Ord. No. 2008-29, 6-10-08)

State Law Reference—Code of Virginia, §15.2-1127.

SECTIONS 6-10 - 6-15. RESERVED.

(Ord. No. 004-90, 2-13-90; Ord. No. 023-92, 12-8-92)

SECTIONS 6-144. UNIFORM SCHEDULE OF CIVIL PENALTIES AND SUMMONS FORMAT.

The following Uniform Schedule of Civil Penalties is hereby adopted by the City of Winchester:

City of Winchester
Department of Zoning and Inspections
Uniform Schedule of Civil Penalties

Fail to display Street Numbers (CC -26-3, IPMC 304.3)	1st **$75.00** ~~$25.00~~ 2nd and subsequent violations **$150.00** ~~$50.00~~
Fail to obtain any required inspection (CC-6-91(f))	$50.00
Fail to provide Notification of Rental Housing (CC-6-90(b)	$50.00
Fail to register Vacant Building (CC-6-9)	**$200.00** ~~$50.00~~
Zoning Violations (scheduled in Sec. 21-3, Z.O.)	1st $200.00 2nd and subsequent violations $500.00
Violations of the Virginia Maintenance Code (CC-6-8)	1st **$100.00** ~~$75.00~~ 2nd and subsequent violations **$350.00** ~~$150.00~~
Weeds and Tall Grass (fail to cut) (CC-30-50) Trash and Rubbish (fail to remove) (CC-11-36)	1st and subsequent from same set of facts $50.00 2nd within 12 months $200.00 similar violations not of same facts 1st and subsequent from same set of facts $50.00 2nd within 12 months $200.00 similar violations not of same facts

SECTION 6-8. VIOLATIONS OF VIRGINIA UNIFORM STATEWIDE BUILDING CODE, VIRGINIA MAINTENANCE CODE; MISDEMEANOR, CIVIL PENALTIES.

(a) Violations of Chapter 1, Section 105, Virginia Maintenance Code, unsafe structures or structures unfit for human habitation shall be deemed a misdemeanor. Penalties shall be as set out in §36-106(A) of the Code of Virginia as amended.

(b) Violations resulting or that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in §25.1-400 Code of Virginia, shall be deemed a misdemeanor. Penalties shall be as set out in §36-106(B) Code of Virginia as amended.

(c) In lieu of criminal penalties otherwise chargeable under the Virginia Uniform Statewide Building Code, Virginia Maintenance Code and in accordance with §36-106(C) of the Code of Virginia as amended, except for any violation resulting in injury to any person or persons, the following civil

penalties shall be imposed upon any person who violates the provisions thereof after compliance with the initial notice has not been achieved:

Failure to obtain any required inspection:

First summons, per day	$100.00
Second or subsequent summonses, per day	$150.00

Violation of any other provision of Virginia Maintenance Code of the Virginia Uniform Statewide Building Code:

First summons, per day:	**$100.00** ~~$ 75.00~~
Second or subsequent summonses, per day	**$350.00** ~~$150.00~~

Failure to display or maintain street numbers:

First summons	$ 75.00
Second or subsequent summonses, per summons	$ 150.00

(d) With the exception of the street numbering provisions of Section 26-3, each day during which a violation exists shall constitute a separate violation. However, a series of violations arising from the same operative set of facts shall not give rise to the levying of a civil penalty more frequently than once in any ten (10) day period, and shall not result in civil penalties exceeding a total of **four thousand dollars ($4,000)** ~~three thousand dollars ($3,000.00).~~

(Ord. No. 021-2005, 6-14-05; Ord. No. 2008-04, 01-08-08; Ord. No. 2011-21, 10-11-11)

Ordinance No. _____

ADOPTED by the Common Council of the City of Winchester on the ____ day of _____, 2013.

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

Deputy Clerk of the Common Council

D-2013-36

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 10/22/13 (work session), 11/12/13(1st Reading) 12/10/13 (2nd reading) **CUT OFF DATE:** 10/16/13

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

ITEM TITLE:
RZ-13-500 AN ORDINANCE TO CONDITIONALLY REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE *(Map Number 249-01-2)* FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY

STAFF RECOMMENDATION:
Approval

PUBLIC NOTICE AND HEARING:
Public hearing for 12/10/13 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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Economic Development			10/16
2. City Attorney			10/17/2013
3. City Manager			10-16-13
4. Clerk of Council			

Initiating Department Director's Signature: _____ 10/16/13
(Planning)

CITY ATTORNEY'S OFFICE Received OCT 16 2013 WINCHESTER, VA

APPROVED AS TO FORM: 10/17/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: October 16, 2013

Re: RZ-13-500

THE ISSUE:
Rezoning a 7.74-acre tract from RO-1 to B-2 with PUD overlay. The existing CE overlay zoning would remain on the front portion of the property. The existing RO-1 zoning would permit office development consistent with the recommendation shown in the Comp Plan. The proposed B-2(PUD) zoning would result in a 132-unit apartment complex and some commercial use.

RELATIONSHIP TO STRATEGIC PLAN:
Goal 4: Create a more liveable city for all
Vision 2028- Great neighborhoods with a range of housing choices

BACKGROUND:
See attached staff report (updated to reflect 10-11-13 version of Proffer Statement)

BUDGET IMPACT:
Because there are no units with more than two bedrooms, the project would not likely generate school-aged children adding to attendance at City schools. In addition to some revenue from on-site commercial use, this new high-quality multifamily development would create more demand for commercial development elsewhere.

OPTIONS:
- Approve subject to latest version of proffers and Development Plan
- Deny (must state reasons for denial in the motion- e.g. "inconsistent with Comp Plan")

RECOMMENDATIONS:
Planning Commission recommended approval subject to the 10-11-13 version of proffers and the latest Development Plan.

Council Work Session
October 22, 2013

RZ-13-500 AN ORDINANCE TO CONDITIONALLY REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE *(Map Number 249-01-2)* FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY

REQUEST DESCRIPTION

The applicant is requesting to change the underlying zoning of a large tract of mostly vacant land at the western limits of the City along the north side of Cedar Creek Grade from RO-1 to B-2 subject to proffers. The proposal keeps the Corridor Enhancement (CE) overlay zoning in place for the first 125 feet back into the site from Cedar Creek Grade, but eliminates it from the remainder of the site where the taller residential structures are proposed. The request proposes to add Planned Unit Development (PUD) overlay zoning across the entire site. The B-2 rezoning would permit the construction of up to 139 apartment units, assuming that the overlay Planned Unit Development (PUD) provisions and Corridor Enhancement (CE) provisions are met. The applicant has provided a Conceptual Site Layout Plan depicting 132 apartment units in 5 three-story buildings and 2 four-story buildings. A separate two-story mixed use with offices on the ground floor and 1-bedroom apartments on the second floor is proposed near the Cedar Creek Grade frontage of the site. The applicant has included an alternative scenario that would eliminate the second floor apartments and extend another 9,846 square feet of commercial use to the upper level, depending upon market demand. Recreational amenities include 2 proposed bocce ball courts out close to Cedar Creek Grade which is available for use by the occupants only and a perimeter walking trail with exercise stations that would be available to the public for at least 2 years. There are also some exercise stations toward the interior of the site.

AREA DESCRIPTION

The subject parcel contains a vacant single-family residence and some agricultural structures. This parcel and one residentially used property immediately to the east comprise an existing RO-1 district. Along with numerous other properties throughout the City, these two properties were rezoned by the City (i.e. not at property owner request) in the 1990's in an effort to stem what was then viewed as undesirable multifamily rental housing. Land to the north and further to the east is zoned HR and contains multifamily development as well as townhouse development. Land to the south fronting along Cedar Creek Grade is also zoned HR and contains single-family residences.

Land to the west is situated in Frederick County. The adjoining Frederick County parcel owned by Greystone Properties, LLC was conditionally rezoned from Rural Areas (RA) to Residential Planned Community (R4) by Frederick County along with other properties including a larger tract owned by Miller & Smith about five years ago. The 360-acre Willow Run project is slated for 1,390 residential units as well as 36 acres of commercial uses. The Greystone Properties portion of the larger Willow Run

project is primarily single-family attached (i.e. townhouse) residential and age-restricted housing. It includes a spine road (Birchmont Dr) that connects Cedar Creek Grade with the extension of Jubal Early Drive to the north. That connection is required to be built prior to the 200th residential permit being issued. A public street connection to Cidermill Lane from the County spine road is also part of the approved Willow Run project. Cidermill Lane is currently being extended to the County line as part of the last phase of the Orchard Hill townhouse development.

COMMENTS FROM STAFF

In a letter (see attached) to the Planning Director dated September 17, 2013, Mr. Timothy Painter of Painter-Lewis PLC, applicant for the owner (Mr. Scott Rosenfeld-Cedar Creek Place LLC), explains the proposed rezoning and the proposed Cedar Creek Place mixed use project. The applicant also provided an original Proffer Statement dated September 9, 2013 which was superseded by a 1st Revision dated September 30, 2013 (received by the Planning Department on October 2, 2013), and a 2nd Revision dated October 11, 2013 (received by the Planning Department on October 11, 2013). The Proffer Statement is addressed further below in the comments from staff. Along with the original letter and Proffer Statement, a 1-sheet Development Plan exhibit dated September 9, 2013 and titled 'Conceptual Site Layout Plan, Rezoning Exhibit "A"' was submitted. A revised 3-page Development Plan was submitted to the Planning Department on October 2, 2013. The Development Plan was revised again on October 11, 2013 to show updated phasing on the cover sheet. It includes detailed phasing, conceptual utility layout, perimeter buffering, and existing topography.

<u>Comprehensive Plan Consistency</u>

The Character Map contained in the adopted Comprehensive Plan calls for a Commerce Revitalization/Infill in this area and for the connection of Stoneleigh Drive to Cedar Creek Grade. PUD overlay allows for consideration of up to 18 dwelling units per acre, which in the case of 7.74 acres would translate to a maximum of 139 dwelling units. The applicant is proposing 132 dwelling units in addition to a building housing commercial offices. The Comprehensive Plan also calls for increased multifamily development citywide to attract young professionals and empty nesters. The proposed upscale apartments would serve these targeted populations.

The Cedar Creek Grade corridor has undergone considerable change over the past 25 years from being primarily single-family development along a two-lane roadway to becoming a mixed use corridor served by a four-lane arterial. A number of sites that were rezoned to RO-1 by the City in the 1990's were subsequently rezoned on a conditional basis to Highway Commercial (B-2) by private developers. These conditional B-2 rezonings often included restrictions on commercial uses. This effort includes the two lots along the south side of Cedar Creek Grade across from the east end of the subject property where two large office buildings are situated today. Corridor Enhancement (CE) overlay zoning was established along Cedar Creek Grade in 2006.

<u>Potential Impacts & Proffers</u>

Since this is a conditional rezoning request wherein the applicant has voluntarily submitted proffers to mitigate potential impacts arising from the rezoning of the property from RO-1(CE) to B-2 (PUD/CE). The September 9, 2013 Proffer Statement and the September 30th revision to it is structured to address six areas under the heading of Site Planning Improvements. These are: Street and Access Improvements; Interior Site Circulation; Site Development; Landscaping and Design; Recreation; and, Storm water Management. The last paragraph of the Proffer Statement binds the developer to develop the site in accordance with the Conceptual Site Layout Plan, Rezoning Exhibit "A" dated September 9, 2013.

The applicant has conducted both a Fiscal Impact Analysis and a Traffic Impact Analysis which are two studies that can be required by the Planning Commission for a PUD rezoning application per Sections 13-4-2.2k and l of the Zoning Ordinance.

Fiscal Impact Analysis

Because the multifamily (i.e. non-commercial) component of the project, from a land use perspective, is inconsistent with the adopted Comprehensive Plan, a Fiscal Impact Analysis was prepared. That Analysis, dated September 2013, shows the impacts on City revenue and expenditures generated by the project as compared to revenue and expenditures arising from development allowed under the current RO-1 development. While the current RO-1 zoning permits office development which generates no school-aged population, it also permits single-family residential homes at a density of 4.3 units per acre which is between the current LR and MR residential district densities. Single-family homes tend to generate more school-aged population then multifamily units, but there would be many fewer single-family homes possible under the current RO-1 zoning than possible under the proposed HR zoning.

The proposed conditional B-2 (PUD) zoning permits commercial office development, and also would permit up to 139 apartment units, in this case primarily consisting of two-bedroom units. The applicant is NOT asking to have any three bedrooms which might increase the likelihood of school-aged population. The Fiscal Analysis shows that the development would result in a net revenue benefit to the City, annually after build-out of nearly $163,000, including on-site and off-site impacts. This assumes that the nonresidential component is built in a timely manner, which is discussed further under the review of the phasing plan.

Mr. Jim Deskins, the City's Economic Redevelopment Director reviewed the proposal and commented on the fiscal impacts associated with changing the zoning from the current RO-1 which would support general and medical office development to instead have mixed use under B-2 (PUD) zoning that would specifically consist of 132 one- and two-bedroom apartment units and 8,800 square feet of commercial development. (Note: the latest Development Plan calls for 9,846 square feet of commercial development which would only make the revenue figures even better than in the report.) In an email to the Planning Department, Mr. Deskins stated that, even with a higher number of students than what he would expect from the development, the report reflects a positive cash flow for the City.

Traffic Impact Analysis

A Traffic Signal Warrant Study dated 9/4/13 was submitted on 9/9/13 to the Planning Director and to the Public Services Director, Perry Eisenach. The Warrant Study concluded that a traffic signal would not be warranted at the proposed intersection of Cedar Creek Grade and the extension of Stoneleigh Drive, even if situated opposite of the existing Cedar Creek Grade/Stone Ridge Rd intersection. The Public Services Director reviewed the study and agreed with the findings.

The Traffic Signal Warrant Study included an analysis of Trip Generation based upon four different Development Scenarios. The figures are contained in Table 1 on page 6 of the Study (See attached Table 1). The proposed scenario identifies 132 apartment units and 8,500 square feet of specialty retail. It would generate 144 trips in the PM Peak Hour and an Average Daily Traffic (ADT) volume of 1,419 trips. The latest Development Plan calls for at least 9,846 square feet of commercial space which will most likely be dominated by office use instead of specialty retail. The trip generation figures should not change considerably from what was analyzed, but the traffic report should be updated to reflect the

latest development proposal including the option to do commercial use on the upper level of the front building. If the 7.74 acres were instead developed with by-right office development consisting of upwards of 120,000 square feet of medical-dental office development, then it would generate 424 trips in the PM Peak Hour and an ADT volume of 4,692 trips (over 3 times the amount of traffic generated by the development proposed with the rezoning). If the site was rezoned to HR District without the proposed PUD overlay zoning, then it would support upwards of 108 multifamily units. This development would generate 77 trips in the PM Peak Hour and an ADT volume of 799 trips. Staff has not observed problems at intersections such as Harvest Drive and W. Jubal Early Dr where considerably larger numbers of apartments, retirement cottages, assisted living, and conventional single-family units are linked to major streets in the City.

Based upon the Development Plan, the development is proposed to include a private extension of Stoneleigh Drive connecting with another private drive that then intersects Cedar Creek Grade at an unsignalized intersection located approximately 240 feet west of the Harvest Drive intersection. This new location is where the existing driveway into the adjoining Horton property is currently located. That driveway would be eliminated under the proposal and a connection to the Horton property would be provided from a point internal to the Cedar Creek Place development north of the existing Horton residence closest to Cedar Creek Grade.

The proposed street location minimizes impacts on the Harvest Drive neighborhood and provides for an indirect connection to the public portion of Stoneleigh Drive in the Orchard Hill neighborhood. It also provides for good sight distance to the west. It will, however, require the granting of an exception by City Council to allow for the new private street to be situated within 300 feet of the existing Harvest Drive intersection.

Alterations were made to traffic flow on Cedar Creek Grade at Stoneridge Rd intersection after VDOT had widened the road from two lanes to four lanes in 1993. The alteration decreased the capacity of Cedar Creek Grade by converting one of the two eastbound lanes and one of the two westbound lanes approaching Stoneridge Rd into right-turn and left-turn lanes respectively. That change essentially reduced Cedar Creek Grade down to a single through lane eastbound and westbound at that one location.

The applicant is proffering to extend a private roadway northward to connect with another private roadway internal to the apartment development. It would also connect to the privately-owned portion of Stoneleigh Drive serving the existing Summerfield Apartment development. Summerfield Apartments were approved with improved access only to the north connecting with the public portion of Stoneleigh Dr in the Orchard Hill townhouse development. The developer of the Summerfield Apartment development offered to extend Stoneleigh Drive as a public street southward to allow for an orderly extension of that street ultimately to Cedar Creek Grade once the former Racey property was developed. Due to strong opposition from adjoining Orchard Hill residents, City Council turned down a subdivision proposal in 1997 that would have extended the public street, but the apartment development site plan was nonetheless approved relying solely upon access to Harvest Drive, a Category II Collector Street via local (Category I) streets within the Orchard Hill development.

As noted above, the Comprehensive Plan calls for the orderly extension of roadway connecting the Summerfield and Orchard Hill neighborhoods to Cedar Creek Grade. This allows for improved traffic flow and improved service delivery for City services such as fire and rescue, police, school buses, and refuse, yard waste, and recycling pickup. It also implements the New Urbanism principle of an interconnected

grid street network advocated in the Comprehensive Plan and avoids undesirably long an inefficient single-access point development typical of 1960's – 1990's suburban sprawl. Total traffic on any one street is reduced since residents do not have to drive through other neighborhoods to get to the major streets in the City. The applicant is also proffering traffic calming measures along the proposed private roadway.

Site Development and Buffering

The Conceptual Site Layout Plan depicts 132 apartment units in 5 three-story buildings, 2 four-story buildings, and the upper floor of the two-story mixed use building out front. Proffers #3 & 4 address Site Development as well as Landscaping and Design. Three of the 5 three-story buildings would back up to the Summerfield Apartment development along the northern boundary furthest from Cedar Creek Grade. One of the 2 four-story structures is located along the west side of site adjoining Frederick County. Per the proffered layout, all of the residential-only buildings would be situated at least 140 feet away from Cedar Creek Grade. Only the apartments on the upper floor of the mixed use building would be within 140 feet of Cedar Creek Grade. In Proffer #3, the applicant has proffered minimum separations between building within the site and between buildings and of-street parking areas. Proffer#3 also now notes that the project will generally conform to the architectural floor plans and elevations prepared by Design Concepts, Inc. Proffer #4 provides detailed information about the landscaped buffers, including the quantity of evergreen and deciduous trees required. Upright evergreen screening consisting of a hedgerow or staggered double row of evergreens is proffered along the west, north and east perimeter of the site including the boundary adjoining the Horton property to the east.

Recreation and Open Space

Proffer #5 addresses recreational amenities and open space. The applicant is proposing a 5-foot wide walking trail with exercise stations for public use for at least a 2-year period and 2 bocce ball courts and a gazebo situated out close to Cedar Creek which would be for use only by the occupants. A 2-court bocce ball facility for a multifamily development of this size is on the low end of facilities provided per dwelling unit. Unlike the recently approved Jubal Square project, no swimming pool and community building is depicted on the plan and the applicant should clarify whether or not a fitness center is proposed in the front mixed use building.

Storm water Management

Proffer #6 addresses the impacts of storm water management and the applicant's measures to mitigate the potential impacts. A detailed storm water analysis would be generated by the applicant and reviewed by the City at the time of site plan. On sheet RZ2 of the applicant's proposed Development Plan layout, two large underground storm water management systems are depicted.

Project Phasing

The applicant proposes to phase the project in 8 phases over a 5-year timeframe as part of the PUD rezoning. Any phasing plan should clearly note the timing of the roadway connection to Summerfield Apartments and the completion of the recreational amenities relative to occupancies of any units. The bocce ball courts and gazebo are annotated as part of Phase 1. In response to concerns raised by City staff, the applicant has amended the phasing plan so that at least half of the winged mixed use building be constructed no later than the completion of Phase 5 and that it be ready for occupancy no later than the occupancy of the Phase 6 building. The latest version of the phasing proposal calls for flexibility with regard to the project phasing such that the Planning Director can administratively modify the phasing shown on the cover sheet of the Development Plan. This would, for example, allow the developer to

proceed with the second 4-story building in advance of commencing the 3-story buildings shown as Phases 5 and 6.

Other Issues

The applicant should review all of the requirements for a complete PUD proposal as spelled out in Section 13-4 of the Zoning Ordinance. Among the Development Plan requirements is the following:

- A plan or statement detailing covenants, restrictions, and conditions pertaining to the use, maintenance and operation of common spaces.

RECOMMENDATION

At its October 15, 2013 meeting, the Planning Commission forwarded **RZ-13-500** to City Council recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-13-500, Prepared by Winchester Planning Department, October 1, 2013*" because the proposed B-2 (PUD/CE) zoning supports the expansion of housing serving targeted populations, facilitates the connection of Stoneleigh Drive to Cedar Creek Grade, and provides for commercial space in support of the Commerce Revitalization/Infill character designation in the Comprehensive Plan. The recommendation is subject to adherence with the latest Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN EXHIBIT "A"' dated September 9, 2013 (last updated on Oct 11, 2013) and the submitted proffers dated September 9, 2013 and last revised October 11, 2013.

***PAINTER-LEWIS*, P.L.C.**
CONSULTING ENGINEERS
817 Cedar Creek Grade, Suite 120
Winchester, Virginia 22601

Tel.: (540) 662-5792
Fax.: (540) 662-5793

September 17, 2013

Mr. Timothy P. Youmans, Director of Planning
City of Winchester, Virginia
15 N. Cameron Street
Rouss City Hall
Winchester, Virginia 22601

Re: Cedar Creek Place Commercial & Apartment Complex
940 Cedar Creek Grade
Winchester, Virginia
Tax Map: 249-01-2
Rezoning Application: RZ-13-500

Dear Sir:

The Comprehensive Plan of the City of Winchester recommends that the area in and around the above-referenced project have an Residential Office District (RO-1) zoning. This district permits a combination of residential and light commercial uses.

This rezoning proposal is requesting that this parcel be rezoned to a B-2 Highway Commercial District (B-2) with a Planned Unit Development District (PUD) overlay. The area along Cedar Creek Grade would house the commercial element and a high-density multifamily development would be developed on the rear of the parcel. The Corridor Enhancement (CE) overlay is proposed to be maintained along the Cedar Creek Grade corridor and extend into the property for one hundred twenty-five feet (125') from the Cedar Creek Grade right-of-way. This zoning would permit the use of a mixture of commercial and multifamily residential uses on this site.

The current RO-1 district allows the use of light-commercial (office) developments and is primarily for single-family residential uses. The B-2 zoning allows for more diversity in the commercial element and allows for a multifamily residential element, as well. Even though this proposal varies from the existing zoning district, it does provide a similar type of housing to what exists on the adjacent property to the north and generally confirms to the use of mixed housing types in the area.

This proposal, to develop the above-referenced project into a combined commercial and high-density residential district with a multifamily use and a PUD overlay, generally conforms to the Comprehensive Plan of the City of Winchester by allowing a varied residential use in this area and still providing a commercial use to serve the general area. This combination of uses and development of this site, as a result of this rezoning, will have a positive impact for the City of Winchester; it generally conforms to the Comprehensive Plan for this area.

Thank you for your attention to this matter. If you would have any questions or would require further information please do not hesitate to contact me.

Sincerely,

Timothy G. Painter, P. E.

c. Mr. Scott Rosenfeld
Cedar Creek Place, LLC
821 Apple Pie Ridge Road
Winchester, Virginia 22603

CEDAR CREEK PLACE
COMMERCIAL and APARTMENT COMPLEX
REZONING REQUEST PROFFER
(Conditions for this Rezoning Request)

Tax Map Number: 249-01-2
Owner: Cedar Creek Place, L.L.C.
Applicant: Painter-Lewis, P.L.C.

RECEIVED
OCT 11 2013

September 9, 2013
Latest Revision: October 11, 2013

Property Information

The undersigned applicant hereby proffers that in the event the Council of the City of Winchester (Council) shall approve the rezoning of 7.7076 acres from Residential Office District (RO-1) to Highway Commercial District (B-2) with a Planned Unit Development District (PUD) overlay and maintaining the Corridor Enhancement District (CE) along Cedar Creek Grade for 125' from the right-of-way line into the parcel (to include the commercial space and the recreational area along Cedar Creek Grade), then development of the subject property shall be done in conformity with the terms and conditions as set forth herein, except to the extent that such terms and conditions may be subsequently amended or revised by the applicant and such be approved by the Council in accordance with Virginia law. In the event that such rezoning is not granted, then these proffers shall be deemed withdrawn and have no effect whatsoever. These proffers shall be binding upon the applicant and their legal successor or assigns.

Any and all proffers and conditions, accepted or binding upon the aforementioned property, as a condition of accepting these proffers, shall become void and have no subsequent affect.

Site Planning Improvements

The undersigned applicant, who is acting on behalf of the owners of the above described property, hereby voluntarily proffers that, if the Council of the City of Winchester approves the rezoning, the undersigned will provide:

1. **Street and Access Improvements**
   - Design and construction of approximately 1120 feet of Private Street from the existing Cedar Creek Grade Right-of-Way to the private street section of Stoneleigh Drive in the Summerfield Luxury Apartment Complex to the north of this property.
   - Traffic calming measures shall be installed along this private street section to lessen the adverse effects of traffic in this apartment complex development.

2. **Interior Site Circulation**
   - Access shall be provided via interior driveways and drive aisles which connect to the proposed private street section to provide the needed access to Cedar Creek Grade Roadway.

3. **Site Development:**
   - A minimum separation distance of thirty-two feet (32') shall be maintained between all building pads.
   - A minimum separation distance of ten feet (10') shall be maintained between the building lines of the apartment buildings and the face of curb of the adjacent parking areas.
   - No apartment buildings shall be constructed closer than one hundred forty feet (140') of the Cedar Creek Grade Right-of-Way and the commercial shall be situated no closer than forty feet (40') of the Cedar Creek Grade Right-of-Way.
   - A minimum separation distance of six feet (6') shall be maintained between the building lines of the commercial buildings and the face of curb of the adjacent parking areas.
   - The architectural building layouts and characteristics shall generally conform to the floor plans and building elevations indicated in the Cedar Creek Place renderings, as prepared by Design Concept Inc. The building renderings referenced were submitted to the City of Winchester on September 11, 2013 and shall be considered part of this application to present a standard of quality to be used for this project. The exterior building materials shall be as follows:
     - The exterior siding finishes shall be stone or masonry or a combination thereof on all buildings for the main floor level.
     - The upper level exterior finishes shall be a combination of stone, masonry, or vinyl siding.
     - The roofing materials shall be Architectural grade asphalt shingles that will accent the color scheme of the buildings.

     The final combinations and color selections shall be determined at the time of the site plan submittal for final review and approval.

4. **Landscaping and Design:**
   - In the perimeter areas of the site where existing residential developments have been constructed, specifically along the eastern, western, and northern boundary lines, an opaque screen consisting of an evergreen hedgerow or double row of evergreens shall be constructed.

5. **Recreation:**
   - An active recreation and landscaping buffer shall be provided along the Cedar Creek Grade Right-of-Way in the areas not included as part of the commercial portion of this development. This area shall be dedicated to active recreation for use by the residents of this development. The active recreation element shall include a minimum five foot (5') wide walking trail with exercise stations that will become part of the local trail system for use by the residents and local public for a period of two (2) years after completion of the trail network. The permitted use by the local public shall be evaluated by the current ownership on an annual basis thereafter and may be restricted dependent upon the future changes in the development.

- Additionally, two bocce courts with community gazebo shall be constructed as part of this development that will be available for private use of the residents of this complex, only.

6. **Storm Water Management:**
   - All storm water management and storm water quality facilities shall be installed underground in accordance with the standards and specifications of the Winchester Public Works Department. These facilities shall be maintained by the owner of the development and be constructed so as to secure the safety of the public at all times.

The conditions proffered above and in accordance with the accompanying rezoning exhibit, entitled Conceptual Site Layout Plan, Exhibit "A", dated September 9, 2013, and as prepared by Painter-Lewis, PLC, shall be binding upon the heirs, executors, administrators, assigns and successors in interest of the Applicant and Owner. In the event the Council grants said rezoning and accepts these conditions, the proffered conditions shall apply to the land rezoned in addition to other requirements set forth in the City of Winchester Code.

Respectfully submitted,

PROPERTY OWNER

By: _____ Date: _____

STATE OF VIRGINIA, AT LARGE
COUNTY OF_____, To Wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____.

My Commission expires _____.

Notary Public _____

Trip Generation

Trip generation for the planned apartment complex was developed from the TripGen Software and is based on the Institute of Transportation Engineers Manual, Trip Generation Manual, 9th edition. The full build-out of the project is planned to occur by the year 2019. The resulting trips generated by the project are summarized as Scenario 3 in Table 1.

In addition to the trip generation resulting from the proposed project, several other potential development types were evaluated for comparison. These are also presented in Table 1.

Table 1 Trip Generation Comparisons

Scenario 1 - Developed under current RO-1 w/ single family detached dwellings

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Residential - single family detached (27 units)	210	27	8	23	31	23	12	35	312
Total New Trips			8	23	31	23	12	35	312

Scenario 2 - Developed under HR zoning w/o PUD overlay

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Apartments (108 units)	220	108	12	45	57	50	27	77	799
Total New Trips			12	45	57	50	27	77	799

Proposed Development

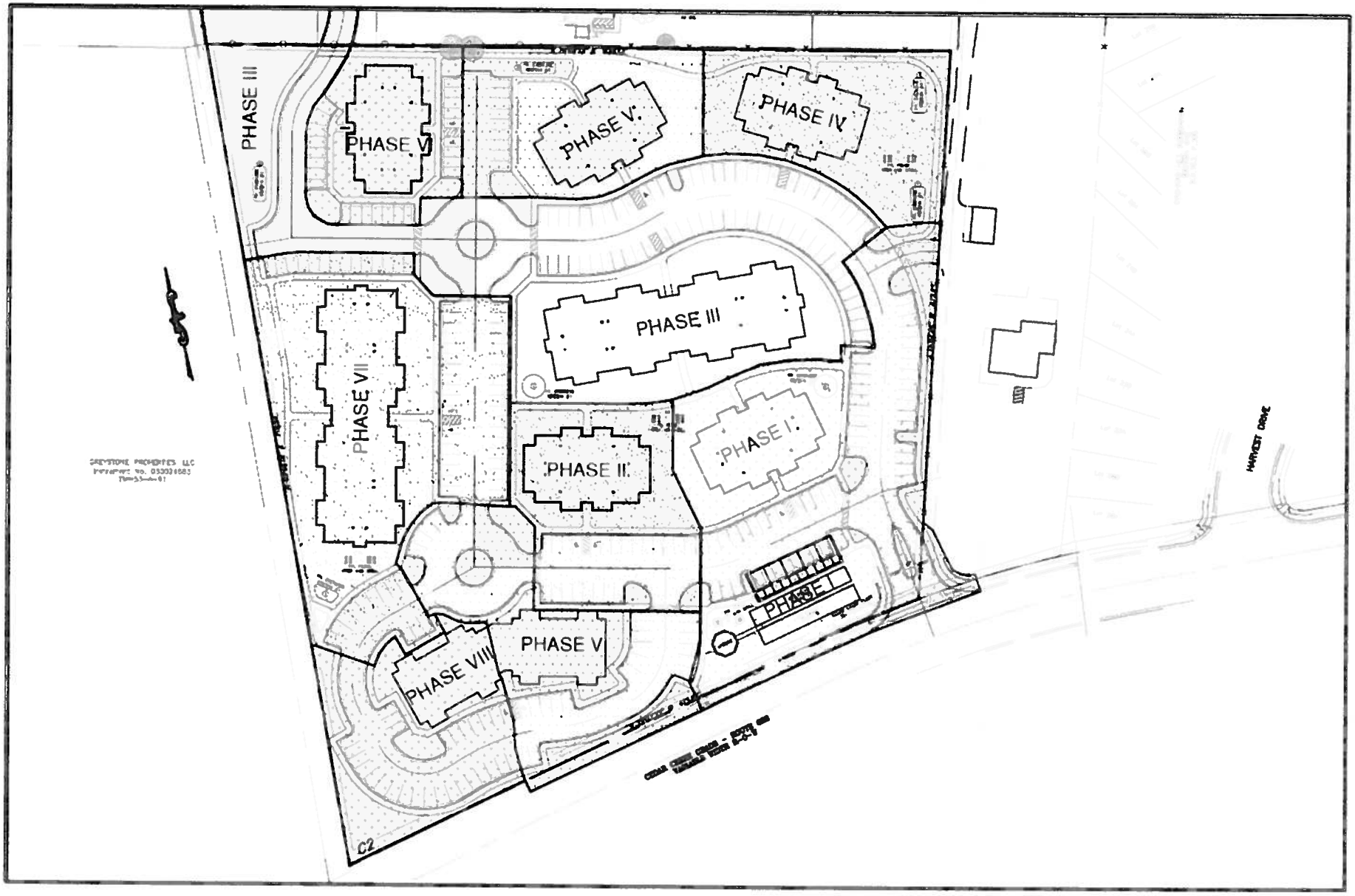
Scenario 3 - Developed under HR zoning with PUD overlay

Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Apartments (~~1124~~ 124 units)	220	124	13	51	64	56	30	86	875
Specialty Retail (8,500 sq. ft.)	826	8.5	16	16	32	32	26	58	544
Total New Trips			29	67	96	88	56	144	1419

now 918-464

Scenario 4 - Developed under B-2 zoning as Medical-Dental Offices

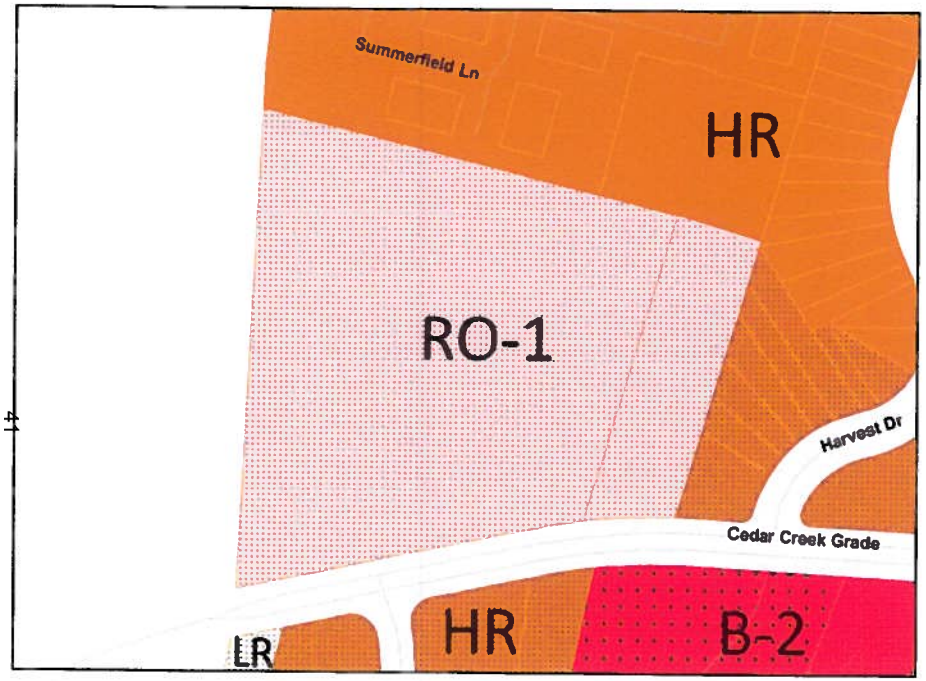
Land Use	ITE Code	Amount	AM Peak Hour In	AM Peak Hour Out	AM Peak Hour Total	PM Peak Hour In	PM Peak Hour Out	PM Peak Hour Total	Avg. Daily Trips
Medical-Dental Office Building (120,000 sq ft FAR = .35)	720	120	280	144	424	213	319	532	4,692
Total New Trips			280	144	424	213	319	532	4,692



PROJECT OVERVIEW

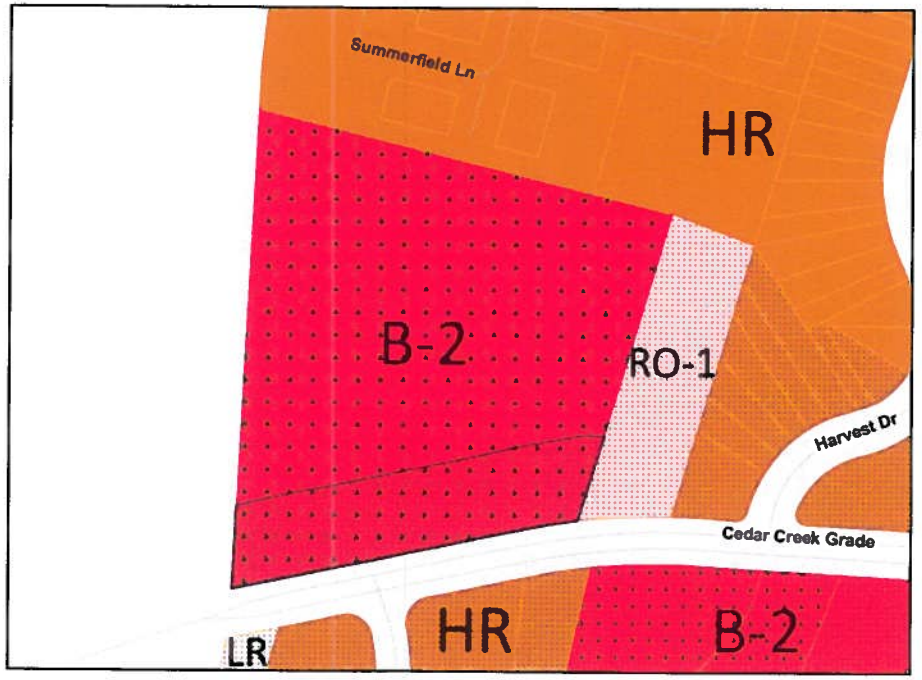
REZONING EXHIBIT
RZ-13-500

PREPARED BY WINCHESTER PLANNING DEPARTMENT
OCTOBER 1, 2013



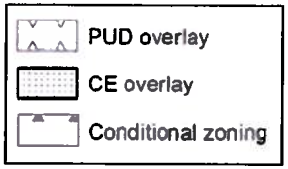
EXISTING

RO-1 (CE) ZONING FOR 940 CEDAR CREEK GRADE



PROPOSED

CONDITIONAL B-2 (PUD/part CE) ZONING FOR 940 CEDAR CREEK GRADE



AN ORDINANCE TO CONDITIONALLY REZONE 7.7076 ACRES OF LAND AT 940 CEDAR CREEK GRADE (Map Number 249-01-2) FROM RESIDENTIAL OFFICE (RO-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY TO HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) & CE DISTRICT OVERLAY

RZ-13-500

WHEREAS, the Common Council has received an application from Painter-Lewis, PLC on behalf of Cedar Creek Place, LLC to rezone property at 940 Cedar Creek Grade from Residential Office with Corridor Enhancement District overlay to Highway Commercial District with Planned Unit Development District overlay and Corridor Enhancement District overlay; and,

WHEREAS, the Planning Commission forwarded the request to Council on October 15, 2013 recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-13-500, Prepared by Winchester Planning Department, October 1, 2013*" because the proposed B-2 (PUD/CE) zoning supports the expansion of housing serving targeted populations, facilitates the connection of Stoneleigh Drive to Cedar Creek Grade, and provides for commercial space in support of the Commerce Revitalization/Infill character designation in the Comprehensive Plan. The recommendation is subject to adherence with the Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN EXHIBIT "A"' dated September 9, 2013 (last updated on October 11, 2013) and the submitted proffers dated September 9, 2013 and last revised October 11, 2013; 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 this property herein designated supports the expansion of housing serving targeted populations, facilitates the connection of Stoneleigh Drive to Cedar Creek Grade, and provides for commercial space in support of the Commerce Revitalization/Infill character designation in 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 Residential Office with Corridor Enhancement District overlay to Highway Commercial District with Planned Unit Development District overlay and Corridor Enhancement District overlay:

7.7076 acres of land at 940 Cedar Creek Grade as depicted on an exhibit entitled "*Rezoning Exhibit RZ-13-500 Prepared by Winchester Planning Department, October 1, 2013*".

BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to adherence with the Development Plan titled 'CONCEPTUAL SITE LAYOUT PLAN EXHIBIT "A"' dated September 9, 2013 (last updated on October 11, 2013) and the submitted proffers dated September 9, 2013 and last revised October 11, 2013.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 8/27/13 (work session), 9/10/13 (regular mtg) **CUT OFF DATE:** 8/21/13

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

ITEM TITLE:
CU-13-372 Request of Morris & Ritchie Associates on behalf of the City of Winchester for a conditional use permit to construct a telecommunications tower at 700 Jefferson Street *(Map Number 190-01-3)* zoned Education, Institution and Public Use (EIP) District.

STAFF RECOMMENDATION:
Approval with conditions

PUBLIC NOTICE AND HEARING:
Public hearing for 9/10/13 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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Planning	TS		8/21/13
2. Emergency Management			8/21/13
3. City Attorney			8/22/2013
4. City Manager			8-22-13
5. Clerk of Council			

Initiating Department Director's Signature: _____ 8/21/13
(Zoning and Inspections)

RECEIVED
AUG 21 2013
CITY ATTORNEY

APPROVED AS TO FORM:
8/22/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Aaron Grisdale, Director of Zoning and Inspections

L. A. Miller, Emergency Management Coordinator

Date: August 21, 2013

September 5, 2013 Update

Re: Conditional Use Permit (CU-13-372) – Public Safety Communications Tower

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THE ISSUE:
Request for CUP for installation of a new public safety communications tower at 700 Jefferson Street.

RELATIONSHIP TO STRATEGIC PLAN:
Goal #2 – Develop a High Performing Organization, Goal #4 Create a More Livable City for All, Management in Progress (2013-2014) – Public Safety Communications System
Provide City Council with information relating to the utilization of an alternate site located at Winchester Medical Center.

BACKGROUND:
City staff has received a conditional use permit application for the construction of a 237-foot radio communications tower on City owned property at 700 Jefferson Street. This request is part of the required upgrades to the City's public safety communication system that has been in the development stages for several years. (Full staff report is attached).
See attached Information from Motorola and Staff Report

BUDGET IMPACT:
No funding is required.
Alternate tower site will reflect cost increase. See attached from Motorola Solutions

OPTIONS:
- Approve with conditions recommended by the Planning Commission
- Approve with revised conditions
- Deny the application
- Consider utilization of alternate site

RECOMMENDATIONS:
Planning Commission and recommend approval with conditions as noted within the staff report on a 4-2 vote.

9-5-13

SUPPLEMENTAL STAFF REPORT
PUBLIC SAFETY COMMUNICATIONS TOWER
ALTERNATE SITE EVALUATION – WINCHESTER MEDICAL CENTER CAMPUS

THE ISSUE: Provide City Council with requested information relating to the utilizing an alternate location for the erection of the City's proposed Public Safety Communications Tower. Develop background information based on identified site on Winchester Medical Center Campus.

BACKGROUND: During the Council Work Session of August 27, 2013 Council requested an analysis of an alternate site for the erection of the proposed Public Safety Communications Tower be conducted. Council specifically identified a site on the campus of the Winchester Medical Center be considered in lieu of the proposed site at 700 Jefferson Street. Motorola Solutions, Teltronics, R. L. Kimball and city staff proceeded with the analysis including locating a probable site for the tower on the campus of Winchester Medical Center. Propagation studies were performed to identify the specifications of the tower enabling compliance with the system's performance standards, consideration of cost differential that may be associated with the alternate site, identification of the impact on project schedule and other items such as zoning were for the alternate site.

Attached for review and consideration are the following items:

- Cover letter crafted by Motorola Solutions
- Table 1 created by Motorola Solutions addressing estimated pricing and projected schedule modification.
- Aerial view of a selected site located southeast of the Health Professionals Building on the Winchester Medical Center Campus.
- Propagation map indentifying coverage based on the utilization of the same height tower (237') as proposed for the 700 Jefferson Street site.
- Propagation map based on the minimum required tower specification to provide coverage in accordance with the performance standard (95%-95%).
- Zoning specifications addressing tower height at the proposed location.
- Considerations related to the 700 Jefferson Street site.

BUDGET IMPACT: Utilization of the alternate tower site reflects an estimated project cost increase of $778,910.00.

ZONING CONSIDERATIONS:

The Zoning Ordinance has a maximum height for transmitting and receiving towers in the Medical Center district of 100-feet. For either a 237-foot or 450-foot tower a variance would need to be requested through the Board of Zoning Appeals. Additionally, should Council desire to select this location and move forward with the necessary approvals, the Conditional Use Permit process would need to start again from the beginning with a review and recommendation from the Planning Commission before being reviewed in full by City Council. Similar to the EIP district, the Medical Center (MC) zoning district does not have a required "fall zone" distance from the tower structure to adjacent properties.

ADDITIONAL CONSIDERATIONS/ADJUSTMENTS – JEFFERSON STREET SITE

- Supply additional substantial ground level screening at Jefferson Street fence line.
- Relocate tower structure 75' north of selected site providing reducing impact on properties located to the south should a full collapse of the tower occur.
- Remove all existing antennas and associated cabling located on elevated tank.
- Confine utilization of tower for public safety use.

MOTOROLA SOLUTIONS

Motorola Solutions, Inc.
7031 Columbia Gateway Dr., 3rd Fl.
Columbia, MD 21046-2289

Telephone: +1 410 712 6200
Fax: +1 410 712 6489

September 5, 2013

Mr. Dale Iman
City Manager
City of Winchester
15 N. Cameron St.
Winchester, VA 22601

Subject: Antenna site study for the Winchester Medical Center (Valley Health Systems) location

Dear Mr. Iman:

At the direction of City Council, Motorola has prepared a high level performance and budgetary feasibility evaluation of a transmitter site located on the Winchester Medical Center (Valley Health System) campus. None of the required approvals from landowners, federal, state, and city authorities has been obtained or is guaranteed.

Motorola has provided two 800MHz voice coverage maps that show the portable radio in-building coverage. The contracted performance standard requires 95% / 95% coverage (95% of the city area at 95% probability).

1. The first propagation study simply relocates the proposed Jefferson Street tower and equipment to the Winchester Medical Center campus. The propagation study shows coverage for 85% of the city using that configuration.
2. The second propagation study shows the minimum tower height at which the required 95% coverage can be provided. A 450 foot tower will be required.

Table 1 below provides budgetary and schedule estimates to implement the single site P25 trunked public safety radio system described in the Motorola proposal of February 29, 2012, substituting a 450 foot self-supporting tower at the Winchester Medical Center campus. These are budgetary guidelines to assist the city with the critical issues decision process, not quotes to provide services.

The relocation of the transmitter site from Jefferson Street to the Winchester Medical Center campus will require an estimated additional budget of $778,910 plus land acquisition costs and an estimated minimum project delay (schedule extension) of 368 days if all required approvals are obtained with minimum delay and without the need for additional resources to meet regulatory requirements.

Please note that a decision to use multiple sites will increase costs substantially beyond the proposed single site design. Site connectivity (microwave), simulcast technology upgrade, site acquisition and development, and system redesign will contribute to additional cost increases. If leased sites are substituted in lieu of city owned sites, then recurring lease costs are an additional City consideration.

Thank you,

Jansen Pieter-CPJ017

Digitally signed by Jansen Pieter-CPJ017
DN: cn=Jansen Pieter-CPJ017
Date: 2013.09.05 08:29:43 -04'00'

Pieter Jansen
Project Manager
Motorola Solutions, Inc

MOTOROLA SOLUTIONS

Motorola Solutions, Inc.
7031 Columbia Gateway Dr., 3rd Fl.
Columbia, MD 21046-2289

Telephone: +1 410 712 6200
Fax: +1 410 712 6489

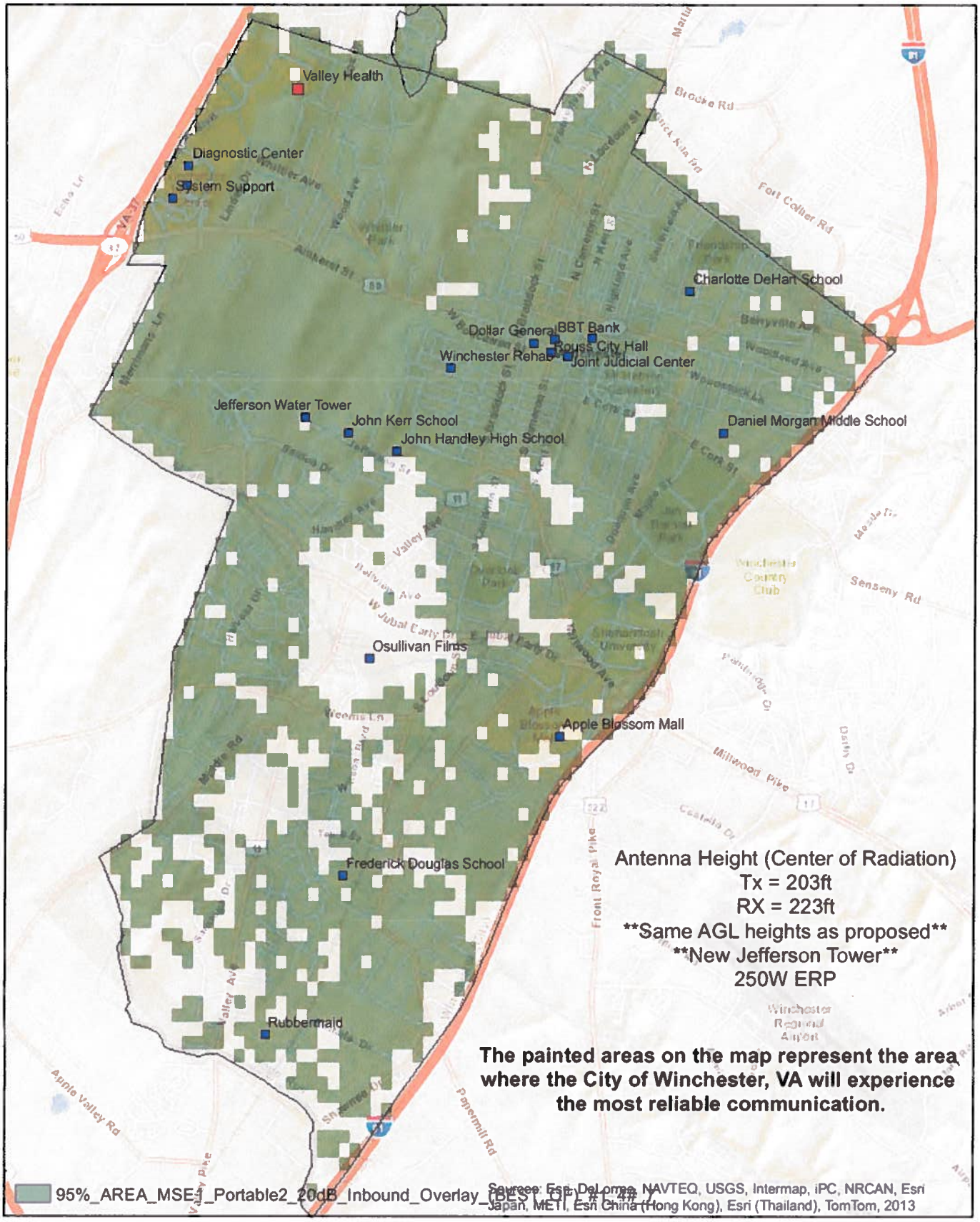
Table 1. Budget and Schedule Impact for Winchester Medical Center Campus Transmitter Site

Description	Estimated Additional Cost	Estimated Duration (days)	Estimated Schedule Extension	Notes
Land acquistion		120 to Denied	120	
Tower 450 ft	$199,973	28	14	Self-Supporting Tower
Tower enhancements	$115,847	14	14	FAA painted/Collocation/Strobe lights
FAA approval	$5,593	90 to Denied [1]	90	Helipad or height restrictions may apply.
FCC Frequency relicensing	$4,237	90 to Denied [1]	*	May not approve VHF and 800 MHz licenses at this height
Narrow band waiver extension(s)	$1,637	30 to Denied [1]	*	FCC response is unknown.
Engineering and Project management (additional - all phases)	$145,987	120	30*	Site plans, RF design, tower, MW, electrical, telco, grounding, CUP re-submittal.
Zoning approval, Coordination, Documentation	$17,288	120	*	Fall zone. Increased tower lighting requirement (multiple strobe).
NEPA/SHPO approvals	$6,780	90	60*	Tower height issues. Entrance corridor.
Site development	$281,568	120 to Denied [1]	40*	Additional compound and fencing - tower base size is doubled.
Budget Estimate	$778,910		368 Days	

* Concurrent task – A task that runs concurrently with other tasks and results in partial or no additional extension to the schedule (assumes all tasks occur in their minimum time frame).
1. Denied – If regulatory approval is denied then impact on schedule and budget impact is not defined.

Google earth

feet 1000
meters 300



0 0.225 0.45 0.9 Miles

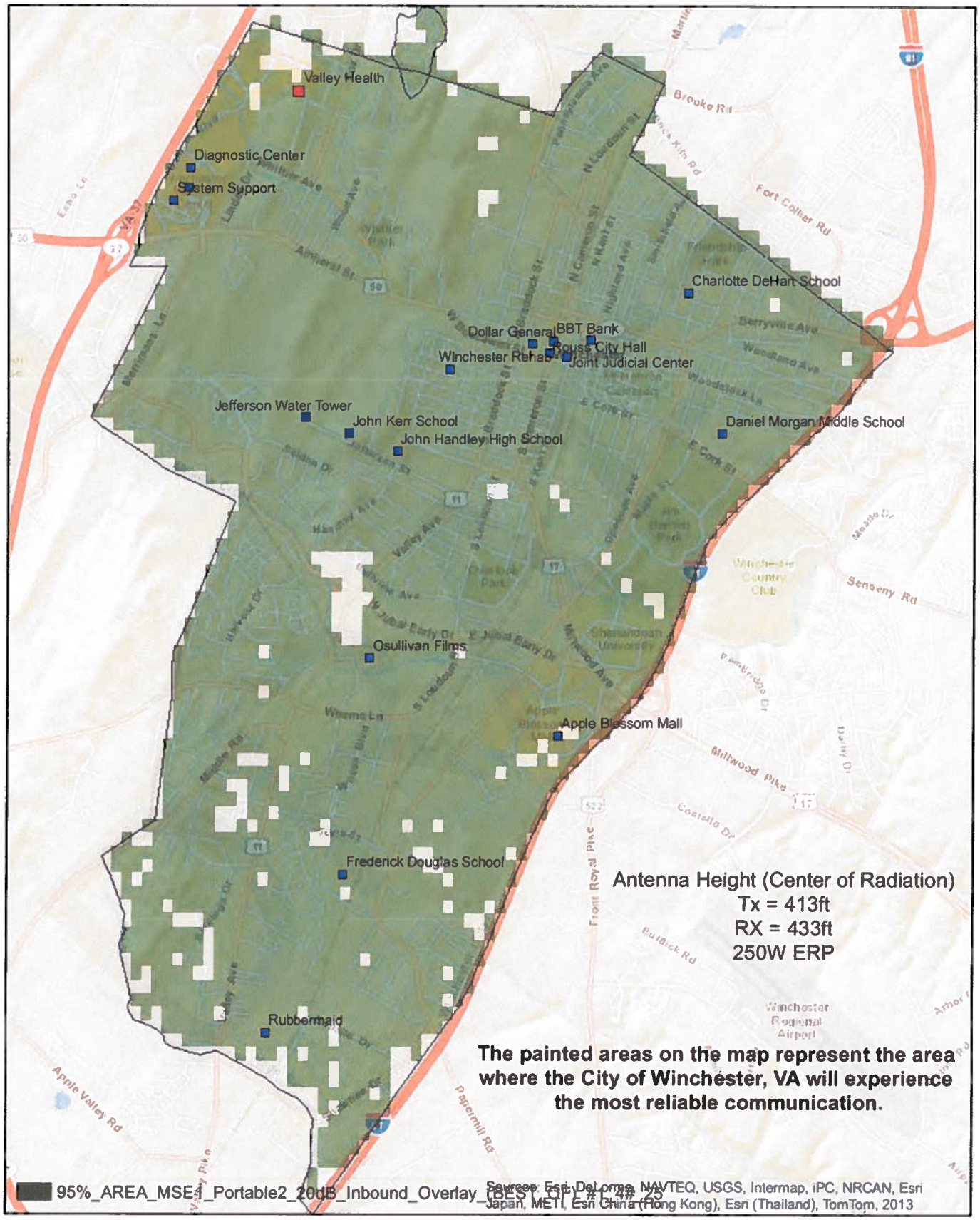
1 inch = 0.69 miles

Portable Inbound Coverage Worn on Hip w/ Swivel Case and RSM
20dB Building Penetration Loss Over Entire Winchester, VA Service Area

crk067-11

City of Winchester, VA For Informational Purposes Only

MOTOROLA Single Site Trunked 800MHz Voice System - DAQ 3.4



0 0.225 0.45 0.9 Miles

1 inch = 0.69 miles

Portable Inbound Coverage Worn on Hip w/ Swivel Case and RSM
20dB Building Penetration Loss Over Entire Winchester, VA Service Area

crk067-11

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Aaron Grisdale, Director of Zoning and Inspections

Date: August 21, 2013

Re: Conditional Use Permit (CU-13-372) – Public Safety Communications Tower

---

THE ISSUE:
Request for CUP for installation of a new public safety communications tower at 700 Jefferson Street.

RELATIONSHIP TO STRATEGIC PLAN:
Goal #2 – Develop a High Performing Organization, Goal #4 Create a More Livable City for All, Management in Progress (2013-2014) – Public Safety Communications System

BACKGROUND:
City staff has received a conditional use permit application for the construction of a 237-foot radio communications tower on City owned property at 700 Jefferson Street. This request is part of the required upgrades to the City's public safety communication system that has been in the development stages for several years. (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 recommend approval with conditions as noted within the staff report on a 4-2 vote.

City Council Work Session
August 27, 2013

CU-13-372 Request of Morris & Ritchie Associates on behalf of the City of Winchester for a conditional use permit to construct a telecommunications tower at 700 Jefferson Street *(Map Number 190-01-3)* zoned Education, Institution and Public Use (EIP) District.

REQUEST DESCRIPTION
The request is for a 237-foot radio communications tower to be located behind the existing John Kerr Elementary School at 700 Jefferson Street adjacent to the existing elevated water tank. The tower will be of a lattice-style construction.

AREA DESCRIPTION
The subject parcel is located on the western terminus of Jefferson Street. The parcel is zoned Education, Institution, and Public Use (EIP) District. The property to the north and east is similarly zoned EIP, and properties on the south, west are zoned Low Density Residential (LR) District. The vicinity is composed of residential, agricultural, and educational uses. On the east is the John Kerr Elementary School, a single family residential property is directly to the south, and the Glass Glen Burnie Foundation property.

STAFF COMMENTS
This request involves the installation of a 230-foot radio communications tower to support a Public Safety Radio Communications System to upgrade the City's infrastructure and improve the service coverage throughout the community. The main portion of the tower and all antennas will be no taller than the proposed 230-foot height. However, there is a lightning rod and aircraft beacon that will be mounted on the top of the tower, for an absolute height of 237-feet. The Winchester Zoning Ordinance establishes several maximum telecommunications tower heights throughout the City of Winchester; however, the EIP district does not have a maximum tower height.

Part of the requirement of the public safety communications system is a federally mandated upgrade to the existing infrastructure that the City utilizes, and is a time sensitive request as well. The project was supposed to be completed by January 1, 2013; however due to technical issues with the process, the City received a one year extension until 2014.

Motorola responded to a City of Winchester Public Safety Radio Network RFP dated December 15, 2011. This was a competitive procurement. The City asked for four different possible options: Option A—Full 800MHz Trunking Radio Network, Option B—800MHz/VHF Hybrid System, Option C—VHF Compliant System and Option D—Alternative Solutions. Motorola chose to submit a proposal to the City of Winchester under the Option D—Alternative Solutions scenario. This enabled the City to provide a single site 800MHz trunking/VHF system that would meet or exceed the specifications set forth in the City's

RFP. In addition, the design ensures that the City will be able to utilize its portable radios in a 20db building which was one of the most important criteria in the RFP.

It was desired to keep the system design to a simplistic, single transmitter site which eliminates the need for duplicate infrastructure, building, generator, monitoring system, UPS, antenna, and line. Also, when introducing additional sites into the mix the City would have to incorporate simulcast technology most likely utilizing microwave. The additional items mentioned above translate into much higher costs for the City.

Motorola's goal was to present the City with mission critical, public safety solution that would meet the RFP specifications and be within the City's budget. The project committee felt that utilizing the Jefferson Street location, which had always been the City's antenna "farm," was the proper call based on the central location (eliminating additional sites) and the water tank already in place.

The current system used by the Winchester Police and Fire and Rescue departments has several technical limits that restrict their staffs from being able to have full and adequate coverage throughout their services areas. For example, the current system does not have adequate signal to penetrate larger buildings and buildings with thicker walls resulting in a loss of communication when police and firefighters enter certain buildings in the City. The proposed system will correct this deficiency.

A cultural survey was required to be conducted to determine what, if any, impacts there would be for the existing historic and cultural sites in the vicinity of the proposed tower. Several photographs were included in order to help illustrate that point.

At the end of the cultural report by CRI (Cultural Resources Inc.), it is important to note that while in a few areas of the City the tower will be visible, there was <u>no adverse impact</u> associated with the construction of this new tower on any of the historic properties surveyed.

Section 18-2-1.2 allows for CUP consideration of communications facilities in the EIP district. There are a number of requirements which must be met for proposed towers. Those requirements, along with staff comments on the applicant's compliance as demonstrated in the submitted materials, are as follows:

1) *All possible means for sharing space on existing towers or on existing building or other structures have been exhausted and no alternative other than constructing a new tower exists.*

   The applicant notes in a letter dated July 8, 2013 that numerous alternative options were investigated throughout the City. The alternate options considered were utilization of existing telecommunications towers, construction of several towers throughout the City, and utilization of the existing elevated water tank. Each of the alternatives did not provide evidence that the alternatives would provide the design and operational criteria in a manner that was economically feasible for the City.

2) *The applicant has executed a Letter of Intent to share space on their tower and negotiate in good faith with other interested parties.*

   As noted in the July 8, 2013 letter from the applicant, City Council instructed that this tower have adequate space on the facility to accommodate future placement of antennas as a means of sharing space.

3) *The tower height is no more than the minimum to accomplish required coverage.*

Originally the height of the tower was designed to be 250-feet. After further analysis, it was determined that a 230-foot tower would be able to achieve the requirements of the updated public safety communications system. There is no maximum height limitation for the EIP district provided in the Zoning Ordinance.

4) *The tower construction is of a design which minimizes the visual impact and the tower and other facilities have been camouflaged and/or screened from adjacent properties and rights-of-way to the maximum extent practicable.*

The tower is of a lattice-style design, which is necessary for the structural stability of the tower due to the height. The support equipment is proposed to be screened from the public right-of-way by a row of evergreen trees to help minimize the visual impact from the street.

5) *The proposal must provide for the retention of existing stands of trees and the installation of screening where existing trees do not mitigate the visual impact of the facility. Such screening must, at a minimum, meet the requirements of Section 19-5-6.4d of the Ordinance. The Planning Commission may recommend and the City Council may require additional trees and screening when the minimum provisions do not mitigate adverse visual impacts of the facility.*

The applicant is not proposing to eliminate any trees in the area. The support equipment will be located adjacent to the tower structure, with evergreen screening along the southern property boundary along Jefferson Street.

6) *The electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute (ANSI) or standard issued by the Federal Government subsequent to the adoption of this Ordinance.*

The applicant will provide the necessary documentation to affirm that the proposal will meet the Federal Government frequency emission standards. Additionally, the tower proposal is undergoing review with the required FAA approvals for the proposed location and height of the structure. A warning beacon is required to be installed at the top of the tower facility. In the Elecromagnetic Emissions (EME) report submitted to the City, the documentation shows that the proposed EME from the public safety communications tower will not exceed the acceptable exposure limits for the general public.

Staff believes that the proposal meets the requirements outlined in Section 18-2-1.2 of the Zoning Ordinance. The request, while proposed to be the tallest telecommunications tower structure in the City, will be the minimum needed in order to accomplish the requirements of the upgraded public safety communications system. Should the structure fail, there are no adjacent residences or occupied structures that are in danger of being in a "fall-zone." The applicant submitted a drawing that indicates that the proposed fall zone would be largely contained within the subject parcel of 700 Jefferson Street.

RECOMMENDATION

During their August 20, 2013 meeting, the Planning Commission forwarded **CU-13-372** recommending approval on a 4-2 vote, 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;

Timbrook Public Safety Center
231 East Piccadilly Street
Winchester, VA 22601

Telephone: (540) 545-4721
FAX: (540) 542-1314
Website: www.winchesterva.gov

July 8, 2013

Mr. Timothy A. Youmans, Planning Director
City of Winchester
Rouss City Hall
15 N. Cameron Street
Winchester, VA 22601

Re: Emergency Communications Project
Jefferson Street Extended Water Tower Site

Dear Mr. Youmans,

The City of Winchester is in need of a Public Safety Radio Communications System to upgrade the radio infrastructure of the city and provide service throughout the community. The infrastructure of this project involves several components one of which is a 230' radio communications tower to be located as indicated above.

The construction and establishment of a transmit/receive site for Public Safety Communications is the result of two studies performed by L. R. Kimball and Associates as authorized by the City of Winchester. The first of these studies was to determine the condition of the City's Public Safety Communications System while the second study involved the establishment of a conceptual design for a communications system that would support current and future Public Safety communications needs.

The first study found that the city had no true communications system but rather had multiple stove pipe systems each of which were inadequate to serve the community. The various stove pipe systems had insufficient frequencies, were undependable based on age and condition, did not provide redundancy of service and due to the age of the equipment were not candidates for an upgrade.

The second study was to determine the type of radio communications system that would best suit the City while providing a state of the art radio communications system for the City in a cost effective manner. After much discussion and research it was determined that a Project 25, digital, trunked system operating in the 800 MHz spectrum was the best option. While engaged in the design phase of the study it was determined that Federal Communications Commission regulations pertaining to the VHF frequency spectrum which the City currently utilized was subject to Narrowbanding requirements to which the City would be subject to by January 1, 2013. This regulatory issue further influenced the decision to convert to the 800 MHz spectrum as sufficient VHF frequencies were not available to support the City's radio communications requirements.

L. R. Kimball and Assoc. presented several design options from which a Request for Proposal (RFP) was crafted. The design specified that the radio communications system would be full service and provide 95%

coverage, 95% of the time with a portable in a 20dB signal loss building coverage. The basic conceptual design identified the probable need for multiple transmit/receive sites but permitted respondents to the RFP flexibility in design if they guarantee the 95%, 95% 20dB coverage specifications. Motorola Solutions presented a design that would require a single transmit/receive site and guarantee radio coverage based on the design specifications. The original propagation studies identified design specifications would be provided by the installation of a 250' communications tower. Further design and environmental considerations were discussed and it was determined that design specifications would be met utilizing a 230' communications tower. The 230' communication tower was determined to be the minimum acceptable from an operational and environmental perspective. A single communications tower was preferred rather than multiple sites and towers as each additional site and tower was estimated to have an associated cost of $750k to $1.25m including the additional cost of simulcast equipment required to utilize multiple towers. The erection of a 230' communications tower is critical to the overall operational design and is considered to have the least overall environmental, aesthetic, and financial impact.

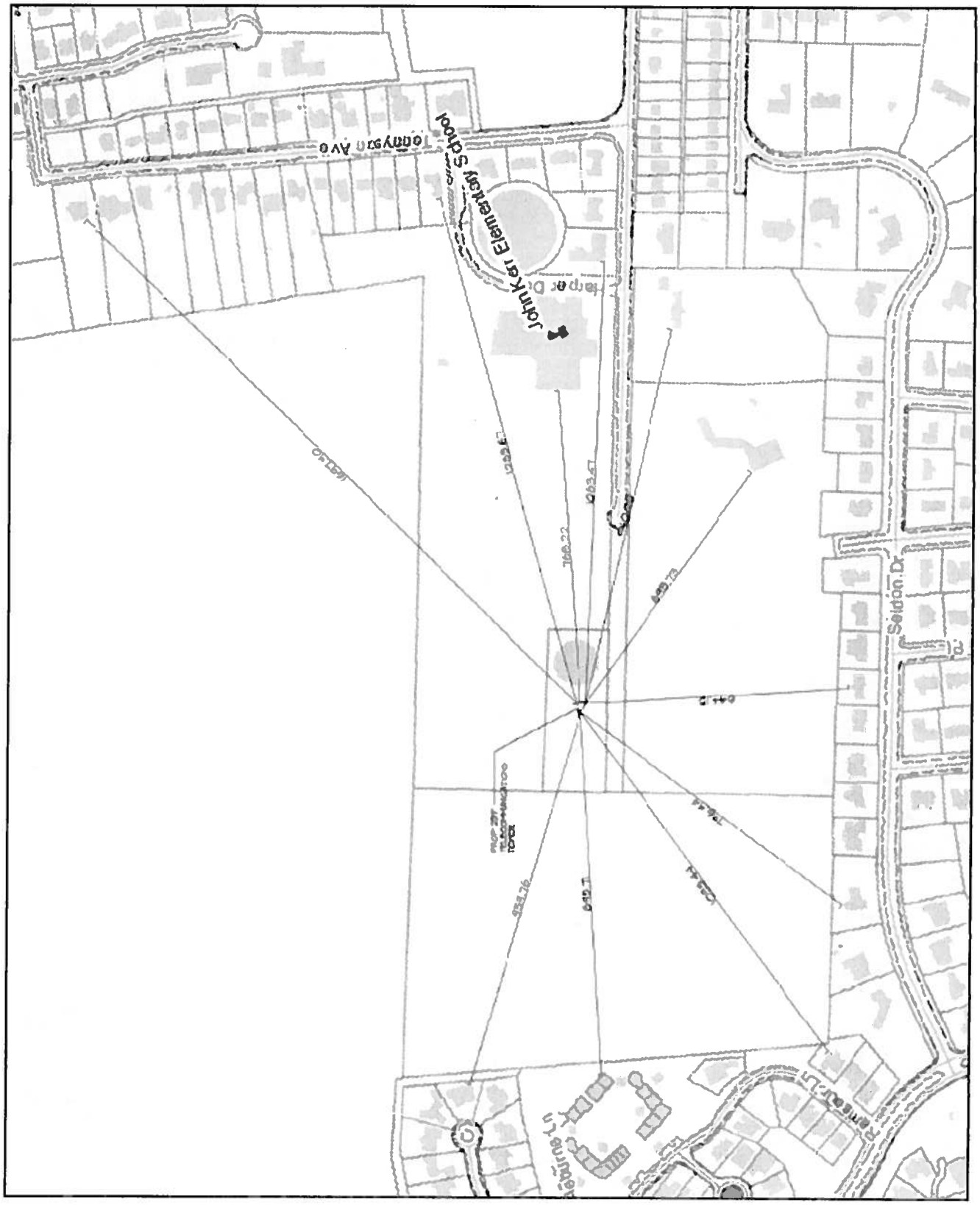
Consideration was given to alternatives other than multiple communications tower sites including but not limited to the utilization of existing communications towers, the utilization of the elevated tank as a supporting structure as well as multiple communications towers at various sites as identified above. In each case analysis of the alternatives did not provide evidence that the alternatives would provide the design and operational criteria in a manner that was economically feasible for the City.

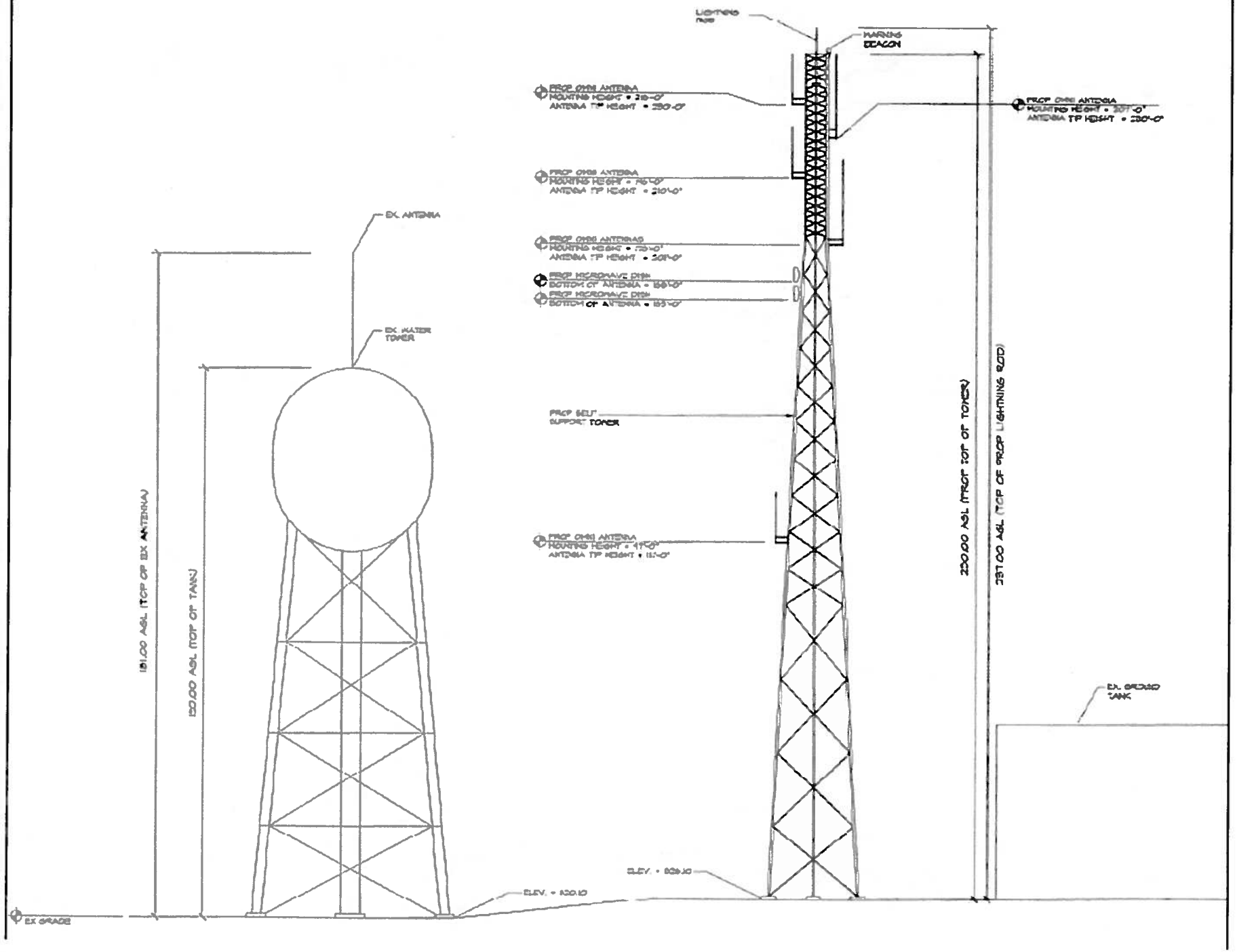
City Council is cognizant of the need to protect resources while providing emergency communications and services to the community in an economically feasible manner. As a result of Council's fundamental values regarding this project they have instructed that the tower have the structural integrity to support the future placement of antennas as a means of sharing space. The current design addresses the desires of Council to share space thus reducing the need for additional communications towers within the City and providing a potential revenue stream. As of this date a letter of intent relating to sharing of space has not been distributed. However, discussions have been initiated with various concerns relating to the location and marketability of the proposed communications tower.

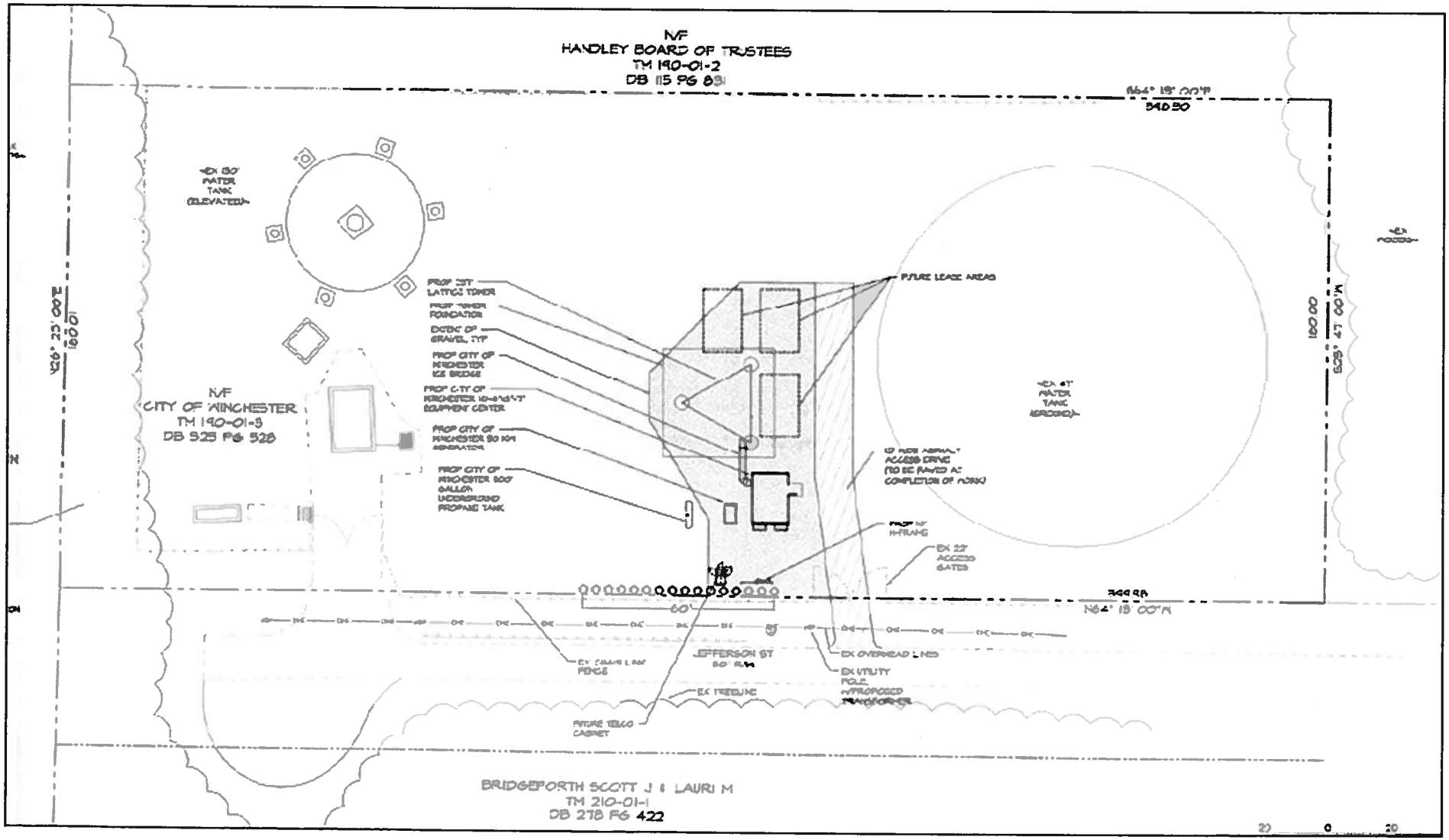
Motorola Solutions Inc. will provide all necessary information to the City of Winchester as it pertains to modeling a predictive electromagnetic exposure (EME) study. Motorola Solutions understands what information the Federal Communications Commission (FCC) Office of Engineering and Technology (OET) Bulletin 65 "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields" has asked in order to model the maximum permissible exposure (MPE). Motorola Solutions will submit the results to the City of Winchester, it's consultant, or other parties identified in writing by the City of Winchester.

Respectfully,

Dale Iman, City Manager, Director of E. M.


Tommyson Ave
John Kerr Elementary School
Seldon Dr
Edgemere Ln
Bruce Ln
1063.47
1063.47
766.22
649.73
641.3
PROP 297
TELECOMMUNICATIONS
TOWER
833.76
649.7
766.44
1063.40


LIGHTING ROD
WARNING BEACON
PROP OMNI ANTENNA
MOUNTING HEIGHT = 210'-0"
ANTENNA TIP HEIGHT = 230'-0"
PROP OMNI ANTENNA
MOUNTING HEIGHT = 210'-0"
ANTENNA TIP HEIGHT = 230'-0"
PROP OMNI ANTENNA
MOUNTING HEIGHT = 76'-0"
ANTENNA TIP HEIGHT = 210'-0"
PROP OMNI ANTENNAS
MOUNTING HEIGHT = 73'-0"
ANTENNA TIP HEIGHT = 208'-0"
PROP MICROWAVE DISH
BOTTOM OF ANTENNA = 158'-0"
PROP MICROWAVE DISH
BOTTOM OF ANTENNA = 153'-0"
PROP SELF SUPPORT TOWER
PROP OMNI ANTENNA
MOUNTING HEIGHT = 41'-0"
ANTENNA TIP HEIGHT = 111'-0"
EX. ANTENNA
EX. WATER TOWER
181.00 AGL (TOP OF EX ANTENNA)
150.00 AGL (TOP OF TANK)
230.00 AGL (TOP OF TOWER)
237.00 AGL (TOP OF PROP LIGHTNING ROD)
EX. GROUND TANK
ELEV. = 829.10
ELEV. = 820.10
EX GRADE


N/F
HANDLEY BOARD OF TRUSTEES
TM 190-01-2
DB 115 PG 831
N/F
CITY OF WINCHESTER
TM 190-01-3
DB 525 PG 528
EX 150' WATER TANK (ELEVATED)
EX 47' WATER TANK (GROUND)
PROP 25' LATTICE TOWER
PROP TOWER FOUNDATION
EXTENT OF GRAVEL, TYP
PROP CITY OF WINCHESTER ICE BRIDGE
PROP CITY OF WINCHESTER 10-8'x8'x7' EQUIPMENT CENTER
PROP CITY OF WINCHESTER 50 KW GENERATOR
PROP CITY OF WINCHESTER 500 GALLON UNDERGROUND PROPANE TANK
FUTURE LEASE AREA
12' WIDE ASPHALT ACCESS DRIVE (TO BE PAVED AT COMPLETION OF WORK)
PROP 10' H-FRAME
EX 22' ACCESS GATES
EX CHAIN LINK FENCE
JEFFERSON ST
EX OVERHEAD LINES
EX UTILITY POLE, PROPOSED TRANSFORMER
EX TREELINE
FUTURE TELCO CABINET
BRIDGEPORTH SCOTT J & LAURI M
TM 210-01-1
DB 278 PG 422
N64° 19' 00"W
N26° 23' 00"E
S26° 47' 00"W
100.00'
60'
20 0 20

MOTOROLA SOLUTIONS

CITY OF WINCHESTER
Antenna Site Determination
August 15, 2013

One or more of the Commissioners are interested in learning more about the site analysis and decision process that led to the selecting of this site on Jefferson Ave.

Motorola Solutions, Inc. (Motorola) Response:

Motorola responded to a City of Winchester Public Safety Radio Network RFP dated December 15, 2011. This was a competitive procurement. The City asked for four different possible options: Option A—Full 800MHz Trunking Radio Network, Option B—800MHz/VHF Hybrid System, Option C—VHF Compliant System and Option D—Alternative Solutions.

Motorola chose to submit a proposal to the City of Winchester under the Option D—Alternative Solutions scenario. This enabled us to provide a single site 800MHz trunking/VHF system that would meet or exceed the specifications set forth in the City's RFP. In addition, the design ensures that the City will be able to utilize its portable radios in a 20db building which was one of the most important criteria in the RFP.

We wanted to keep the system design to a simplistic, single transmitter site which eliminates the need for duplicate infrastructure, building, generator, monitoring system, UPS, antenna, and line. Also, when introducing additional sites into the mix the City would have to incorporate simulcast technology most likely utilizing microwave. The additional items mentioned above translate into dollars.

Motorola's goal was to present the City with mission critical, public safety solution that would meet the RFP specifications and be within the City's budget. We felt that utilizing the Jefferson Street location, which had always been the City's antenna "farm," was the proper call based on the central location (eliminating additional sites) and the water tank already in place.

For candidate sites reviewed please, refer to "APPENDIX C - CANDIDATE RADIO SITES" column "OPTION FOR NEW PUBLIC SAFETY SITE Yes/No, Why".

APPENDIX C - CANDIDATE RADIO SITES

COMMON NAME	ADDRESS	X/Y COORDINATES	GROUND ELEVATION	STRUCTURE HEIGHT	OWNER	AVAILABILITY	OPTION FOR NEW PUBLIC SAFETY SITE Yes/No, Why
Timbrook Public Safety Center	231 East Piccadilly Street	78-9-39.643 W 39-11-5.292 N	720'	50 ft tower	City of Winchester	Available	No. Site will not meet coverage specification and would require additional sites to meet specifications. Tower will not structurally support additional antenna system.
Jefferson Water Tower	540 Jefferson Street	78-11-01.80 W 39-10-48.10 N	866'	150 Water Tower	City of Winchester	Available	No. Site will not meet coverage specification and would require additional sites to meet specifications. (Note this location is best candidate for a new tower to meet the coverage specification with single site)
Frederick Douglas Elementary School	100 W. Cedarmeade Ave.	78-10-53.674 W 39-9-6.812 N	744'	Land only	Winchester Public Schools	Available	No. Site will not meet coverage specification and would require additional sites to meet specifications.
Health Professionals Building	1775 North Sector Court	78-11-9.427 W 39-12-1.066 N	866'	83'	Valley Health Systems	Unknown	No. Site will not meet coverage specification and would require additional sites to meet specifications.
North Loudoun Parking Garage	50 East Fairfax Lane	78-9-50.584 W 39-11-16.306 N	728'	728' includes structure height at roof (NW corner)	Winchester Parking Authority	Available	No. Site will not meet coverage specification and would require additional sites to meet specifications.
Winchester City Yards	310 E. Pall Mall Street	78-9-44.721 W 39-10-37.572 N	702'	Land only	City of Winchester, (Northeast of Spreader Storage Area)	Available	No. Site will not meet coverage specification and would require additional sites to meet specifications.
Virginia Avenue Charlotte DeHart Elementary School	550 Virginia Ave.	78-9-8.052 W 39-11-20.829 N	712'	Land only	Winchester Public Schools (North of School Parking Lot)	Available	No. Site will not meet coverage specification and would require additional sites to meet specifications.

John Handley High School	425 Handley Blvd..	78-10-41.366 W 39-10-42.935 N	852'	Land only	Winchester Public Schools	Available	No. Site will not meet coverage specification or would require additional sites to meet specifications
Active Living Center/War Memorial Building	1001 East Cork Street	78-9-18.867 W 39-10-29.826 N	716'	Land only	City of Winchester	Available	No. Site will not meet coverage specification or would require additional sites to meet specifications.
Shentel Stadium	1122 Ralph Shockey Drive	78-9-13.96 W 39-9-57.065 N	853'	Land only	Shenandoah University outside city limits	Unknown	No. Site will not meet coverage specification or would require additional sites to meet specifications.
Shentel Tower	701 Fairmont Ave	78-10-9.173 W 39-11-57.389 N	870'	201'	National Fruit Products	Unknown	No. Site will not meet coverage specification or would require additional sites to meet specifications.

CRI
CULTURAL RESOURCES, INC.

July 26, 2013

Mr. Andrew Hendricks, P.G.
Geo-Technology Associates, Inc.
43760 Trade Center Place, Suite 110
Sterling, Virginia, 20166

RE: Architectural Visual Effects Survey for the Proposed City of Winchester Telecommunications Tower, Winchester, Virginia

Dear Mr. Hendricks:

A review of the materials available in the VDHR site files for architectural resources within the APE for the proposed City of Winchester telecommunications tower located at 700 Jefferson Street in Winchester, Virginia was conducted in preparation for the field survey. The purpose of the file review was to determine if any of the previously recorded resources within the APE for visual effects were eligible for or listed on the National Register of Historic Places (NRHP) and if so to determine if the proposed cellular installation would adversely affect these resources. The research determined that 21 recorded architectural resources were within the APE and that four resources Willow Grove (034-0089), Willow Grove (Jacob Baker House) (034-0090), The Third Battle of Winchester (034-0456) and the Second Battle of Winchester (034-5023) have been determined eligible for listing on the NRHP, and six resources Glen Burnie (138-0008), Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004) are listed on the NRHP; the remaining resources have not been evaluated or have been determined not eligible for listing on the NRHP. Six of those resources have not been individually evaluated but are noted as contributing to the Winchester Historic District (Figures 1-5; Table 1). The review of these architectural resources was conducted by Ellen M. Brady, President and Sandra DeChard, Senior Architectural Historian. A site visit to the project area was conducted by Taft Kiser and Tracey McDonald on July 3, 2013. Visual assessment analysis and determination of visual effect were conducted by Ellen M. Brady, Senior Principal Investigator with assistance from Ms. DeChard.

The investigations were conducted with reference to state (*Guidelines For Conducting Historic Resource Survey in Virginia* (Virginia Department of Historic Resources {VDHR} 2011) and federal guidelines (*Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* [United States Department of the Interior {USDI} 1983]) as well as in accordance with the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process* effective March 7, 2005.

1049 Technology Park Drive, Glen Allen, Virginia 23059 - Phone: (804) 355-7200 - Fax: (804) 355-1520
PO Box 6329 Norfolk, Virginia 23508 - Phone (757) 626-0558 - Fax (757) 626-0564
www.culturalresources.net

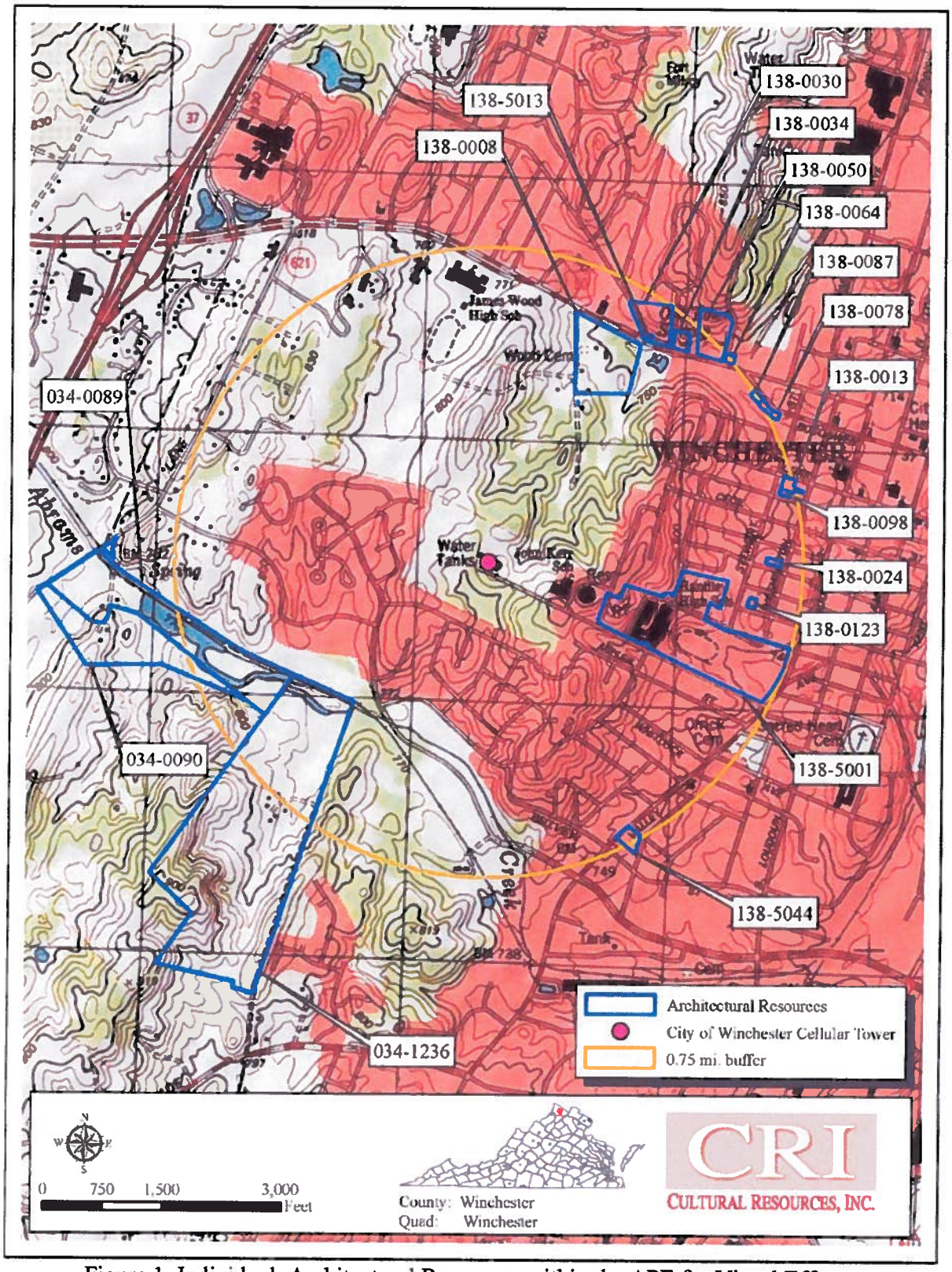


Figure 1. Individual Architectural Resources within the APE for Visual Effects.

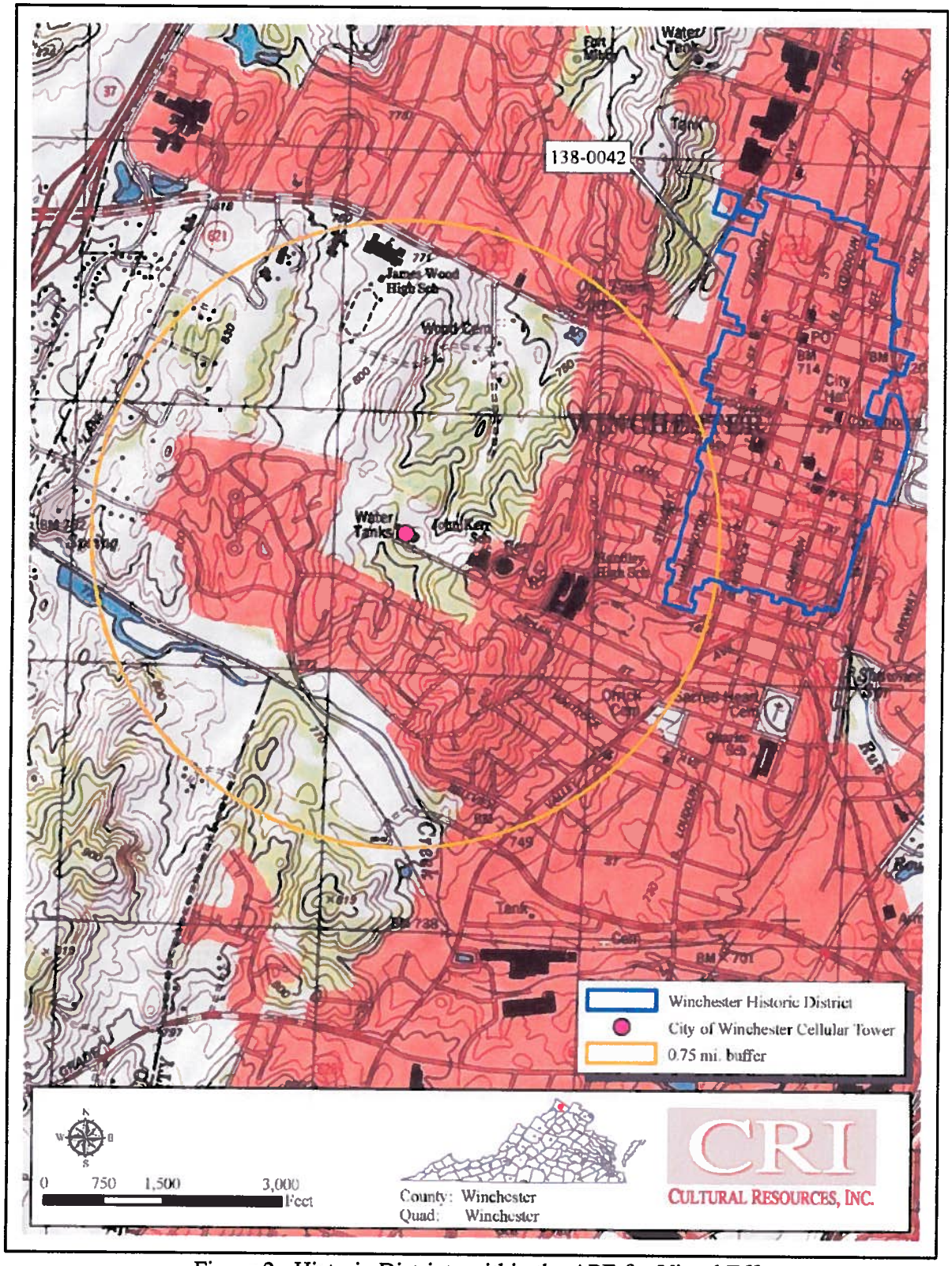


Figure 2. Historic Districts within the APE for Visual Effects.

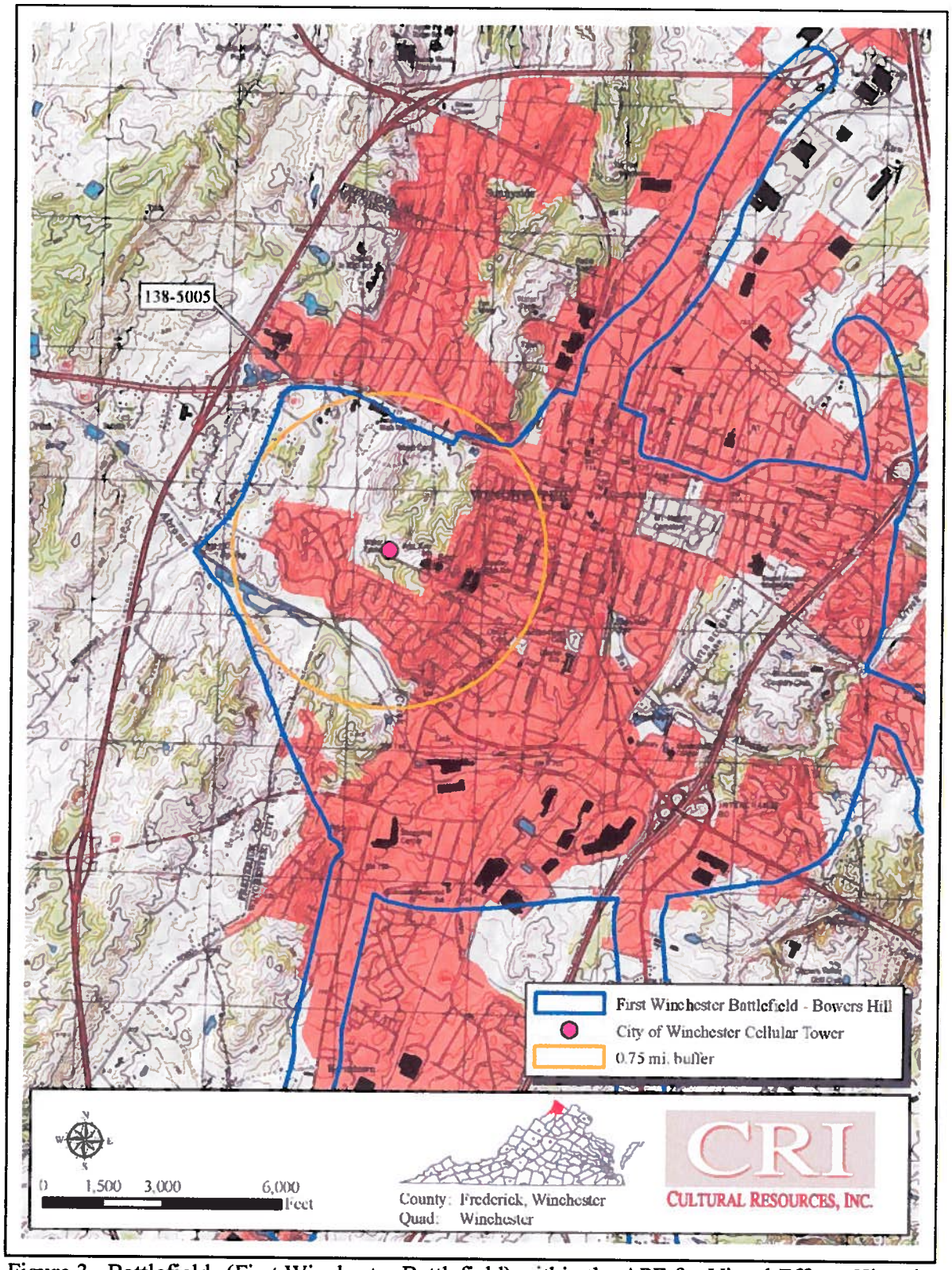


Figure 3. Battlefields (First Winchester Battlefield) within the APE for Visual Effects Historic Districts.

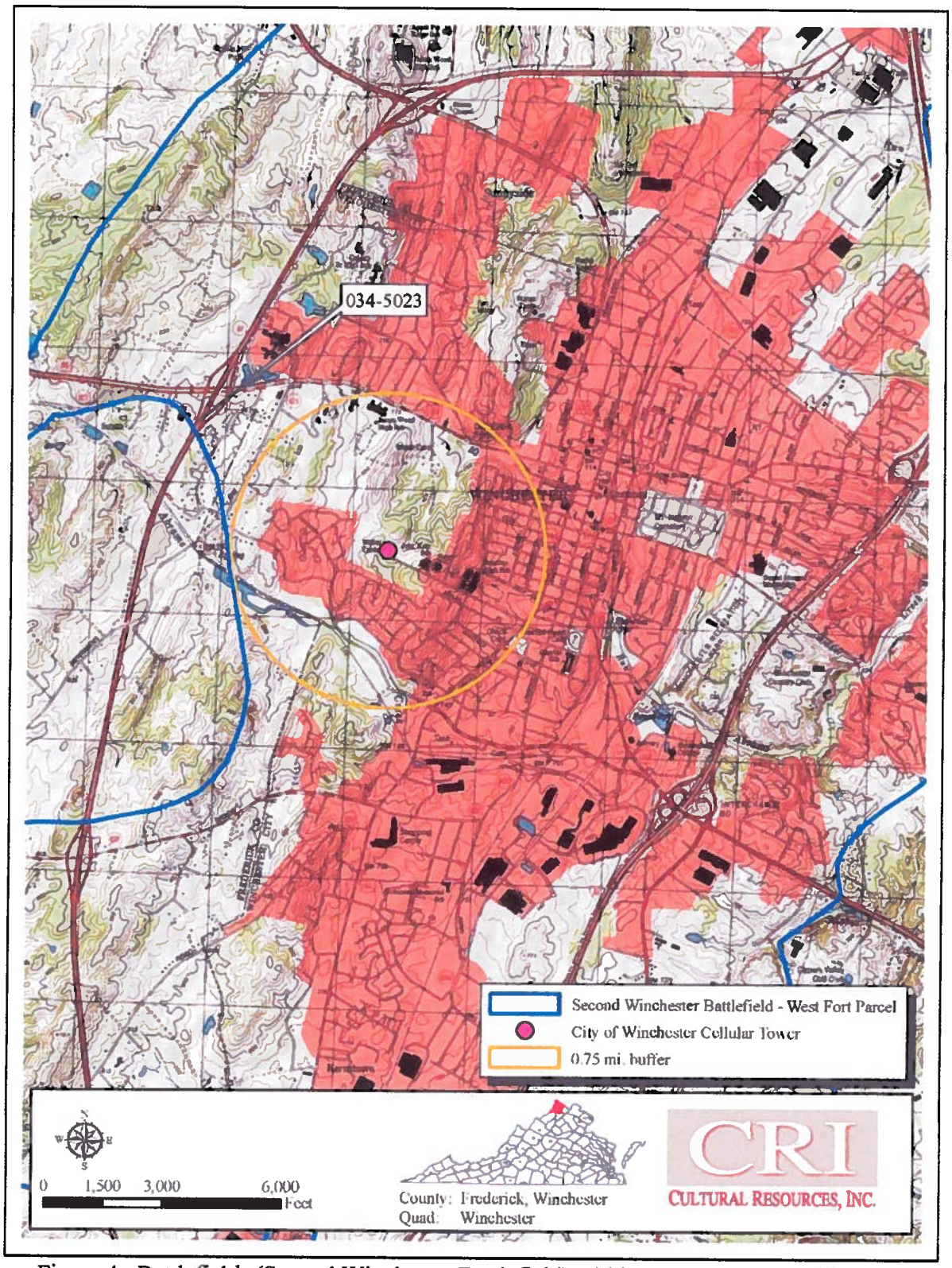


Figure 4. Battlefields (Second Winchester Battlefield) within the APE for Visual Effects Historic Districts.

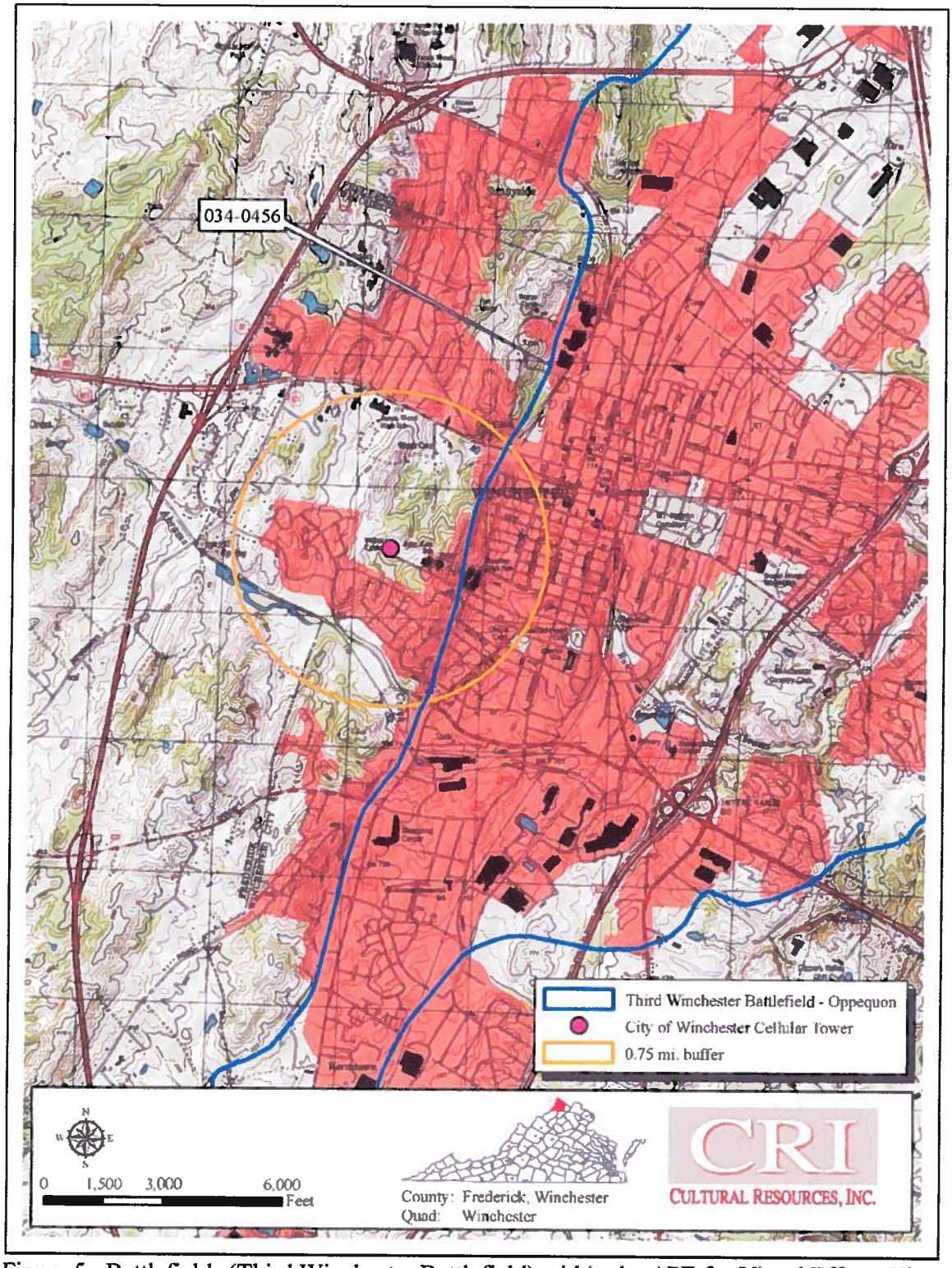


Figure 5. Battlefields (Third Winchester Battlefield) within the APE for Visual Effects Historic Districts.

Table 1. Previously Recorded Architectural Resources within APE

DHR No.	Property Name	Eligible/Listed	Notes
034-0089	Willow Grove	Y	Eligible
034-0090	Willow Grove (Jacob Baker House)	Y	Eligible
034-0456	Third Battle of Winchester (Oppequon Battlefield)	Y	Eligible
034-1236	Penbrook-Cove Farm (Thomas Cook House)	N	Not Eligible- Primary Resource Destroyed
034-5023	Second Winchester Battlefield (Apple Pie Ridge/West Fort Parcel)	Y	Eligible
138-0008	Glen Burnie	Y	NRHP
138-0013	Col. Richard E. Byrd House (Mackey)	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0024	Ward House, 521 S Washington St	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0030	Hawthorne	Y	Eligible
138-0034	Hexagon House	Y	NRHP
138-0042	Winchester Historic District and Boundary Increase	Y	NRHP
138-0050	House, 514 Amherst Street (Selma)	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0064	Building, 338 Amherst Street	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0078	Winchester Little Theatre (Penn Central Train Depot), 317-21 W Boscawen	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0087	Building, 325-31 W Boscawen	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0098	House, 216 W Clifford	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-0123	House, 216 W Pall Mall St	N	Not Evaluated- Contributing to Winchester Historic District 138-0042
138-5001	Handley High School	Y	NRHP
138-5005	First Winchester Battlefield (Winchester I/Bowers Hill)	N	Not Eligible
138-5013	Old Town Spring (Federal Spring)	N	Not Evaluated
138-5044	Coca-Cola Bottling Plant, 1720 Valley Avenue (Rt 11)	Y	NRHP

Summary of Architectural Resources Considered for Visual Effects Assessment

Ten architectural resources within the APE, Willow Grove (034-0089), Willow Grove (Jacob Baker House (034-0090), The Third Battle of Winchester (034-0456) and the Second Battle of Winchester (034-5023), Glen Burnie (138-0008), Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and

the Coca-Cola Bottling Plant (138-5004), met the criteria for visual assessment. The remaining resources have not been evaluated individually or have been determined not eligible for listing on the NRHP.

Willow Grove (034-0089)
There is little information in the site form for this resource other than it is associated with the Jacob Baker House and was determined eligible in 1987.

Willow Grove/Jacob Baker House (034-0090)
This mid-19th century Greek Revival brick dwelling was built ca. 1848, however, it is possible that this is not the original Baker family residence. The family acquired the land in 1755 and probably had their original home on or near the site of the current house. The house was determined eligible under Criterion C for Architecture (VDHR Site Form).

Third Battle of Winchester (034-0456)
On the morning of September 19th, Sheridan began moving west toward Winchester, sending Brigadier General James H. Wilson's cavalry across Opequon Creek down the Berryville Pike. Confederate General Ramseur had focused his men on the western side of the canyon closer to Winchester, leaving the eastern entrance vulnerable with only pickets that were easily overrun. The three Union infantry corps arrived after the delayed movement along the Pike, and joined the already engaged cavalry of Wilson in moving on the Confederate front. Just before noon, Union Generals Grover, Ricketts, and Getty advanced in that order from right to left on Generals Gordon, Rodes, and Ramseur along the Confederate line. Grover's XIX Corps had a brief breakthrough against Gordon's Division, but were eventually counterattacked, resulting in close to 1,500 casualties for the Federals in less than an hour (Kennedy 1998:315). Ramseur was briefly pushed back by the VI Corps until Rodes came from the rear to stop the advance. Union General Russell's men counterattacked Rodes to stop the Confederate push, resulting in the deaths of both General Rodes and Russell (Kennedy 1998:315, Salmon 2001:362).

By late afternoon Sheridan chose to press the matter by sending General George Crook's two divisions of the VIII Corps to attack the left flank of Gordon. Crook's men drove the Confederate left flank back to the north of Red Bud Run, creating an open hole for Sheridan's cavalry to push through and attack at the height of the infantry combat. Meanwhile US Captain Henry DuPont's eighteen cannons assaulted Gordon from a hill opposite his position, allowing the Union infantry to push the Confederates beyond Red Bud Run near the Hackwood House, and back towards Winchester (Kennedy 1998:316, Salmon 2001:362). By nightfall Winchester was in Union control, leaving Sheridan victorious but at a cost of over 5,000 Union casualties. The Confederates lost over 3,600 men, but Early's Army remained intact near Strasburg at Fisher Hill (Kennedy 1998: 316). The Battlefield has been determined eligible and is located east of the proposed tower. The PotNR area defined by ABPP is located well outside the APE and located east outside of the City of Winchester.

Second Battle of Winchester (034-5023)
Confederate Gen Robert E. Lee ordered Gen. Ewell to clear the northern Shenandoah Valley of Federal opposition after the Battle of Brandy Station, June 9, 1963. Ewell's forces converged on Winchester's garrison commanded by Gen. Milroy. Milroy was determined to make a stand

in the supposedly strong fortifications west and north of town. Fighting occurred on the afternoon on June 13, 1863 but on June 14th the Confederate Louisiana Brigade captured the West Fort leaving Milroy in an untenable position. After dark, Milroy abandoned his remaining entrenchments in an attempt to retreat to Charles Town. Confederate Gen. Edward "Allegheny" Johnson's division marched at night and before daylight of June 15th they cut off Milroy's retreat just north of Winchester at Stephenson's Depot. More than 2500 Federals surrendered. The proposed tower is located within a core area of the battlefield, however this portion of the battlefield does not retain integrity and the PotNR defined area for this battlefield is located North of the proposed tower and the City of Winchester.

Glen Burnie (138-0008)
Glen Burnie was the seat of James Wood, Sr., who is believed to have built a log building with stone chimneys on this site about the time of his marriage to Mary Rutherford in 1738. The main section of the present structure was built by Robert Wood, the youngest son of Col. James Wood, according to family records. The current owner, Mr. Julian W. Glass, believes that a part of the house dates to the original building. The first meetings of the Frederick County Court (organized in 1743) were held in James Wood's "Office" in the yard at Glen Burnie. James Wood served as the Clerk of the Frederick County Court until his death in 1759. In 1744 Col. Wood requested permission of the county justices to lay off a number of lots for a town, first called Opequon, then Frederick Town and finally Winchester (VDHR Site Form). Glen Burnie is listed on the NRHP under Criteria A and C.

Hawthorne (138-0030)
Hawthorne is a Late Georgian- to Federal-style stone dwelling located on an approximately five-acre parcel on Amherst Street in the western portion of the City of Winchester, Virginia. The main portion of the house was constructed ca. 1811 and rests on parts of an 18th-century foundation. The surviving foundations likely date from the ownership of James Wood, Jr., son of Winchester's acknowledged founder, Col. James Wood. The present building dates from the first decade of the 19th century and was one of a few residences reported to have been constructed in Winchester by builder Lewis Barnett. In addition to the main dwelling is the ca. 1816 springhouse and spring, a site that from its earliest years helped to define the estate. Hawthorne is eligible for the National Register at a local level under Criteria A, B, and C for its local significance as well as its architecture (VDHR Site Form). The resource was listed on the NRHP in June of 2013.

Hexagon House (138-0034)
The Hexagon House is located at 530 Amherst Street in the city of Winchester. Built between 1871-1873, the two-story, five-course American bond brick structure is covered by a low pitch roof. In plan the building is hexagonal with a central chimney serving corner fireplaces on the first and second floors. The Hexagon House, is significant as the only 19th century hexagonal house standing in Virginia. The building was partially influenced by Orson S. Fowler's "A Home for All, or the Gravel Wall Mode of Building" (1853), a handbook that popularized the polygonal house as the most practical, economical and healthful in plan for Americans. In keeping with Fowler's recommendation, the Hexagon House has ventilators in the principal rooms to remove "bad" air. (VDHR Site Form and NRHP Nomination). The House was listed under Criterion C for its architectural significance.

Winchester Historic District (138-0042)
The Winchester Historic District is approximately forty-five city blocks in size and envelopes both commercial and residential properties. The district follows a grid plan, eighty percent of which lies within the city boundaries set following the Wood and Fairfax additions of 1758 and 1759. The district is bordered to the east by the Town Run, the railroad line, the Mt. Hebron Cemetery, and a small industrial tract. The northern boundary follows historic city limits. Notable examples of buildings within the district include a series of late 19th-century Italianate houses on the west side of the 300 block of N. Braddock, Stonewall Jackson's Headquarters (Gothic Revival, 1854, 415 N. Braddock), "Fairmont" (Georgian, 1812, 1830; 311 Fairmont), AME Church (vernacular Gothic Revival, 1878, 428 N. Loudoun), and 303 and 445 Fairmont (Italianate, ca. 1875-1880) (VDHR Site Form and NRHP Nomination). In 2003 and 2012 extensions to the historic district were proposed. Current mapping does not appear to reflect the most recent boundary expansions however individual resources noted to be contributing to the historic district outside the mapped boundary were considered during the evaluation.

Handley High School (138-5001)
John Handley High School is situated on a hill overlooking a broad park-like campus in a residential area southwest of the central business district of the city of Winchester, Virginia. The property is bounded by Valley Avenue to the east, Jefferson Street to the south, Tennyson Avenue to the west, and Handley Boulevard to the north. John Handley High School is one of the most impressive Neoclassical Revival schools in Virginia. Designed by Cleveland, Ohio, architect Walter R. McCornack, the school was completed in 1923. Handley High School is noted as an outstanding example of the Neoclassical Revival style. Handley High School is also significant in the history of education in Virginia. Believed to be the first and only privately endowed public school in the Commonweatlh, the school was constructed with proceeds from a private trust given to the City of Winchester by Judge John Handley of Scranton, Pennsylvania (VDHR Site Form and NRHP Nomination). The Handley High School is listed under Criteria A and C.

Coca-Cola Bottling Plant (138-5044)
The Coca Cola Bottling Works building, located at 1720 Valley Avenue in Winchester, Virginia, was constructed in 1940-1941. The complex was used to bottle Coca-Cola and eventually became a Coca-Cola distribution center before closing in 2006. The building retains architectural integrity with few alterations to the original section, although a rear, one-story, brick wing was added in 1960 and a large, two-story, brick-veneered, concrete-block warehouse wing was built in 1974. The original two-story, four-bay, brick building is in the Art Deco style, popular for commercial buildings of the era. The building was designed by Davis & Platt, Inc., a building contractor based in Washington, DC. T The period of significance is 1940-1957 (VDHR Site Form and NRHP Nomination). The resource was listed under Criteria A and C.

Visibility Evaluation

During the field survey portion of the project, an overall visual assessment was conducted to obtain a general view of the surrounding landscape. To facilitate the viewing of the proposed emergency communications tower site from vantages within the APE a weather balloon was lifted to the height of the proposed emergency communications tower on the proposed tower site.

The balloon test served to simulate the height and location of the proposed emergency communications tower and provided a quantitative measure of visibility of the installation. The balloon was extended to 250 feet, the height of the proposed self-support tower. A second balloon was flown at 200 feet for scale and stability. The purpose of the test was to determine if the proposed tower would be visible from the four NHRP-eligible resources including Willow Grove (034-0089), Willow Grove (Jacob Baker House) (034-0090), The Third Battle of Winchester (034-0456) and the Second Battle of Winchester (034-5023), and the six NRHP-listed resources Glen Burnie (138-0008), Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004) within the defined 0.75-mile APE for visual effects.

Photographs were taken from thirty-eight locations across the APE to cover all the resources within the APE. Due to overlapping resources photos are referenced by street location and not resource number except when current photos of resources were taken where possible. Table 2 lists the resources with reference to photo locations and photo numbers and tower visibility.

Table 2. Table of Recorded Architectural Resources within APE and Photo Locations and Photo Numbers.

DHR No.	Property Name	Eligible/Listed	Photo Location	Visible	Photo #
034-0089	Willow Grove	Y- Eligible	No Access within APE Closest Photo Location at similar elevation is 14	No	42
034-0090	Willow Grove (Jacob Baker House)	Y- Eligible	No Access within APE Closest Photo Location at similar elevation is 37	No	55
034-0456	Third Battle of Winchester (Opequon Battlefield)	Y- Eligible	2-6; 24-35	No	1, 3-5, 7-9, 11, 13-14, 17, 20, 23, 34-36, 53
034-1236	Penbrook-Cove Farm (Thomas Cook House)	N – Not Eligible Destroyed	No Access within APE closest photo location is 36	No	49
034-5023	Second Winchester Battlefield (Apple Pie Ridge/West Fort Parcel)	Y- Eligible	All	Only from 4 locations- 12, 17, 19, 38	1-5; 7-10; 11; 13-14; 17; 20; 23; 25; 27; 29; 31-55
138-0008	Glen Burnie	Y-NRHP	19; 20; 21	Only from 19	28-33

DHR No.	Property Name	Eligible/Listed	Photo Location	Visible	Photo #
138-0013	Col. Richard E. Byrd House (Mackey)	N- Contributing to HD	28	No	16-17
138-0024	Ward House, 521 S Washington St	N- Contributing to HD	31	No	12-13
138-0030	Hawthorne	Y-NRHP	21; 22; 23	No	25-27; 29
138-0034	Hexagon House	Y-NRHP	23	No	24-25
138-0042	Winchester Historic District and Boundary Increase	Y- NRHP	28; 31; 32	No	10-13; 15-17
138-0050	House, 514 Amherst Street (Selma)	N- Contributing to HD	24	No	21; 23
138-0064	Building, 338 Amherst Street	N- Contributing to HD	24	No	22-23
138-0078	Winchester Little Theatre (Penn Central Train Depot), 317-21 W Boscawen	N- Contributing to HD	25	No	18; 20
138-0087	Building, 325-31 W Boscawen	N- Contributing to HD	25	No	19-20
138-0098	House, 216 W Clifford	N- Contributing to HD	28	No	15; 17
138-0123	House, 216 W Pall Mall St	N- Contributing to HD	32	No	10-11
138-5001	Handley High School	Y-NRHP	1; 33-35	No	1-2; 4-5
138-5005	First Winchester Battlefield (Winchester I/Bowers Hill)	N-Not Eligible	1-17; 20-21; 23-38	Only visible from 12, 17 & 38	1-5; 7-9; 11; 13; 14; 17; 20; 23; 25-31; 34-36;38-55
138-5013	Old Town Spring (Federal Spring)	N-Not Evalauted	21	No	28-29
138-5044	Coca-Cola Bottling Plant, 1720 Valley Avenue (Rt 11)	Y- NRHP	4-6	No	6-9

During the site visit and balloon test it was determined that the balloon was barely visible from Photo Locations 12, 17 and 19 and visible from Location 28 (Photos 32, 38, 43, and 54). Photo simulations were done from the locations were the balloon was visible (Photos 33, 39, 44, 45). The tower will not be visible the majority of the locations. Two resources Willow Grove (034-0089), Willow Grove (Jacob Baker House (034-0090) have their primary resources located outside of the APE and public access was not available to the portion of the property that falls within the APE. Photos taken at the same elevation close to the edge of the APE indicate that the tower will not be visible from these two resources. The tower will not be visible from Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042) or any of the contributing resources to the historic district included those outside the mapping district boundary, Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004).

The proposed tower is located south of Glen Burnie (138-0008), and will be slightly visible from the northwest corner of the NRHP listed boundary. The proposed tower will not be visible from other locations on the property and will not be visible from the Museum of the Shenandoah Valley located just outside the boundary.

The proposed tower falls within two battlefields (First Battle of Winchester (138-5005) and the Second Battle of Winchester (034-5023) and a third battlefield (Third Battle of Winchester (034-0456)) is located within the APE. The First Battle of Winchester has been recommended not eligible for listing the NRHP. The Second Battle of Winchester has been determined eligible for listing on the NRHP. The proposed tower location falls within the core area, as defined by the Civil War Sites Advisory Commission and American Battlefield Protection Program (ABPP) for both battlefields. In 2009 ABPP evaluated all battlefields in Virginia and defined potential National Register boundaries for the battlefields (PotNR). No PotNR areas were defined for the First Battle of Winchester. A PotNR was defined for the Second Battle of Winchester but is located well north of the proposed tower location and the City of Winchester. The Third Battle of Winchester is located east of the proposed tower location. The PotNR area for the Third Battle of Winchester is located east of the City of Winchester and does not fall within the APE. The tower will not be visible from locations within the Third Battle of Winchester within the APE. The proposed tower will be slightly visible from a few locations within the Second Battle of Winchester.

The data gathered during the site visit indicated, that the tower is located such that tree cover and topography makes it not visible from the NHRP- eligible resources Willow Grove (034-0089), Willow Grove (Jacob Baker House (034-0090), The Third Battle of Winchester (034-0456), and NRHP listed properties Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004). The tower will be slightly visible from the northwestern corner of boundary of Glen Burnie (138-0008) but will not be visible from the remainder of the property. The tower will be slightly visible from a few locations within the Second Battle of Winchester (034-5023). However, large portions of the surrounding area, and within the battlefield boundaries, are developed, particularly south and east of the proposed installation. It is recommended that the proposed emergency communications tower will have **no adverse effect** on the four NHRP-eligible resources Willow Grove (034-0089), Willow Grove (Jacob Baker House (034-0090), The Third Battle of Winchester (034-0456) and the Second Battle of Winchester (034-5023), and the six NRHP- listed resources Glen Burnie (138-0008), Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004).

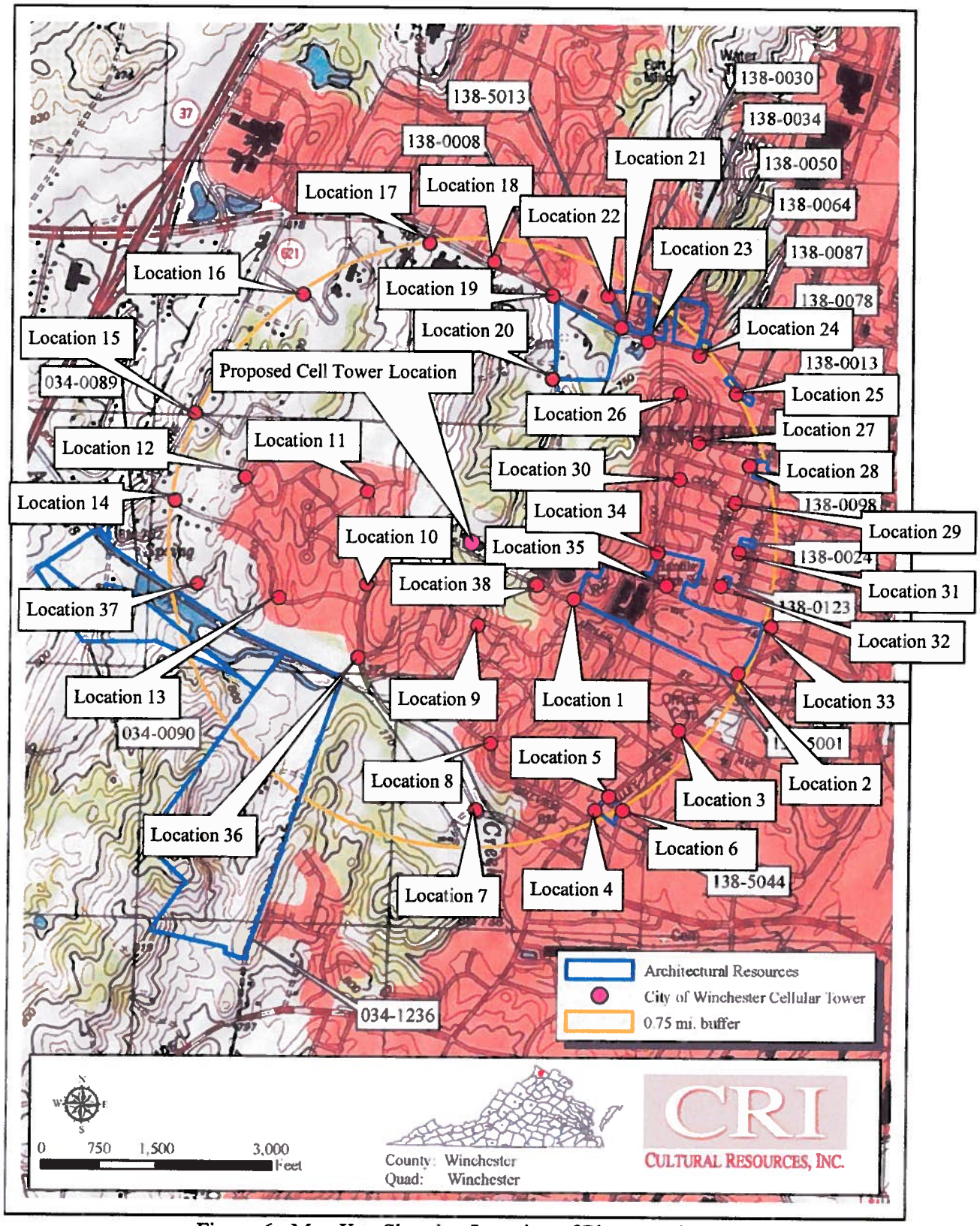


Figure 6. Map Key Showing Location of Photographs.

Conclusions

View shed analysis of the NHRP- ligible resources Willow Grove (034-0089), Willow Grove (Jacob Baker House) (034-0090), The Third Battle of Winchester (034-0456), and NRHP-listed properties Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004), within the APE, determined that the proposed 250 foot City of Winchester emergency telecommunications tower located at 700 Jefferson Street in Winchester, Virginia will not be visible from the NHRP- eligible resources Willow Grove (034-0089), Willow Grove (Jacob Baker House (034-0090), The Third Battle of Winchester (034-0456), and NRHP listed properties Hawthorne (138-0030), the Hexagon House (138-0034), the Winchester Historic District (138-0042), Handley High School (138-5001) and the Coca-Cola Bottling Plant (138-5004). The tower will be slightly visible from the northwestern corner of boundary of Glen Burnie (138-0008) but will not be visible from the remainder of the property. The tower will be slightly visible from a few locations within the Second Battle of Winchester (034-5023), however these views do not adversely affect the resource. It is recommended that the proposed tower will have **no adverse effect** on the above resources. Should you have any questions or would like additional information, please do not hesitate to contact me at 757-626-0558 or by email at ebrady@culturalresources.net.

Sincerely,

Ellen M. Brady
President

MOTOROLA SOLUTIONS

City of Winchester, Virginia
Electromagnet (EME) Assessment

August 15, 2013

Attached is the Motorola Solutions, Inc EME assessment that provides the estimation of EME Exposure and compliance.

Summary of estimated EME and compliance:
The proposed antenna systems at the Jefferson site are estimated compliant with 800 MHZ, PTP (Point to Point Microwave), VHF and Low Band antennas.

Please refer to the document "City of Winchester, Virginia - EME ASSESSMENT" dated August 14, 2013 for regulations used and data.

Pieter Jansen
Project Manager
Motorola Solutions, Inc

MOTOROLA SOLUTIONS

City of Winchester, Virginia - EME ASSESSMENT

August 14th 2013

Executive Summary

A computational assessment was carried out to provide an estimation of the EME exposure and compliance distances from the City of Winchester antennas and associated transmitters, relative to the *new* communication system described in the following.

The compliance is established with respect to the US FCC regulations [1]. The assessment was carried out using the methodologies specified in [1]-[2]. The following table provides the compliance distances for *general public* and *occupational-type* exposure at the Jefferson Tower Site for the City of Winchester, Virginia:

800 MHz antenna	Locations facing the antennas	Ground level
General public exposure	1.0 m (39")	All locations compliant
Occupational-type exposure	0.2 m (8")	All locations compliant

PTP antenna	Locations facing the antennas	Ground level
General public exposure	3.0 m (9' 10")	All locations compliant
Occupational-type exposure	0.1 m (4")	All locations compliant

VHF antenna	Locations facing the antennas	Ground level
General public exposure	1.87 m (6' 2")	All locations compliant
Occupational-type exposure	0.38 m (15")	All locations compliant

Low Band antenna	Locations facing the antennas	Ground level
General public exposure	1.28 m (4' 2")	All locations compliant
Occupational-type exposure	0.31 m (1' 7")	All locations compliant

The above compliance distances are typically much greater than those that would be predicted to really be needed if an actual measurement were performed for the site using an actual Specific Absorption Rate (SAR) analysis. SAR is a more accurate measure of exposure and is the basic measurement for exposure under the US FCC regulations [3]. However, SAR is much more

complicated to estimate (measurements or electromagnetic simulations) than free-space fields or the equivalent power density. Thus in this case the simpler, practical approach to compute the compliance distance based on the analytical estimation of power density is used.

Antenna Site Information

The transmit system at the Jefferson Tower site features four types of transmit antennas in different configurations.

The 800 MHz system features 1 antenna (Sinclair SC479-HL1LDF) installed at 196' above ground level on the south leg of the tower. It is connected through a 4 dB loss combiner/splitter and a 3.2 dB loss cable, fed by a 6-channel GTR8000 repeater system with 100 W per channel output power. Six RF channels feed the single antenna. Taking into account the mentioned losses and the 50% duty-cycle due to the PTT transmit mode, the forward RF power at this antenna connector is about 57.2 W.

The PTP system features 2 antennas (Cambium 85010089003); one is installed at 163' and the other at 168' above ground level on the north leg of the tower. The transmitter is attached directly to the antenna (dish), so the cable loss is negligible. The forward power of the PTP 800 transmitter is approximately 1.0 W.

The VHF system features 1 antenna (Sinclair SC229-SFXLDF) installed at 178' above ground level on the north leg of the tower. It is connected through a 6 dB loss combiner/splitter and a 1.8 dB loss cable, fed by a 5-channel MTR3000 repeater system with 100 W per channel output power. Five RF channels feed the single antenna. Taking into account the mentioned losses and the 50% duty-cycle due to the PTT transmit mode, the forward RF power at this antenna connector is about 68.8 W.

The Low Band system features 1 antenna (RFS 1142-2BN2) installed at 97' above ground level on the north leg of the tower. It is connected with a 0.6 dB loss cable, fed by a single channel base station. Taking into account the mentioned loss and the 50% duty-cycle due to the PTT transmit mode, the forward RF power at this antenna connector is about 33 W.

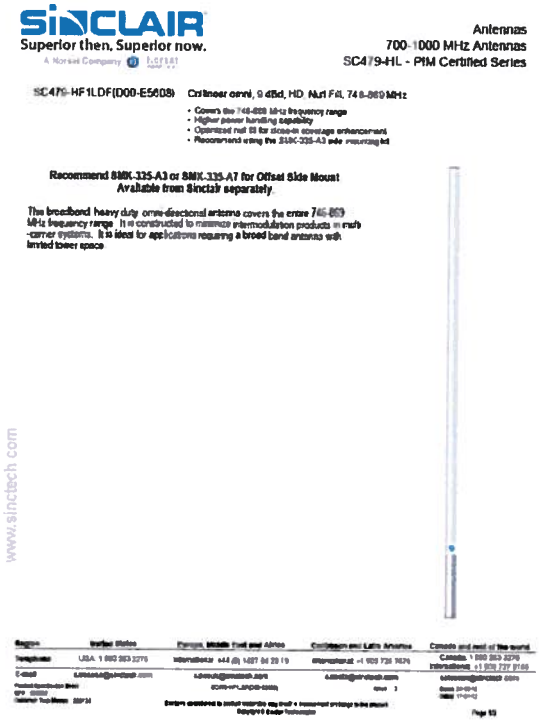
TX Antennas

Sinclair SC479-HF1LDF: Omni-directional antenna, with 9.0 dBd gain, about 6-degree vertical beamwidth, and a 2 degree down-tilt. Data sheet is attached.

Cambium Networks 85010089003: Directional antenna, with 37.0 dBd gain, about 2.2-degree vertical beamwidth, no down-tilt. Data sheet is attached.

Sinclair SC229-SFXLDF: Omni-directional antenna, with 6.0 dBd gain, about 17- degree vertical beamwidth, no down-tilt. Data sheet is attached.

RFS 1142-2BN: Directional antenna, with 2.1 dBd gain, about 75- degree vertical beamwidth, no down-tilt. Data sheet is attached.



SINCLAIR
Superior then. Superior now.

Antennas
700-1000 MHz Antennas
SC479-HL - PIM Certified Series

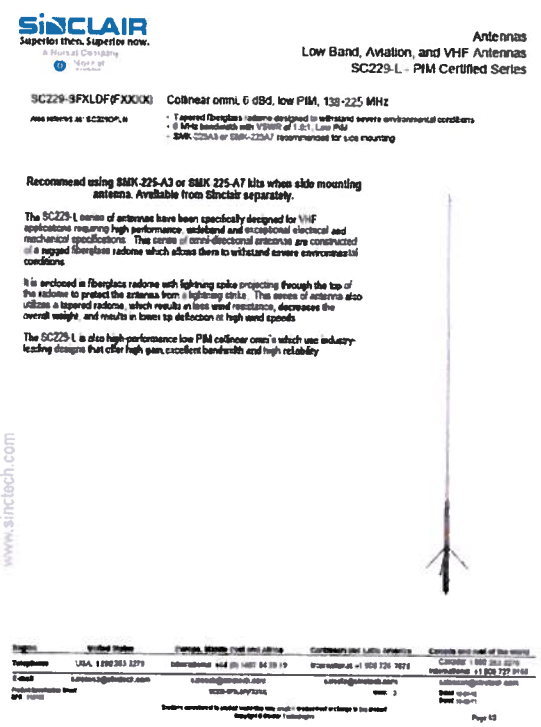
SC479-HF1LDF(D00-E5608) Collinear omni, 9 dBd, HD, Nut Fill, 748-869 MHz

- Covers the 748-869 MHz frequency range
- Higher power handling capability
- Optimized null fill for close-in coverage enhancement
- Recommend using the SMK-335-A3 side mounting kit

Recommend SMK-335-A3 or SMK-335-A7 for Offset Side Mount
Available from Sinclair separately.

The broadband heavy duty omni-directional antenna covers the entire 746-869 MHz frequency range. It is constructed to minimize intermodulation products in multi-carrier systems. It is ideal for applications requiring a broad band antenna with limited tower space.

www.sinctech.com



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Superior then. Superior now.

Antennas
Low Band, Aviation, and VHF Antennas
SC229-L - PIM Certified Series

SC229-9FXLDF(FXXXX) Collinear omni, 6 dBd, low PIM, 138-225 MHz

- Tapered fiberglass radome designed to withstand severe environmental conditions
- 6 MHz bandwidth with VSWR of 1.2:1, Low PIM
- SMK-225A3 or SMK-225A7 recommended for side mounting

Recommend using SMK-225-A3 or SMK 225-A7 kits when side mounting antenna. Available from Sinclair separately.

The SC229-L series of antennas have been specifically designed for VHF applications requiring high performance, wideband and exceptional electrical and mechanical specifications. This series of omni-directional antennas are constructed of a rugged fiberglass radome which allows them to withstand severe environmental conditions.

It is enclosed in fiberglass radome with lightning spike projecting through the top of the radome to protect the antenna from a lightning strike. This series of antenna also utilizes a tapered radome, which results in less wind resistance, decreases the overall weight, and results in lower tip deflection at high wind speeds.

The SC229-L is also high-performance low PIM collinear omni's which use industry-leading designs that offer high gain, excellent bandwidth and high reliability.

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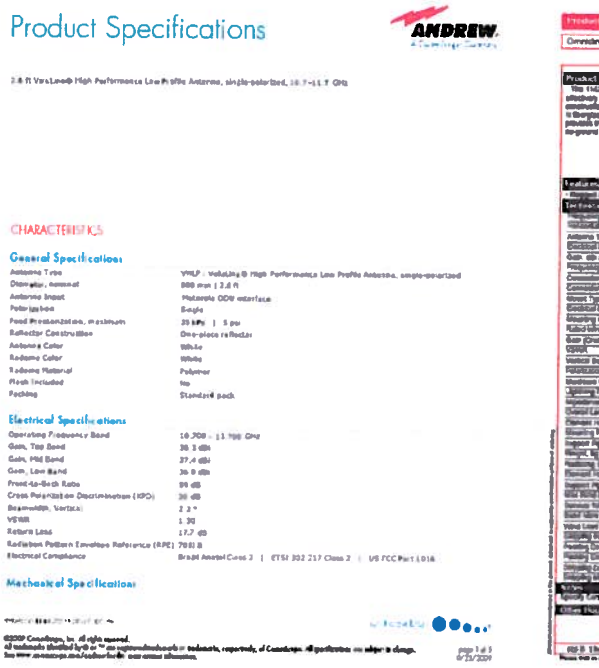


Product Specifications

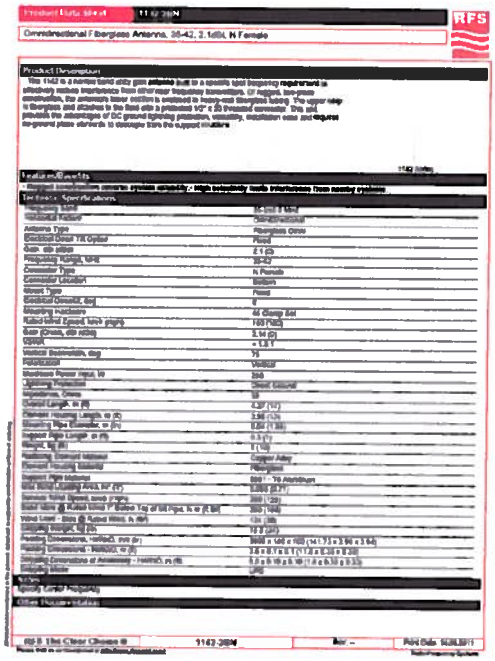
ANDREW

CHARACTERISTICS

General Specifications

Electrical Specifications

Mechanical Specifications



RFS

Omnidirectional Fiberglass Antenna, 30-42, 2.1dBd, N Female

Product Description

Electrical Specifications

Applicable Exposure Limits

The FCC exposure limits [1], when expressed in terms of equivalent power density, are frequency dependent. In particular, within the frequency band of operation, the limit is 3.03 W/m^2 for the *general public* and 15.1 W/m^2 for *occupational-type* exposure.

Exposure Prediction Models

Two different models are employed to perform the exposure assessment. One is relative to exposures at the same level as the antenna and *in front of* collinear arrays, while the other is for exposure *at ground level.*

A. Exposure in Front of the Collinear Array Antennas

The behaviors of the spatially averaged and the spatial peak equivalent power density in the near radiating field of typical base station array antennas (omni-directional or sector coverage) can be predicted using simple algebraic formulas that depend on a few, readily available antenna parameters, such as directivity, beamwidth, physical length, and the radiated power [2]. The spatial domain where the prediction is valid encompasses the antenna enclosing cylinder (defined as a cylinder centred on the antenna axis, extending as much as the antenna length in height), at distances greater than one wavelength (i.e., outside the reactive near field region of the individual array elements), along all azimuth directions within and outside the main beam, up to the far field.

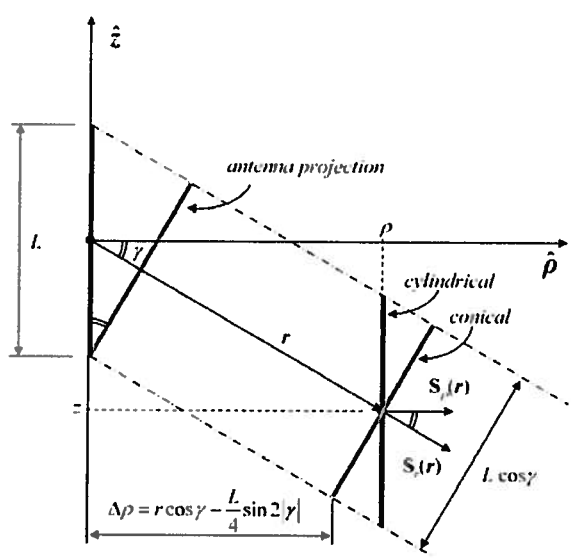


Fig. 1. Reference frame and notations employed to describe the cylindrical model.

The most frequent application of the method is when exposure is assessed very close to the antenna, within its radiating near field region, where workers may be present for maintenance or other duties and in those cases where an exposure assessment is desired at buildings facing antennas. In those cases it is desirable to avoid large overestimations produced by simpler models that do not take into account the distributed nature of the radiator (but rather model the RF emission as stemming from a source point), while avoiding complex full-wave simulations or other type of modelling requiring in depth knowledge of the antenna structure and operation from an electromagnetic standpoint.

The method in [2] provides reliable predictions as long as scattered fields from objects surrounding the antenna are not significant and electrical beam down-tilt does not exceed 10^0. In practice, it is important that significant scatterers do not protrude inside the antenna enclosing cylinder, particularly in the main beam, and that pavement reflections do not become relevant.

The model predictions are mostly reliable in the radiating near field, before the RF energy propagation regime converts from cylindrical to spherical in character, because antennas will most likely be installed in such a way that no significant scattering from pavement or nearby objects occurs in the radiating near field.

The reference frame relative to an array antenna axis and the relevant analytical notations employed in the analytical prediction formulas for the spatially-averaged and the spatial-peak power density are illustrated in Fig. 1.

The parameters required to apply the formulas are the following:

W_{rad} : Antenna radiated power;
L : Physical antenna length (meters);
D_A : Antenna peak directivity (unitless); the peak gain can be used;
γ : Electrical down-tilt angle of the antenna main beam (radians);
$\bar{\phi}_{3dB}$: Azimuth semi-beamwidth of the antenna pattern (radians).

For omni-directional arrays, the prediction formula for the spatial-peak equivalent power density is:

$$\hat{S}_r(r,\phi;\gamma) = \frac{W_{rad}}{\pi \cdot r \cdot L \cdot \cos^2\gamma \sqrt{1+\left(2\frac{r}{r_0}\right)^2}}, \quad r_0 = \frac{1}{2} D_A L \cos^2\gamma \qquad (1)$$

The above prediction formula does not take into account the formation of grating lobes near *endfire*, whose power content typically becomes significant for tilt angles greater than 10^0. Hence, we delimit conventionally the validity of this formula to the range $|\gamma| \le 10^0$.

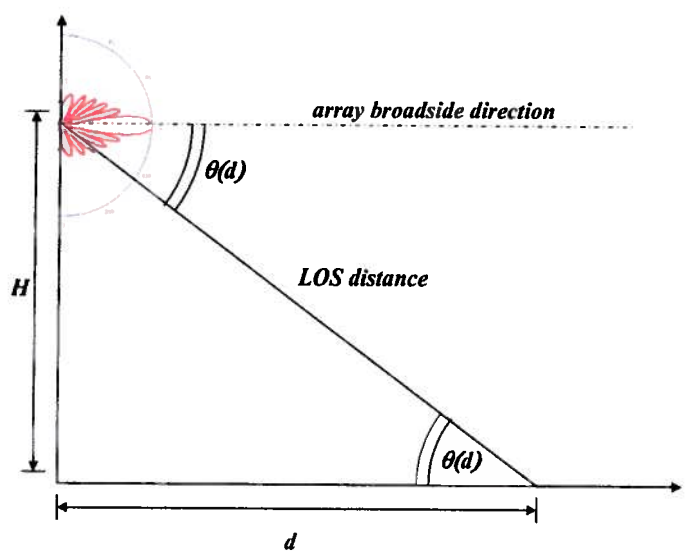


Fig. 2. Schematic of the ground-level exposure model adopted for the assessment.

B. Exposure at Ground Level

This type of exposure occurs in the antenna far-field, so simpler expressions can be employed. The antenna phase center is assumed to be the mounting height. The resulting predictive equation for the power density produced by each antenna at ground level is:

$$S(d) = (2.56) \cdot \frac{W_{rad} \cdot G(\theta(d))}{4\pi\left(H^2 + d^2\right)} \tag{2}$$

where W_{rad} is the radiated power, and $G(\theta)$ is the elevation gain pattern, which is approximated by means of the following expression

$$G(\theta) = G_A \left[\left| \frac{\sin\left(\frac{k_0 L}{2}\sin\theta\right)}{\frac{k_0 L}{2}\sin\theta} \cos^X \theta \right|^2 (1-B) + B\cos^{1/X}\theta \right] \tag{3}$$

where G_A is the antenna gain, k_0 is the free space wavenumber and L is the effective antenna length yielding the appropriate vertical beamwidth, X and B are auxiliary parameters used to shape the elevation pattern, while H is the antenna height above ground and d is the field point distance from the base of the installation tower (see fig. 2). The factor "2.56" is introduced to enforce near-perfect, in-phase ground reflection as recommended in [1].

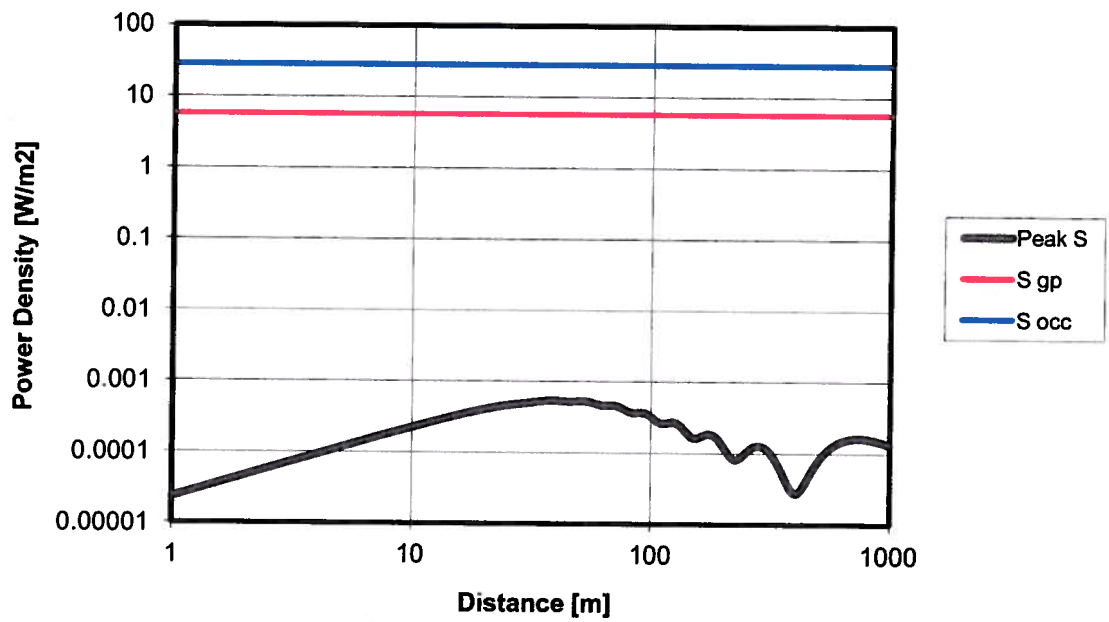
Exposure Assessment

800 MHz Antenna

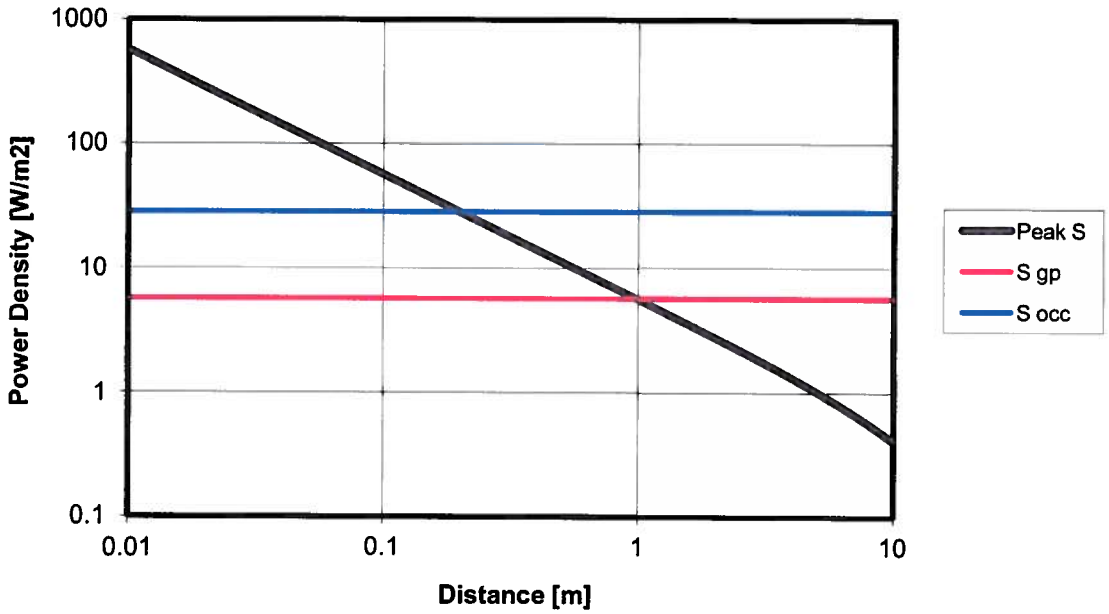
The following table reports the effective lengths, and the X, B factors used to shape the antenna elevation beam to match the beamwidth reported in the data sheet:

Antenna	SC479-HL1LDF (D02-E5608)
L	3.2 m
X	1
B	0.03

The antenna emits at most 57.2 W. The following graph reports the exposure in terms of the average power density (in W/m^2), compared with the US FCC exposure limit for the general public (S_{GP}) or for occupational exposure (S_{OCC}), versus distance d (in meters) from the vertical antenna projection to ground, showing that the exposure level is always at least 10,000 times less than the FCC limit for the general population [1]. Correspondingly, the exposure is at least 53,000 times below the FCC occupational limit [1].



For what concerns exposure at the same height as the antennas, each antenna is considered separately due to the large distance between them. The prediction formula (1) yields exposure levels as described in the following graph, resulting in a compliance distance of 1.0 m for general public and of 0.20 m for occupational type exposure.



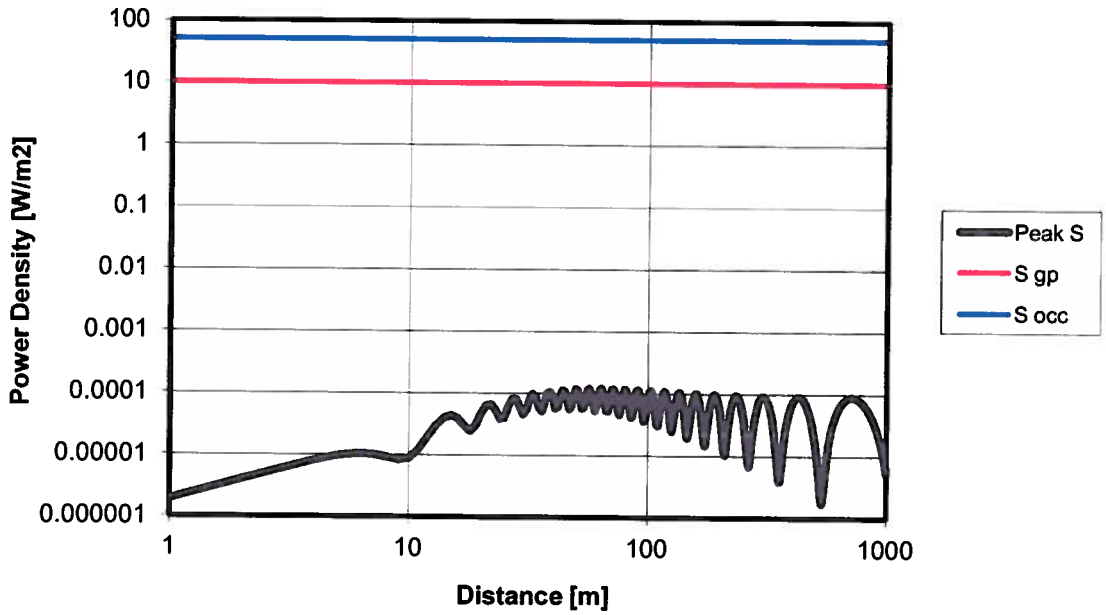
PTP Antennas

Because these two antennas have identical RF and antenna configurations, one assessment is made to cover both.

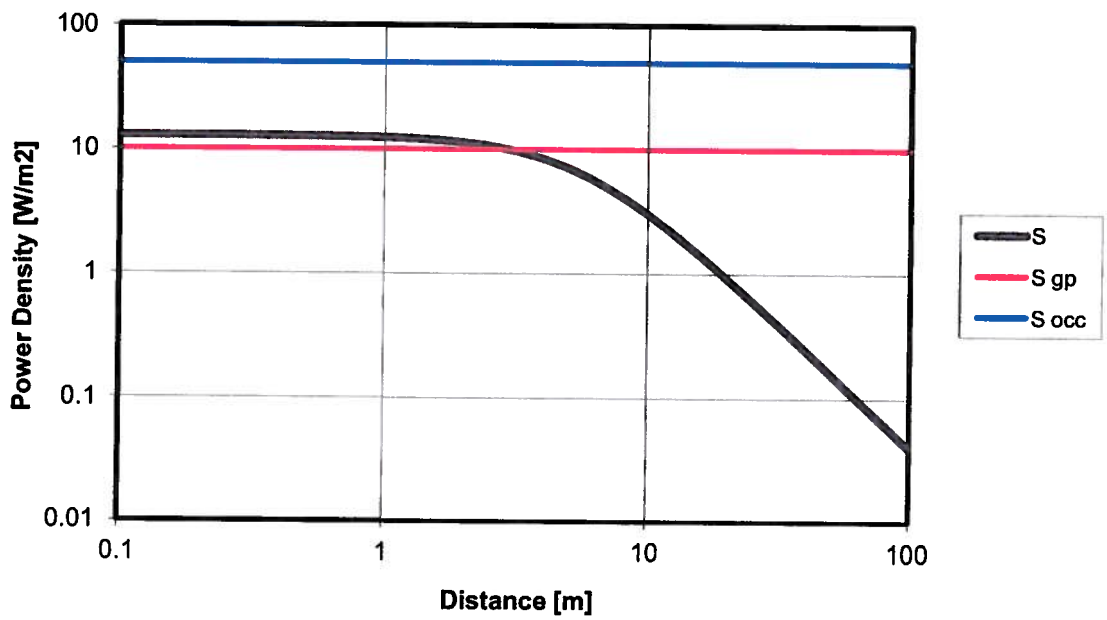
The following table reports the effective lengths, and the X, B factors used to shape the antenna elevation beam to match the beamwidth reported in the data sheet:

Antenna	85010089003
L	.63 m
X	.5
B	.0005

The antenna emits at most 1.0 W. The following graph reports the exposure in terms of the average power density (in W/m^2), compared with the US FCC exposure limit for the general public (S_{GP}) or for occupational exposure (S_{OCC}), versus distance d (in meters) from the vertical antenna projection to ground, showing that the exposure level is always at least 82,000 times less than the FCC limit for the general population [1]. Correspondingly, the exposure is at least 410,000 times below the FCC occupational limit [1].



For what concerns exposure at the same height as the antennas, the prediction formula (1) yields exposure levels as described in the following graph, resulting in a compliance distance of 3.0 m for general public and of 0.1 m for occupational type exposure.

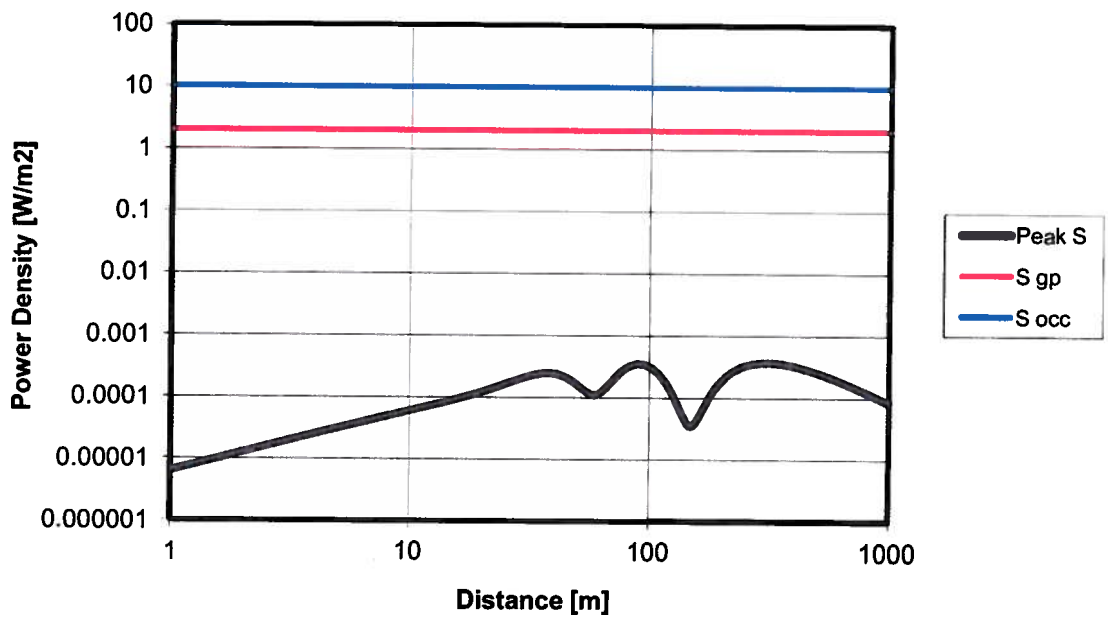


VHF Antenna

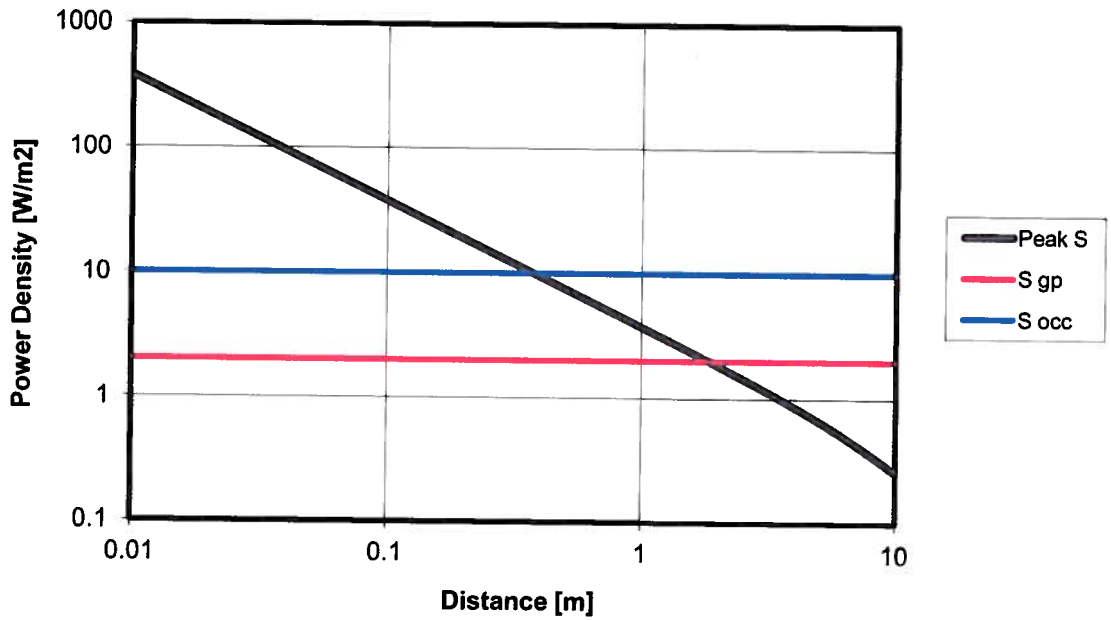
The following table reports the effective lengths, and the X, B factors used to shape the antenna elevation beam to match the beamwidth reported in the data sheet:

Antenna	SC229-SFXLDF
L	5.8 m
X	1
B	0.01

The antenna emits at most 68.8 W. The following graph reports the exposure in terms of the average power density (in W/m^2), compared with the US FCC exposure limit for the general public (S_{GP}) or for occupational exposure (S_{OCC}), versus distance d (in meters) from the vertical antenna projection to ground, showing that the exposure level is always at least 5,000 times less than the FCC limit for the general population [1]. Correspondingly, the exposure is at least 27,000 times below the FCC occupational limit [1].



For what concerns exposure at the same height as the antennas, the prediction formula (1) yields exposure levels as described in the following graph, resulting in a compliance distance of 1.87 m for general public and of 0.38 m for occupational type exposure.

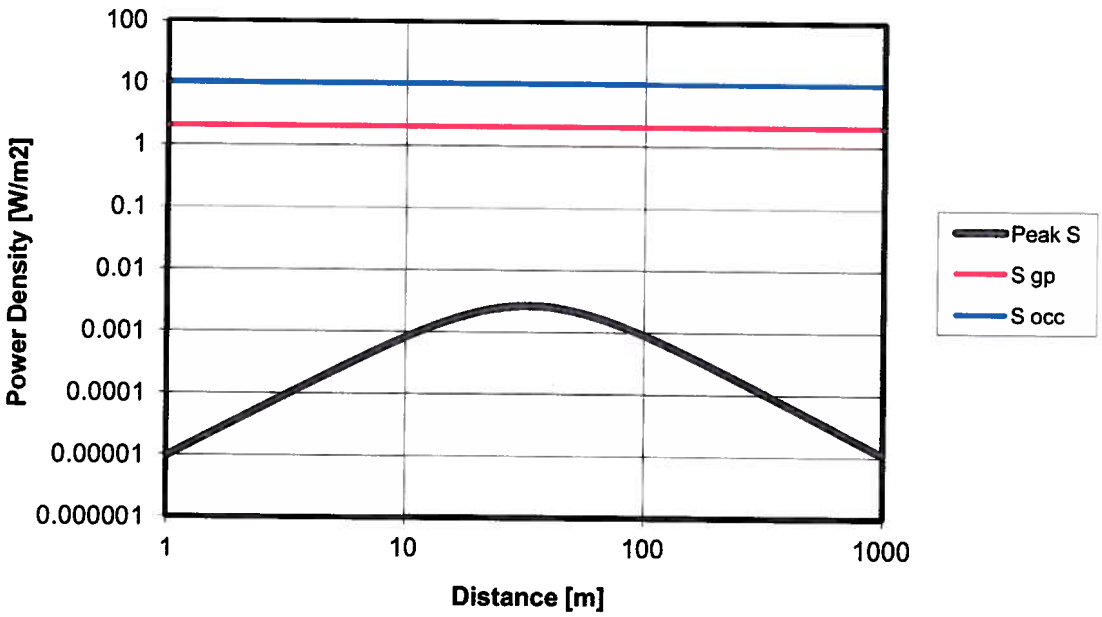


Low Band Antenna

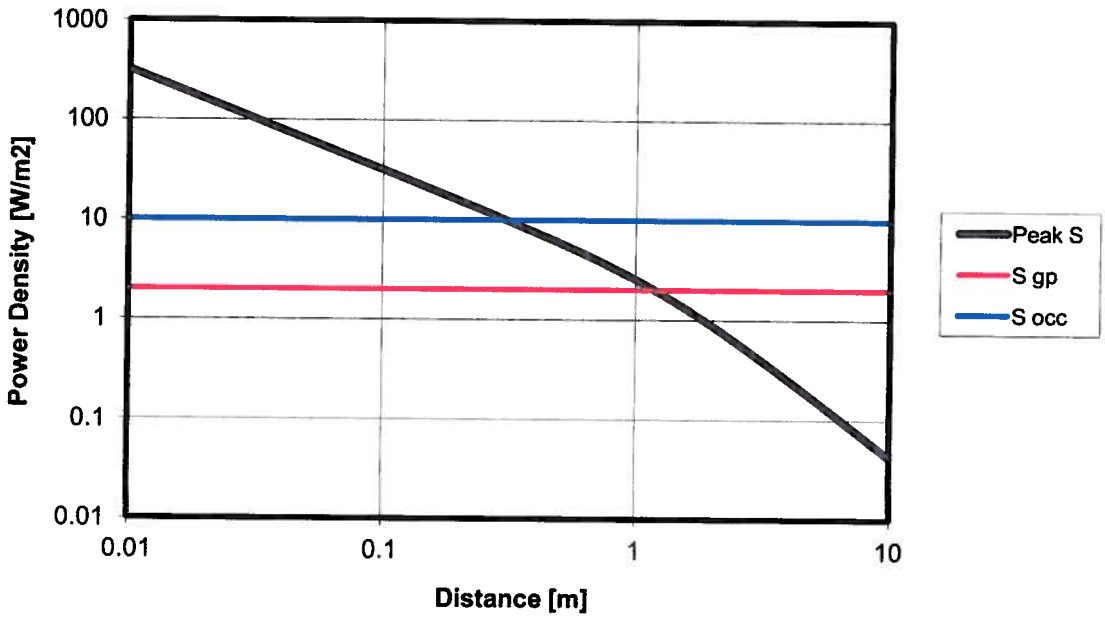
The following table reports the effective lengths, and the X, B factors used to shape the antenna elevation beam to match the beamwidth reported in the data sheet:

Antenna	1142-2BN2
L	3.3 m
X	1
B	0.00

The antenna emits at most 33.0 W. The following graph reports the exposure in terms of the average power density (in W/m^2), compared with the US FCC exposure limit for the general public (S_{GP}) or for occupational exposure (S_{OCC}), versus distance d (in meters) from the vertical antenna projection to ground, showing that the exposure level is always at least 750 times less than the FCC limit for the general population [1]. Correspondingly, the exposure is at least 3,700 times below the FCC occupational limit [1].



For what concerns exposure at the same height as the antennas, the prediction formula (1) yields exposure levels as described in the following graph, resulting in a compliance distance of 1.28 m for general public and of 0.31 m for occupational type exposure.



References

[1] United States Federal Communication Commission, "Evaluating compliance with FCC guidelines for human exposure to radiofrequency electromagnetic fields," OET Bulletin 65 (Ed. 97-01), August 1997.

[2] R. Cicchetti and A. Faraone, "Estimation of the Peak Power Density in the Vicinity of Cellular and Radio Base Station Antennas," *IEEE Transactions on Electromagnetic Compatibility*, Vol. 46, No. 2, pp. 275-290, May 2004.

[3] Supplement C (Edition 01-01) to US FCC OET Bulletin 65 (Edition 97-01), "Additional Information for Evaluating Compliance of Mobile and Portable Devices with FCC Limits for Human Exposure to Radiofrequency Emissions," June 2001.

SUPPLEMENTAL STAFF REPORT
PROPOSED PUBLIC SAFETY COMMUNICATIONS TOWER

ISSUE: Review information relating to proposed public safety communications tower sites as requested and presented to Council during the August 27, 2013 Council Work Session:

- Winchester Medical Center Campus – Council requested the Winchester Medical Center Campus be considered as an alternate site for the erection of a Public Safety Communication Tower. Motorola Solutions performed an analysis of the site as requested. Staff reviewed the site and has prepared data in relationship to zoning considerations. Additionally, staff reviewed the proposed site at 700 Jefferson Street and has provided possible considerations for the site.
- Review information and respond to questions relating to the proposed Public Safety Communications Tower site at 700 Jefferson Street.

BACKGROUND: The City embarked on a mission to upgrade the Public Safety Communications System during 2005. The project was continued with the authorization of a contract with Robert L. Kimball & Assoc. to conduct a full evaluation of the existing system, determine the current and future needs of city agencies and prepare a conceptual design and cost estimate of the project. This was accomplished in a collaborative effort with staff and presented to Council during the August 16, 2011 meeting. Subsequent to this meeting discussions were pursued and authorization received permitting staff to work in a cooperative effort with Kimball's personnel to craft an RFP including system options. The RFP was completed and distributed... One response was received in accordance with the procurement ordinance. The RFP was reviewed, the prospective vendor interviewed as authorized by Council and the contract with Motorola Solutions executed. (See process timeline below).

- Kimball agreement authorized – July 13, 2010
- Presentation to Council – August 16, 2011
- Authorization to develop RFP – August 23, 2011
- Resolution to authorize issuance of RFP – December 15, 2011
- Resolution authorizing City Manger to execute agreement with Motorola Solutions for the purchase and installation of a public safety radio system June 19, 2012
- Resolution authorizing negotiations with vendor relating to the erection of a 250' Public Safety Communications Tower at the Jefferson Street site, June 19, 2012...

The existing Public Safety Communication System has been identified and documented as inadequate to support public safety operations and has exceeded its life expectancy. Infrastructure equipment, mobile equipment and handheld equipment has also exceeded its life expectancy and is not reliable. The system lacks interoperability, experiences channel congestion, has "dead spots" and is basically undependable. Additionally, the current system is not in compliance with Federal Communications (FCC) Regulations relating to Narrowbanding. Narrowbanding compliance was required as of January 1, 2013. The system is currently operating under a waiver requested by the city and issued by the FCC. The waiver application requested a waiver through March 2014. The FCC only granted the waiver through January 1, 2014. A second application for an extension of the waiver is being prepared.

During the before mentioned process the erection of the Public Safety Communications Tower and the proposed site were points of discussion and information as identified below:

- Initial Kimball briefing November 27, 2097

- Receipt of RFP response on February 29, 2012 identified the proposed site of a Public Safety Communications Tower was proposed at the 700 Jefferson Street location. This is the same location occupied by the existing Public Safety Communications equipment. Also located on this site is an elevated water tank of approx. 187' and a ground water reservoir.
- Communications Project Negotiations Summary was distributed May 16, 2012 to Council by City Manger Iman relating to the overall project and specifically relating to the Public Safety Communications Tower at the Jefferson Street. It also included other options that were considered during the negotiations.
- Council Work Session of June 19, 2012 conducted discussions relating to the erection of the Public Safety Communications Tower at the Jefferson Street site. Considered a resolution to authorize negotiations with vendor relating to Public Safety Communications Tower. This meeting also involved discussion that would permit the City Manager to enter into discussion with the Handley Trust relating to the acquisition of land.
- Regular Council Meeting of July 10, 2012 passed resolutions authorizing negotiations for the erection of the Public Safety Communications Tower utilizing the alternate option. Resolutions authorizing the City Manager to have discussion with Handley Trust relating land acquisition and the execution of a contract with Motorola Solutions were also passed.
- Joint meeting of City Council and Winchester School Board was conducted March 5, 2013 at Daniel Morgan Middle School. The Public Safety Communications Tower was an agenda item. The communications project was discussed and a presentation given identifying the location and height of the tower as 250'.
- Councilors notified by Mr. Iman July 2, 2013 that the balloon test relating to the Public Safety Communications Tower would be performed July 3, 2013.
- Site balloon test performed July 3, 2013 in accordance with the Virginia Department of Historic Resources.
- Adjacent property owners notified of Planning Commission Meeting on August 5, 2013.
- Public Safety Communication Tower was an agenda item for the August 13, 2013, Planning Commission Work Session.
- Regular Meeting of Planning Commission conducted August 13, 2013 including a Public Hearing relating to the proposed Public Safety Communications Tower. Planning Commission approved site and forwarded to City Council.
- Council Work Session was conducted August 27, 2013. Council received public comments and report on the Public Safety Communications Tower and requested additional information as related to a proposed alternate site on the campus of Winchester Medical Center.
- Regular Meeting of City Council conducted September 10, 2013. A Public Hearing was conducted pertaining to the Public Safety Communications Tower. The item was tabled and Council advised the City Manager to would receive questions from Councilors and the Public through COB, Friday, September 13, 2013. Questions would be responded to by staff and subject matter experts from Robert L. Kimball & Assoc. and Motorola Solutions.

SUMMARY: Through Council's guidance and authorizations and partnership staff has continued to advance the project forward in collaborative effort with our partners from Robert L. Kimball & Assoc. and Motorola Solutions. Staff from the majority of city departments has been either directly or indirectly associated with the Public Safety Communications Project. As identified by the City Manager in an earlier communication the City has invested nearly $600.000 in the project with the goal of providing the citizens, visitors, and first responders with a state of the art radio communications system that provided versatility, dependability, coverage that addresses current and future radio communications needs in a comprehensive and fiscally responsible manner. On no less than thirteen occasions the public safety communications tower was discussed and in most of these occurrences the location and height of the tower was discussed. The consultants from Kimball have more than fulfilled their contractual obligation to the city providing a comprehensive study of the existing system and providing a conceptual design, performance standards and a cost estimate. Motorola entered into a contract with the city through the procurement process complying with the RFP while providing a solution to the public safety communications system by engineering a system that met the specified performance standards within the appropriated budget. I have attached an e-mail from Shag Kiefer of Robert L. Kimball & Assoc. and from Gerry Boyd, Vice President of Teltronics Inc. Mr. Kiefer's letter summarizes the current project status while Mr. Boyd's correspondence details the site selection process as it was conducted. As for staff each has performed their specific duties in accordance with their job related duties, statutes, ordinances and resolutions of the city and/or the authority having jurisdiction.

There have been several comments and concerns expressed regarding the proposed location of the public safety communications tower. Through the discussions there has been one common thread, the city needs a dependable, up to date, robust public safety communications system that provides service in accordance with a recognized standard (95% 95% utilizing portables inside of buildings.

I am not aware of any city staff, Kimball or Motorola personnel that are married to the proposed site. However, there are two specific items that continue to be constant throughout the process. The first is the design and engineering of the proposed system while the second is the appropriated budget. The design and engineering of the system meets the specified performance standard and there is an executed contract for such. Secondly, is the appropriated budget. These items are at the heart of the project, if either of these items changes the other must change proportionately.

City staff and those associated with Kimball and Motorola are committed to implementing a public safety communications project that complies with the performance standard and is fiscally responsible. Staff would be remiss if the extension of the project timeline were not mentioned. The current system had numerous deficiencies at the time of the first study and during the subsequent study and design phases. Staff continues to bandage the system. In addition there is the matter of narrowbanding compliance and action or inaction the FCC. There are also additional ancillary points to be mindful of but how they will be addressed by regulatory agencies will not be known until a site(s) are chosen and ratification process initiated.

Representatives of Kimball, Motorola and City Departments are present and available to respond to questions.

Thanks for the opportunity to come before you.

L.A Miller

From: Kiefer, B. Shag [SHAG.KIEFER@lrkimball.com]
Sent: Wednesday, September 11, 2013 5:57 PM
To: L.A Miller
Subject: Winchester: Radio project redesign considerations

Lynn,

After attending last night's Council meeting I wanted to share my observations regarding the current discussions about changing the radio system design.

There were two primary constraints related to the initial release of the RFP for a public safety radio system in December 2012.

1. The vendor must provide a system which meets a performance goal (95%/95% 20 dB in-building coverage).
2. Council allocated $3.5 million for all project expenses (including the proposal amount).

If neither constraint has changed, then the single site design at Jefferson St before City Council is the best option for the City given these constraints. As you know, we have put a tremendous amount of work into this design and I have heard no comments or objections that change my assessment. The follow up site viability assessment done at the request of Council for the Winchester Medical Center site confirms this position.

If the Council chooses to change the budgetary constraint for this project, it then creates an opportunity to develop multi-site design proposals. The danger I see in the present environment is the tendency to discuss design <u>options</u> independent from due consideration for the design <u>process</u>.

The vendor's design process has two parts.

- An **initial conceptual design** before contract signing. The purpose is to generate a viable cost to be quoted. The design is based on vendor site surveys and the information provided by the City.
- A subsequent **design review** (CDR) process after contract signing. The purpose is to identify and address the multiple individual design constraints and develop a final comprehensive system design which can be constructed.

If multi-site designs are requested, then both parts of the design process will need to be repeated. We have invested more than 1-1/2 years plus the payments to Motorola to get to this point in the design process with one site. I fear that discussing design *options* will be unproductive without the proper consideration for the design *process*. The question I often hear asked is how much does it cost to build (or collocate) a tower site. The more important question is what will it cost in funds and schedule to design a system that will use a proposed site. A large amount of work must be done before we know that a site is actually viable. As you now know, radio system design is a highly complex. interdependent, and iterative process. Each design parameter can impact the other considerations, and in many instances any one factor can scuttle the entire site plan. There are federal, state, and local regulatory requirements related to FCC licensing, FAA aerospace clearances, zoning, historical, cultural, and environmental impacts, as well as propagation, line of sight paths, and ground space requirements to be resolved before the cost to actually build at the site becomes relevant. The more sites that need to be evaluated, the greater the preparatory costs that are added to project costs.

As the discussion about radio system design continues, I would like to offer the reminder that undertaking a design change should be preceded by a funding commitment and then followed by adherence to the design process.

Thank you,

Shag Kiefer, ENP
Telecommunications Specialist
Communications Technology Division
L.R. Kimball - a CDI Company
804-426-3946
shag.kiefer@LRKimball.com

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9/16/13

City of Winchester

Mr. Dale Iman, City Manager
15 North Cameron St.
Winchester, VA 22601

Dear Sir,

Before proposing a new tower on the City property on Jefferson Street, Motorola Solutions considered every potential location listed in the RFP. We also looked for other existing towers that might be suitable, but found none.

Because the City's budget precluded a system design using multiple towers, we needed to find a location where a single tower of reasonable height would provide the radio coverage and performance required by the City.

Our starting point was to evaluate coverage using the existing water tank at Jefferson Street. Our studies showed that it was not possible to meet the City's coverage requirements without raising the antennas above the existing tank, and we determined that a tower 250 feet high would be needed.

The Jefferson Street location appeared to be a good choice since it was owned by the City, was zoned EIP, is already fenced, and has sufficient space to accommodate the tower and associated equipment and generator. It is also on relatively high ground and is located close to the center of the City.

We evaluated coverage using the existing Shentel tower on Fairmont Avenue and found that this tower is not high enough to meet the City's coverage requirements. It is also at the North end of the City, which reduces its coverage in the southern part of the City.

We also evaluated coverage using a tower at the Timbrook Public Safety Center, another location proposed by the City. We determined that a 350 foot high tower would be needed to meet the City's coverage requirements using this location. Informal discussions with the Federal Aviation Administration (FAA) indicted that this tower would be less likely to be approved than the 250 foot tower at Jefferson Street.

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800-237-9213
Fax 410-860-0430

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Fax 410-956-2137

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The results of these studies indicate that the remaining proposed locations would require a tower significantly higher than 250 feet because they are on lower ground or are not centrally located within the City of Winchester. As a result, these sites would be more costly to construct, would likely be more visible because of the higher tower, and would be less likely to be approved by the FAA. We therefore did not perform detailed engineering studies for these less desirable locations.

Sincerely,

Paul Manders

Paul Manders
President-Teltronic, Inc.
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Date	Event	Action/Discussion/Distribution	Supporting Documents
11/27/07	Council Work Session	Report provided by Curt Andrich, Senior Consultant (L. R. Kimball & Assoc.) - Report identified the Jefferson Street site as the city's prime transmitter site for the existing system. - Provided estimate of $3.5 million to install a digital radio system	Minutes
9/1/09	Community Safety & Public Services Committee Meeting	Discussion of public safety communications system, narrowbanding issue and estimated costs of corrective action by Lynn Miller (City's Emergency Management Coord.) and Dan Smith (L. R. Kimball & Assoc.)	Minutes
7/13/10	Regular Council Meeting	Resolution to authorize agreement with L. Robert Kimball & Assoc. to complete services on radio communications system. Resolution (R-2010-43) unanimously approved by voice vote.	Minutes
8/16/11	Council Work Session	Presentation by Sherry Bush, Project Mgr. & Chris Kelly, Technical Advisor (L.R. Kimball & Assoc.) - Discussion provided Kimball's opinion of the current problem areas and to provide options. - Resolution (R-2011-31) was deferred until the August 23, 2011 Council work session.	1) Presentation 2) Minutes 3) Resolution
8/17/11	Winchester Star article	*Decision on city emergency system delayed one week*	
8/23/11	Council Work Session	Discussion relating to additional information presented during the 8/16/11 work session resulted in a motion being presented and unanimously approved to move forward with the development of and RFP for an 800 MHz system and other options (RFP to be discussed with Council prior to issuance).	Minutes
8/24/11	Winchester Star article	*City to take bids on range of communications systems*	
9/13/11	Regular Council Meeting	Resolution to authorize the issuance of an RFP which was to include a range of options.	Minutes
11/22/11	Council Work Session	Discussion about draft RFP and resolution (R-2011-63) to move forward to voting. Motion made.	1) Minutes 2) Resolution

11/23/11	Winchester Star article	*City oks plan for radio system bids*	
12/13/11	Regular Council Meeting	Resolution (R-2011-63) to authorize the distribution of an RFP was unanimously approved.	Minutes
12/15/11	RFP	RFP #200823 distributed	Procurement Timeline
1/10/12	RFP Pre-proposal Meeting	Mandatory meeting for prospective offers. Five representatives attended (Motorola, Teltronic, Harris, Tait & Morcom)	
1/25/12	RFP Extension	A two-week bid extension was issued	
2/29/12	Proposals due	Proposals were due this day by 2:00 pm. One responsive proposal was received from Motorola. One non-responsive proposal from Teltronic was rejected for being late under the VA Public Procurement Act.	
3/1/12	Proposal review	Evaluation committee begins reviewing proposal from Motorola	
3/20/12	Council Work Session	Staff report updating Council on the communications project presented by Lynn Miller and Steve Corbit, City's Purchasing Agent	1) Minutes 2) Staff Report
3/21/12	Winchester Star article	*City faces dilemma on new radio system, Lone bid on new radio system may be cost prohibitive*	
3/26/12	Motorola Interview	Evaluation committee conducts interview with Motorola and presents 67 questions.	
4/24/12	Interpretation	Zoning Ordinance interpretations relating to 700 Jefferson Street	Interpretation
4/24/12	Council Work Session	Staff report was provided which addressed issues including, but not limited to, background, study determinations, corrective actions, alternatives, etc.	1) Minutes 2) Staff Report
4/25/12	Winchester Star article	*City faces deadline on system*	
5/16/12	Email communications	Email communications between City Manager and Council members concerning report provided by Emergency Mgt. Coordinator summarizing points of discussion between the City and Motorola Solutions during negotiations	Emails

6/19/12	Council Work Session	Three items were discussed: A) Resolution (R-2012-45) to enter into negotiations with the vendor regarding a 250' communications tower. Item was moved forward to regular Council meeting. B) Resolution (R-2012-46) to initiate discussion with the Winchester School Bd and the Handley Trust pertaining to the acquistion of land. C) Resolution (R-2012-47) authorizing the City Manager to execute a contract with Motorola Solutions for the purchase and installation of a radio communications system. All items were moved forward to the July regular Council meeting.	1) Minutes 2) R-2012-45 3) R-2012-46 4) R-2012-47
6/20/12	Winchester Star article	*City could build, lease tower for communications system*	
7/1/12	5-Year CIP Budget	Five-Year Capital Improvement Plan (CIP) budget reflected the communication project having a budget of $1 million in 2011, $2 million in 2012, and $2 million in 2013. As of July 1, 2012, the project was reduced to $3.5 million.	CIP Budget
7/10/12	Regular Council Meeting	A) Resolution (R-2012-45) passed with 8/0 vote. B) Resolution (R-2012-45) passed with 8/0 vote. C) Resolution (R-2012-47) passed with 8/0 vote.	Minutes
7/11/12	Winchester Star article	*City moves ahead on $3.6M upgrade in communications*	
11/6/12	Winchester Star article	*Emergency system plan on hold in city*	
11/14/12	Contract	Executed contract with Motorola Solutions	Contract
12/27/12	Winchester Star article	*City down to the wire waiting for word on emergency communications tower*	
1/4/13	Meeting with Scott Bridgeforth	Dale Iman, City Manager, met with Scott Bridgeforth to update him on all information related to the tower to be constructed at the Jefferson Street site adjacent to his property.	
2/22/13	Winchester Star article	*FAA clears city for takeoff*	
2/25/13-9/12/13	Discussions with MSV	Email thread was initiated by Ms. Armel (MSV) to Tim Youmans (City's Planning Director) relating to her being contacted by a	Emails

		neighbor about the proposed communications tower. Tim responded and provided information including a date of a Council meeting and articles in the Winchester Star.	
3/5/13	Council/Winchester School Bd Ad Hoc Committee Meeting	A presentation by Lynn Miller was provided to the committee and attending residents on the Jefferson Street tower project.	1) Presentation 2) Minutes
7/2/13	Email communications	The email from the City Manager advised all councilors that the balloon test as required in the Environmental Assessment to determine impact on historical sites would be performed on July 3, 2013. It also provided a schedule relating to the submittal and pursuit of the Conditional Use Permit.	Emails
7/3/13	Site and balloon test	A site and balloon test performed by Cultural Resources Inc. in accordance with the VA Department of Historic Resources. The report concluded no adverse effect on the identified historical resources.	Report can be reviewed at the Emergency Mgt. Office (TPSC)
7/3/13	Pre-application meeting	A meeting was held between Tim Youmans (City's Planning Director), Aaron Grisdale (City's Director of Zoning & Inspections), Jon Erickson (Morris & Ritchie Assoc.) and Lynn Miller (City's Emergency Mgt. Coord.) to discuss the Conditional Use Permit application and determine areas of concern.	Minutes
7/8/13	Conditional Use Permit Application	Application submitted	
7/13/13	Planning Commission Work Session	Project discussed	
8/5/13	Public Hearing Notice	A Notice of Public Hearing ad published in The Winchester Star	Notice
8/5/13	Notice to Owners	A Notice was sent to the three adjourning property owners concerning the upcoming public hearing at the August 20, 2013 Planning Commission Meeting.	Notice
8/12/13	Public Hearing Notice	A Notice of Public Hearing ad published in The Winchester Star	Notice
8/14/13	Winchester Star article	*City's communication tower under scrutiny*	
8/20/13	Planning	Project discussed and public hearing held	1) Agenda

	Commission Meeting		2) Minutes
8/21/13	Winchester Star article	*Commissioners reluctantly recommend tower near Kerr*	
8/27/13	Council Work Session	Council requested additional information be supplied for the Sept. 10, 2013 regular council meeting including consideration and analysis of a site on the Winchester Medical Center Campus.	Draft Minutes
8/28/13	Notice to Owners	A Notice was sent to the three adjoining property owners concerning the upcoming public hearing at the September 10, 2013 Regular Council Meeting.	Notice
8/28/13	Winchester Star article	*City advances tower plan while eyeing alternative site*	
9/5/13	WMC Report Submitted	Motorola submitted a report that considered and analyzed the WMC campus as an alternative site	WMC Report
9/6/13	Winchester Star article	*Disputed tower heads to council*	
9/6/13	TV3 Winchester Report	*New radio tower stirs controversy*	Report
9/7/13	Winchester Star editorial	*Our View: Jefferson tower-the best of sites, the worst of sites*	
9/10/13	Regular Council Meeting	Public hearing received comments from 10 citizens objecting to the location of the proposed tower (Jefferson St.). Information relating to the site on the WMC campus was not discussed. Council tabled the agenda item and requested that Councilors and the public submit questions to the City Manager by Friday, Sept. 13. Staff would review the questions and responses will be posted on the City's website.	Agenda
9/11/13	Winchester Star article	*Jefferson St. tower put on hold by city*	

Proposed Public Safety Communications Tower Questions and Answers

The following questions and answers are intended to inform the public about questions that have been submitted to the City Manager concerning the tower. Visit the project timeline webpage for more information and links to supporting documents.

Print PDF

Q1. What were the findings of the Winchester Medical Center location evaluation as a potential site?

Respondent - Emergency Management:

- At the August 27, 2013 Work Session, Council requested additional information be supplied for the Sept. 10, 2013 meeting including consideration and analysis of a site on the Winchester Medical Center campus.
- Click here to review the report from Motorola concerning the potential Winchester Medical Center site.

Q2. When was meetings held with adjacent property owners and who was included? Please list any specific meeting dates with the Bridgeforths, if any.

Respondent - Emergency Management:

- All adjacent property owners were contacted in accordance with the notification requirements of the Zoning Ordinance as identified in the response to question #3.
- There was a public meeting presentation advertised and conducted at Daniel Morgan Middle School the evening of March 5, 2013 at 6:30 p.m. The presentation relating to the Communications Tower was an agenda item and included a narrative and visual components. This meeting also included a discussion of the John Kerr Elementary School and a large number of nearby residents attended.
- The communications tower and its location at Jefferson Street have been a topic of discussion and presented to the members of City Council on numerous occasions. Agendas with supporting documents are posted on the City's website the Friday prior to every meeting and all City Council meetings and work sessions are telecast live on cable channel 6 and rebroadcast the following Thursday at 7:00 p.m.
- Articles covering the issues and actions of City Council have been published in the Winchester Star newspaper a publication of general circulation in the City (refer to the project timeline).
- I have had two lengthy telephone conversations with Mrs. Bridgeforth relating to the tower. I do not have the specific dates of the conversations but estimate the first conversation was between 2-2.5 months ago and the most recent was within the past 3-4 weeks. I did receive an e-mail from Mrs. Bridgeforth on 8/23/13, containing several questions relating to the communications tower and responded to her on 8/24/13.

Respondent - City Manager:

- On January 4, 2013, I met with Mr. Scott Bridgeforth at my office on the third floor of Rouss City Hall. I shared all available information regarding the communication tower and the selected site on Jefferson Street. At the time of this meeting the height of the tower was estimated to be 250 feet. Mr. Bridgeforth asked several questions related to his future plans for development of the vacant property west of his residence. I agreed to make myself available to him and his spouse Lauri regarding this matter should either have questions. Email correspondence

Q3. When was the Jefferson Street site location discussed publicly as a potential or as a preferred site and what public discussion/notice has occurred in regard to this as a site?

Respondent - Emergency Management:

- Two public hearing notices were sent by to all adjacent property owners within 300-feet of the subject parcel.
- One round of notices was sent to the property owners on August 5, 2013 in advance of the August 20, 2013, Planning Commission public hearing.
- The second round of notices was sent to the property owners on August 28, 2013, in advance of the September 10, 2013 City Council public hearing.
- The City of Winchester Zoning Ordinance has more stringent public notification requirements than is required per the Code of Virginia. The Zoning Ordinance requires that all properties within 300 feet of any point of the subject property receive a public hearing notice. However, in this particular instance the surrounding properties are of a size that there are only three properties that fall in the 300-foot radius of the subject property (the Glass Glen Burnie Foundation property, the Bridgeforth property, and the Handley Board of Trustees property.
- Additionally a public notification sign was posted on the subject property in advance of both the Planning Commission and City Council public hearings.

Q4. The original proposal was a $6M system that included multiple location towers (I believe). Please describe the discussion of how this price was reduced and why ultimately leading to a $3.5M solution.

Respondent - Emergency Management:

- The original conceptual design presented by Robert L. Kimball and Assoc. addressed the performance standard and was addressed as multiple sites having an estimated cost of between $5-$6M.
- Council indicated they were disappointed with this presentation and the cost and indicated this was not acceptable.
- As I recall the CIP budget contained the Communications Project of $5M in amounts of $1M in 2011, $2M in 2012 and $2M in 2013.
- During the Regular Council meeting of June 19, 2012 City Council adopted a resolution authorizing the City Manager to execute a contract with Motorola Solutions for the communications project and the project cost was not to exceed $3,571,005.60. I am presuming

that upon review of the response to the RFP by City Council the appropriation was reduced from $5M to the $3.5M to that amount identified in the RFP response.

Respondent - Kimball:

- The $5M-$6M was an opinion of probable costs from Kimball for a multi-site system, not a proposed amount from a vendor.
- Kimball decided not to provide a cost estimate for a single site solution because the only site identified during the conceptual design phase that was capable of providing adequate coverage throughout the city was the Jefferson St site and FAA regulatory restrictions for this site posed a liability to site development.
- It was the vendor who proposed a $3.2M single site solution based on the expectation that this site could be developed

Q5. How many sites including Jefferson Street were fully studied and vetted?

Respondent - Kimball:

- During the conceptual design phase Kimball ran propagation studies to determine design feasibility and estimates of probable cost to guide Council's budgetary expectations to acquire a radio system. These were not site feasibility studies.
- Responsibility to select and develop sites is the vendor's responsibility within the RFP. A non-exclusive list of 11 potentially available sites was provided in the RFP to the vendors. The vendor's proposal identifies the assumptions that the Jefferson site is available.
- A transmitter site is considered fully vetted when any critical criterion is identified that causes the site to be unable to meet system performance specifications. The most common failure criteria are the coverage provided by the site, the site development costs, and regulatory restrictions.

Respondent - Motorola (from the Teltronic site selection letter to the City):

- Before proposing a new tower on the City property on Jefferson Street, Motorola Solutions considered every potential location listed in the RFP. We also looked for other existing towers that might be suitable, but found none.
- Because the City's budget precluded a system design using multiple towers, we needed to find a location where a single tower of reasonable height would provide the radio coverage and performance required by the City.
- Our starting point was to evaluate coverage using the existing water tank at Jefferson Street. Our studies showed that it was not possible to meet the City's coverage requirements without raising the antennas above the existing tank, and we determined that a tower 250 feet high would be needed.
- The Jefferson Street location appeared to be a good choice since it was owned by the City, was zoned ElP, is already fenced, and has sufficient space to accommodate the tower and associated equipment and generator. It is also on relatively high ground and is located close to the center of the City.
- We evaluated coverage using the existing Shentel tower on Fairmont Avenue and found that this tower is not high enough to meet the City's coverage requirements. It is also at the North end of the City, which reduces its coverage in the southern part of the City.

- We also evaluated coverage using a tower at the Timbrook Public Safety Center, another location proposed by the City. We determined that a 350 foot high tower would be needed to meet the City's coverage requirements using this location. Informal discussions with the Federal Aviation Administration (FAA) indicted that this tower would be less likely to be approved than the 250 foot tower at Jefferson Street.
- The results of these studies indicate that the remaining proposed locations would require a tower significantly higher than 250 feet because they are on lower ground or are not centrally located within the City of Winchester. As a result, these sites would be more costly to construct, would likely be more visible because of the higher tower, and would be less likely to be approved by the FAA. We therefore did not perform detailed engineering studies for these less desirable locations..

Q6. What is the estimated cost to do a multi-location tower site to meet the 95/95 standard?

Respondent - Kimball/Motorola:

- The Kimball presentation to Council on (August 16, 2011) provided an opinion of probable cost of $5M for a 2-site system with towers at Jefferson Street and the Timbrook Public Safety Center (PSC).
- The opinion of probable cost of $6M was provided for a 3-site system with towers at Jefferson St., Timbrook PSC, and the Frederick Douglass Elementary School.
- Current cost projections are not expected to exceed the original opinion by more than 25% including non-vendor costs that will be incurred by the city.

Q7. Were any radiation studies conducted? Are these required?

Respondent - Zoning:

- The Winchester Zoning Ordinance Section 18-8-2-1.2 requires that "[t]he electromagnetic fields do not exceed the radio frequency emission standards established by the American National Standards Institute or standard issued by the Federal Government subsequent to the adoption of this Ordinance." A typical condition with these conditional use permits has been to require the submission of an as-built emissions certificate to ensure City staff that the construction and resulting emissions are in conformance with Federal requirements.
- The applicant submitted up-front EME assessment estimating the potential exposure and the proposed compliance with national and Federal standards and requirements.

Respondent - Motorola/Kimball:

- A review of the Electromagnetic Emissions (EME) study provided by Motorola, which was provided by the vendor within the scope of their current contract for the proposed Jefferson Street site, shows that the methods and analysis used in the study comport with the methodology defined by the Federal Communications Commission (FCC) Office of Engineering Technology (OEM) Bulletin 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields."

- The EME analysis shows the exposure level is always at least 5,000 times less than the FCC limit for the general population in the VHF-HB frequency band and at least 10,000 times less than the FCC limit for the general population in the 800 MHz frequency band.

Q8. Is it possible to use existing towers within the City to accommodate our communication needs?

Respondent - Kimball:

- It is not possible to use existing towers with the budget currently appropriated for this project.
- If sufficient budget is appropriated to evaluate alternate sites (either existing towers or new potential sites), then a new radio project proposal and cost estimate can be prepared. Analysis of existing sites should include a total cost of ownership (TCO) analysis for comparison with the amortized cost of city owned and constructed sites. Typical site leases do not guarantee site availability for more than 5 years.

Q9. What happens if a single tower on Jefferson St is impacted by an event such as tornado, etc. What is back up system/plan?

Respondent - Emergency Management:

- Should the Jefferson Street tower be impacted by a catastrophic weather event such as a tornado the system has been designed with redundancy from a fixed location remote from Jefferson Street as well as the utilization of the Mobile Command Unit. The redundant location or the mobile location will not provide the robust coverage as is designed into the system when the Jefferson site is fully operational, but coverage of a lesser degree will be obtained.
- It should be noted that even with a multiple site system should an event such as identified occurs it would not be unusual for the system to experience a reduction in coverage as multiple site systems are normally designed to have a partial overlap in coverage. If the overlap area is interrupted the coverage will be reduced.
- It is possible to design a system where total coverage redundancy is possible but in most cases this is not accomplished due to fiscal restraints.

Q10. When was the water tower and reservoir built? Did the Bridgeforths purchase their home before or after this tower was built? Were the other adjoining neighborhoods built before or after tower?

Respondent - Finance:

- The publicly available land records reflect that the Bridgeforths purchased their land after the water tower and reservoir were built. Specifically, they purchased the land in 2004 and built their house in 2005.

Respondent - Utilities:

- The elevated water storage tank was constructed in 1976. The ground level water storage tank was constructed in 1970.

- We estimate that each tank will have a useful life of at least 50 years – hopefully longer because they have been well maintained.
- With regard to replacement, we are actually in the process at looking at our long term needs for water storage and the options available to meet that need. We won't have any final recommendations from that study for another year or so. We may find that it is best to replace these current tanks in the same location at some time in the future or build new tanks in other locations.

Respondent - Planning & Zoning:

- Most of the homes in the Williamsburg Heights, especially those along the north side of Seldon Dr, were built in the 1987-1989 timeframe.
- Linda Ross' house on Jefferson Street was built in 1949, but she moved there well after the water tanks were constructed.
- The home on the north side of Jefferson Street closest to John Kerr Elementary School was built in 1963, but the current owners purchased it in 2004.
- Everything in Meadow Branch North was built in 1988 or later with most of the closer homes near the Mews being mid-1990's or later.

Q11. Is it possible to use the water tower as a location?

Respondent - Kimball:

- It is not possible to use the existing elevated water tank to meet system performance specifications.
- The elevated water tank was the starting point for design considerations because of its superior location (elevation and central area of the city), it is city owned, it would require no recurring lease payments or land procurement, and it is appropriately zoned. However the elevated water tank will not provide adequate structural locations for antenna mounting (with vertical RF isolation), nor is it of sufficient height to provide adequate coverage throughout the city. Antenna mounting on the perimeter of the tank distorts the antenna propagation characteristics further limiting its suitability as an antenna mounting location.

Q12. What is time estimate and expense if Council were to decide to look for alternative sites/options?

Respondent - Kimball:

- There is an estimated minimum project delay of approximately 11 months for the vendor to assess and confirm the viability of existing candidate sites and design a radio system to use the existing sites. Lease negotiation times are not included. For new sites the estimated minimum project delay is approximately 15 months from the date of site identification and system redesign to initiating construction. Time estimates are based on a nominal impact from legal and regulatory delays and are from the date of notification by Council authorizing the budget to proceed.
- The Kimball presentation to Council on August 16, 2011 provided an opinion of probable cost of $5M for a 2-site system and an opinion of probable cost of $6M for a 3-site system. Current cost

projections are not expected to exceed the original opinion of $5M - $6M by more than 25% including the costs for which the city is responsible.

- Considerable time and expense has been expended to date to vet design options including alternate sites (see the response to Question 4 for a summary of the process). The proposed single site Jefferson Street 237-foot tower design is the only design that meets performance requirements within the appropriated budget. The funds expended to prepare the current design are not recoverable. There has been no budget appropriated for system redesign, nor is it within the scope of the current contract with Motorola or Kimball.

See also the responses to questions 6 & 8 for additional information.

Respondent - Zoning:

- Should City Council decide to pursue an alternate site or sites, the conditional use permit process would have to start again from the beginning. As a result the application would restart the Conditional Use Permit (CUP) process, which can be 2-3 months at a minimum depending on the timing of the application.
- If multiple sites are considered, each site would be a separate application to be considered. Each site/application would need to be evaluated on its own individual merits and potential impacts on surrounding properties.

Q13. What are the specifics concerning the ACTUAL penalties that Winchester taxpayers would incur should this project be delayed past the current waiver? What are the penalties for failure to comply with the January 1, 2013 deadline?

Respondent - Emergency Management:

- The following was copied from the Narrowband Technology Enforcement Advisory, Advisory 2012-05. The entire document can be found searching "narrowbanding" on the FCC website. This will permit review of the entire document.
- The Enforcement Bureau is committed to aggressively enforcing the narrowbanding transition deadline and violators may be subject to enforcement action. Penalties for non-compliance may include license revocation, and/or monetary forfeitures of up to $16,000 for each such violation or each day of a continuing violation, and up to $112,500 for any single act or failure to act.

Q14: For a relatively small increase in investment/costs, isn't strong consideration for multiple sites/towers reasonable, given the significantly reduced visual/aesthetic impact it would have compared to a single, large tower that drastically impacts the City's skyline and views, especially when the City is going to greater lengths to beautify it appearance?

Respondent - Emergency Management:

- Based on the original cost estimates the differential between the budgeted amount of $3.5M reflected an additional $2.5M. Aesthetics should most certainly be a consideration; a redesign could result in at least two additional sites that may also have an aesthetic impact.

- In addition, the City Council has a fiduciary responsibility to the citizens of the entire City.

Respondent - Kimball:

- A system redesign for multiple sites is not a small cost. First the initial site assessments are required to select the optimum constellation of sites. The site assessments evaluate technical parameters required for the system to meet contracted performance standards, lease terms, and total cost of ownership for the city. Once the sites are selected the vendor can prepare a cost estimate for the revised design.

See Question #2 for more detail regarding schedule delay and cost estimates.

Q15: If a multi-site system is feasible, couldn't part of Jim Barnett Park be considered? It seems some of the land there, north of the Christianland area, is high ground and might provide good coverage. After all, the City already owns the land, it is near a highway where there are already numerous tall towers and signs, and it does not decrease the residential home values in nearby neighborhoods. Also it is, I believe, zoned appropriately for this use.

Respondent - Emergency Management:

- The area within Jim Barnett Park was included in the candidate sites for consideration. Any site that would be selected must be in a location that is served by infrastructure (i.e. electrical, phone, etc.). Jim Barnett Park is located in the far northeast section of the City and a tower at that location would not provide the standard of coverage for the southern end of the City of Winchester.

Q16: How is it at all possible that City staff accepted the very misleading photos of the balloon test provided by the consultant? Anyone who has spent a few minutes in our city would recognize that those photos were not at all representative of a true "balloon test," and know that 5 yards lateral to any views would provide a significantly different sight of the balloon/tower.

Respondent - Emergency Management:

- The balloon test was a requirement of the Virginia Department of Historical Resources (VDHR) and was focused on specific properties that were located in the Area of Potential Effect (APE) that are eligible for or listed on the National Register of Historic Places. The City did not request or require this test be performed.
- It is my understanding in reviewing the report that the specific places from where the photos taken were selected by Cultural Resources Inc. The determination of sites was determined by CRI in accordance with criteria of VDHR. The city did not request, was not consulted and had no input with regard to the test and/or acceptance of the test photos.

Respondent - Kimball:

- The balloon test was performed by an independent contractor hired by the radio vendor to ensure that the Jefferson St site tower will meet NEPA/SHPO compliance requirements. The photo requirements are specified by the agencies requesting their submittal.
- The city neither required, nor requested, the balloon test.

Q17: Are you yet immediately applying for another waiver/extension of the mandate deadline, recognizing that to get this project correct it is likely to take longer than a few months?

Respondent - Emergency Management:

- Yes, we are aware of and will be initiating a request to have the waiver extended. Regardless of the matters currently being discussed, the January 1, 2014 date cannot be met.

Q18: Will these and similar citizen questions and inquiries be included in the public record, and answers by City Staff and Council be included as well?

Respondent - Emergency Management:

- The direction provided identified that responses by City staff and technical consultants be posted on the City's website and distributed to Council.

Q19. At any time, for any reason, could a fallout of emissions occur, the tower topple, or any air or ground be contaminated on any land not owned by the City of Winchester causing possible legal action against the City?

Respondent - Kimball:

- In the event of a tower collapse, all radio emissions would cease and there are no hazardous materials involved in the radio project to produce air or ground contamination.

Q20. With the erection of the tower, at any point in time, and for any legal or other reason, could the adjoining property owned by the Handley Board of Trustees be condemned and taken out of consideration as a possible site for the proposed construction of a new John Kerr Elementary School?

Respondent - Zoning:

- From the Zoning Ordinance perspective, no development impacts would result as of the proposed location of the tower at 700 Jefferson Street. Zoning and Inspections staff has only seen one proposal for the existing John Kerr Elementary site which was presented during the Winchester Public School meeting on Monday, September 9, 2013. This proposal showed that no buildings or parking lot features would be within a 237-foot radius around the proposed tower.

- The City of Winchester has the legal authority to condemn property for public use. The proposed communication tower is a public use. The City's contractor, Motorola has identified the proposed site at 700 Jefferson Street as the best site for this facility. Therefore, the City has no interest in acquiring the adjacent property owned by the Handley Trust for this purpose.

Q21. Does the single tower limit the footprint for the new John Kerr Elementary School?

Respondent - City Manager:

- The proposed single tower located at 700 Jefferson Street does not restrict the proposed footprint of the proposed new John Kerr Elementary School as submitted on 7.12.2013 by SHOCKEY P3, LLC .

Q22. Will construction of the tower, in any way, risk damage to or cause a rupture of the current water tower or reservoir?

Respondent - Utilities:

- The construction of the tower will have only a very minimal risk to damage or rupture the existing water tanks. Since the contractor is well versed in this type of construction and will take the necessary precautions, no issues are anticipated.

Q23. What is the City's level of confidence regarding the Hoe-Ram's impact on the water tower and reservoir?

Respondent - Utilities:

- We are very confident that the construction will be completed without any damage to the water tanks. Appropriate staff will be present on site during the construction to monitor the tanks to ensure there are no damages created.

Q24. Has there been a structural evaluation of both the water tower and reservoir in the last five years? If not, will this be done before construction begins?

Respondent - Utilities:

- The water tanks are inspected every year by an outside contractor that specializes in water tank construction and maintenance.
- The most recent inspection reported that both the elevated (February 19, 2013) and ground mounted tanks (October 25, 2012) are in good condition and there are no structural issues that currently exist.

Q25. Has the construction team drilled the site to determine what they will encounter underground?

Respondent - Motorola:

- EIA standard 222-G requires soil testing for Class III (public safety) towers. Our contract includes soil testing (drilling) after the tower location has been approved. The soil testing (drilling) part of the process which is to be performed by our Site Team is pending the outcome of the conditional use permit currently being considered by City Council.
- We have had all existing buried utilities located and have determined that there are no existing buried pipes, cables, etc. that would be affected by construction of the tower.

Q26. How deep are the footers for the radio tower?

Respondent - Motorola:

- This tower implementation will utilize a "slab and pier" method to ensure the most secure installation. The final tower foundation design will be determined once the soil borings have been completed and examined by a structural engineer.
- EIA standard 222-G requires soil testing for Class III (mission critical) towers. Our contract includes soil testing (drilling) after the tower location has been approved. The results of the soil test will be used to design a foundation which is appropriate for the tower and soil conditions.
- Typical foundation design for normal soils uses a 35 ft square buried slab with three 4.5 foot diameter, 6 ft tall buried piers.

Q27. Will dynamite be used in any way during any phase of the radio tower construction?

Respondent - Emergency Management:

- This would not be an acceptable practice.

Respondent - Utilities:

- Explosives will not be used during the radio tower construction.

Respondent - Motorola:

- No dynamite will be used in the construction and installation of the proposed tower.

Q28. If the John Kerr Elementary School is relocated and this property is to be sold (or used for other purposes), has there been an economic impact analysis regarding the possible negative impact the radio tower will have on potential resale value?

Respondent - City Manager:

- No, such an analysis has not been conducted. Without a defined development plan such an analysis would be completely hypothetical.

Q29. What other sites have been or can be considered that incorporates the radio tower's "drop zone" so that it does not overlap into LR, MR, HR, and all other zoning districts listed in 18-2-1.2 of the City's Zoning Ordinance?

Respondent - Zoning:

- In addition to the Jefferson Street location, site analysis and propagation studies were performed at 231 E Piccadilly Street (Timbrook Public Safety Center), 799 Fairmont Avenue (National Fruit), and 1840 Amherst Street (Winchester Medical Center).
- Neither the Winchester Medical Center nor the National Fruit sites would conceptually have a fall zone radius that would overlap onto residentially zoned properties. Depending on placement of the tower on the Timbrook Public Safety Center location, properties in the HR or HR-1 zoning district could be overlapped by the radius.
- All but two of these overlapped parcels near the Timbrook Public Safety Center are currently developed by residential or institutional structures. The two remaining undeveloped parcels are nonconforming lots of records that could potentially by developed with single family residences. However, the Winchester Zoning Ordinance does not discuss a "drop zone" or "fall zone" requirement; it only discusses setback requirements for new towers proposed within a residentially zoned parcel.
- The Winchester Zoning Ordinance does not discuss a "drop zone" or "fall zone" requirement; it only discusses setback requirements for new towers proposed within a residentially zoned parcel.
- In an April 24, 2012 Zoning Interpretation, the Zoning Administrator stated that there is no maximum height or setback requirement outlined in the Zoning Ordinance for proposed towers in the Education, Institution, and Public Use (EIP) zoning district (include link to Interpretation document). The proposed tower site on 700 Jefferson Street is zoned EIP and as a result there is no maximum tower height or setback requirement from property lines.

Q30. What percentage coverage would the City have using the backup versus the multiple site system should the single pole system fail?

Respondent - Motorola/Kimball:

- The contingency plan in the event of a catastrophic failure of the Jefferson St tower invokes the use of the backup control stations to be located at the Timbrook Public Safety Center. Dual-band mobile coverage would be the same as currently exists when the city uses the Timbrook backup stations which are on-street coverage for the majority of the city. Out of range portable in-building coverage would be addressed using NIMS ICS-100 protocols and command mobile-relay.
- The mobile command vehicle deployment will supplement the Timbrook backup coverage.
- Propagation studies and performance specifications for the Timbrook backup system depend on the deployment of the mobile command vehicle and frequency band utilized. To determine the

coverage provided by the failure of a single site of a multi-site system will require a system design, defined sites, and propagation studies for specified design.

- We are unable to answer the question without additional information and design assumptions.

Also see question #8.

Q31. Can the bid process be reopened for a short period to accommodate new suggestions for multiple towers?

(Respondent - Finance/Purchasing:

- No, the bid process closed upon the signing of the contract.

Q32. Will the City's current contractor/high bidder bill the City for time spent so far?

Respondent - Emergency Management:

- Yes. Invoices for work rendered thus far have been processed and the payments have been made.

Respondent - Motorola:

- Implementing Public Safety communication systems is Motorola's core competency. We have thousands of accepted systems installed in the United States alone.
- A milestone payment schedule is part of our contract documentation. The City of Winchester and Motorola have agreed through negotiations to specific milestone payment terms.
- Motorola, once a task is completed and agreed to such by both parties, invoices the City for payment of the completed milestone task. Motorola has billed for milestones achieved.

Respondent - Kimball:

- Kimball bills for the consultant services that are rendered within the scope of the current contract.
- We are currently in the implementation phase of the public safety radio system project and have billed for the services provided to date.
- Kimball understands that a project may require services outside of the contract scope of work due to unforeseen circumstances in a project of this complexity.
- Kimball is available to provide additional services either as a change order to the existing contract, or on a time and materials basis, in order to assist the City of Winchester with modifications to and completion of the proposed radio project.

Q33. Will the radio tower need to be enlarged to meet communication needs in the future?

Respondent - Emergency Management:

- The system and infrastructure has been designed and engineered based on a minimum life expectancy of 25 years.
- The performance standard is based on recognized standards to meet current and future communications requirements.
- There is no indication the proposed communications tower would require enlargement in the future.

Respondent - Kimball:

- The proposed radio tower at Jefferson St. will not need to be modified to meet future Winchester public safety communications requirements. The radio system is designed to provide coverage for mission critical communications at the proposed height.
- Expansion of system capacity (the quantity of users) will not require any modification to the proposed tower.

Q34. Exactly where will the radio tower be located on Jefferson Street?

Respondent - Emergency Management:

- The proposed location of the tower will be within the city's utility compound located on the north side of Jefferson Street at the dead end of Jefferson. The proposed location of the tower within the utility compound will be between the elevated water tank and the ground reservoir with the base of the tower located approximately 25' – 30' west from the ground reservoir.
- There has been some discussion that the tower could be moved approximately 75' north of the originally proposed location but this has only been discussed.
- The proposed tower would be required to remain in the restricted identified area to maintain compliance with the FAA ruling.

Q35. What impact, or influence, will the proposed communications tower location on the Jefferson Street site have on the City's decision for the future location of John Kerr Elementary School?

Respondent - City Manager:

- The location of the communication tower at 700 Jefferson Street will not have any impact or influence on the site location decision related to a new John Kerr Elementary School.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 12/10/13 (regular mtg), **CUT OFF DATE:** 12/03/13

RESOLUTION ___ **ORDINANCE** _X_ **PUBLIC HEARING** ___

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. (*Revision to temporary sign provisions and permit requirements)*

STAFF RECOMMENDATION:
Approval.

PUBLIC NOTICE AND HEARING:
Public hearing held on 10/22/13

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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Planning	TY		12/3/13
2. City Attorney			
3. City Manager	[illegible]		12-3-13
4. Clerk of Council			

Initiating Department Director's Signature: [signature] 12/3/13
(Zoning and Inspections)

RECEIVED
DEC - 2 2014
CITY ATTORNEY

APPROVED AS TO FORM: [signature] 12/3/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

AMG **From:** Aaron Grisdale, Director of Zoning and Inspections

Date: December 10, 2013

Re: O-2013-14, 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 #4 of "Create a More Livable City for All" as well as the policy agenda item of City Gateway Beautification for the major entrance corridors of the City.

BACKGROUND:
Council considered this item during their April 23rd work session, and held a public hearing on June 11, 2013. After hearing concerns from several local entities and businesses during the public hearing, staff held meetings with the Chamber of Commerce, Museum of the Shenandoah Valley, and other interested local businesses. As a result of these meetings and conversations, staff has prepared changes to the proposed text amendment to incorporate some of the concerns and recommendations of these groups.

September 3, 2013 - Update
During the Council work sessions on August 20th and 27th this item was discussed with Council. Council provided direction to eliminate the permit requirement, consider an alternate allocation of temporary signage that is proportional to the amount of lot frontage and set a maximum number of temporary signs per property.

This version of the text amendment, Draft 7, includes the aforementioned revisions desired by Council. The temporary sign permit provisions were removed, and an allocation of temporary signs proportional to the amount of frontage on a public street was included. The proposed allocation allows for one temporary sign per 50-feet of public street frontage with a maximum of four signs per property. The previously included maximum size, required setback, and height provisions were maintained from the previous versión. Two tables were included in this draft to help make the ordinance easier to read and understand.(Full staff report attached).

November 19, 2013 – Update
During the October 22, 2013 special meeting of City Council, there were three minor revisions that were included in the temporary sign ordinance, which different from the version Council reviewed during the first reading on September 10, 2013. First, there was an increase to the size of residential real estate signs to 8 square feet. Secondly, "university campus" was explicitly listed under the *Development Banner* provisions of Section 18-8-12.2l, along with an increase of the maximum size of such signs to 10 square feet. Lastly, a the word "banner" was deleted from the "Temporary banner advertising signs" included in Section 18-8-12.3a in order to remove an unintended restriction on the types of sign material, and make the ordinance more inclusive.

December 10, 2013 – Update
During the November 19, 2013 Council work session, a motion was made to amend the proposed ordinance to strike the language in Section 18-8-12.3 regarding the spacing standard and to modify of the time allotted for temporary signs from 10 days per month to 30 days per quarter.

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.

City Council Meeting
December 10, 2013

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 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. Furthermore, the Winchester Comprehensive Plan calls for Winchester to be a "Community of Choice" and reducing sign clutter and improving the overall appearance of the community can contribute towards that goal.

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.

UPDATE For Council Work Session 8/20/13:
City Staff has had discussions with several businesses and organizations including the Chamber of Commerce regarding this temporary sign ordinance. As a result of the concerns that were voiced during Council's public hearing as well as the questions and concerns brought up during these other discussions, staff has proposed a few revisions to this text amendment. Earlier in August, staff provided a copy of the updated zoning text amendment to the Chamber of Commerce to solicit comments and feedback from the revisions. Staff believes that this draft of the text amendment balances the input received from the local community as well as the steps needed to bring the City's Zoning Ordinance closer in line with Council's Strategic Plan. Specifically the changes include:

- A change to exempt government signs from the requirements of the sign ordinance; such signs include but are not limited to street signs, highway markers, and traffic control devices. (Section 18-8-2.4)
- Adding language to ensure that political campaign signs are only installed on private property with the consent of the property owner. (Section 18-8-12.2c)
- Adding language to special event signs to allow for them to be located on public property with approval of the City Manager or his designee. This was to ensure there is no conflict with special event signs that may be placed on the public right-of-way along the Loudoun Street Mall with special approval. (Section 18-8-12.2e)
- A change to signs for outdoor sales of merchandise to allow for a temporary sign for outside vendors and outdoor display of merchandise associated with a permit on the Loudoun Street Mall. (Section 18-8-12.2f)
- Allowing for a temporary "OPEN" business flag sign affixed to the building. Such signs may not exceed 15 square feet. (Section 18-8-12.2i)
- Adding language to allow for development banners to be affixed to poles inside of a commercial shopping center or medical campus, provided such signs do not exceed 6 square feet. (Section 18-8-12.2j)
- Adding clarifying language that incidental price or advertising signs, such as the small signs on the top of a fuel pump or a price sign on a vehicle or other merchandise does not require a sign permit. (Section 18-8-12.2k)
- A change to the allocation of portable signs on a property from one sign per street frontage to one sign per business; with the caveat that no more than two signs be located within 100-feet of each other within the limits of the development, similar to the current regulations for permanent directional signs. This change will allow greater flexibility on larger parcels that contain numerous business tenants. (Section 18-8-12.3c)
- Increasing the number of temporary sign permits that can be issued per year from three to four; and changing the allocation from permits per property, to permits per business/tenant. (Section 18-8-12.3)
- Adding a classification of signs for regional tourism destinations. This will allow for unique properties that serve as a regional draw for tourists, such as the Museum of Shenandoah Valley and the Winchester Frederick County Visitor Center, to display advertisements for special events/displays. (Section 18-8-12.3e)
- Clarifying the definition of a "Portable Price or Advertising Sign" to eliminate the inclusion of portable flag signs, since they are already prohibited elsewhere in the Ordinance. (Section 18-8-18.17)
- Clarifying the definition of "Temporary Sales Sign" for special temporary permitted sales events such as fireworks or Christmas tree sales; and clarifying that these signs do not include the temporary signs in the Primary and Secondary Assessment districts. (Section 18-8-18.19)

- Changing the proposed temporary sign permit fee from $40 to $25 per permit. (Section 23-8-12)

Update For Council Meeting 9/3/13:
During the Council work sessions on August 20th and 27th this item was discussed with Council. Council provided direction to eliminate the permit requirement, consider an alternate allocation of temporary signage that is proportional to the amount of lot frontage and set a maximum number of temporary signs per property.

This version of the text amendment, Draft 7, includes the aforementioned revisions desired by Council. The temporary sign permit provisions were removed, and an allocation of temporary signs proportional to the amount of frontage on a public street was included. The proposed allocation allows for one temporary sign per 50-feet of public street frontage with a maximum of four signs per property. If a property has multiple street frontages then each frontage will be included in the calculation. If a property does not meet the required 50-foot frontage requirement, they will be permitted to have one temporary sign.

The previously included maximum size, required setback, and height provisions were maintained from the previous version. Two tables were included in this draft to help make the ordinance easier to read and understand. Lastly, a provision was included to keep minimum spacing on site. The proposed spacing requirement is tied to the speed limit of the street that the property fronts upon. If the posted speed limit is 25 miles per hour or less, the spacing required will be 50-feet. For streets with a higher travel speed and higher speed limit the spacing requirement will be increased to 75-feet.

Update for Council Work Session 11/19/13:
During the October 22, 2013 special meeting of City Council, there were three minor revisions that were included in the temporary sign ordinance, which different from the version Council reviewed during the first reading on September 10, 2013. First, there was an increase to the size of residential real estate signs to 8 square feet. Secondly, "university campus" was explicitly listed under the *Development Banner* provisions of Section 18-8-12.2l, along with an increase of the maximum size of such signs to 10 square feet. Lastly, a the word "banner" was deleted from the "Temporary banner advertising signs" included in Section 18-8-12.3a in order to remove an unintended restriction on the types of sign material, and make the ordinance more inclusive.

Update for Council Meeting 12/10/13:
During the November 19, 2013 Council work session, a motion was made to amend the proposed ordinance to strike the language in Section 18-8-12.3 regarding the spacing standard and to modify of the time allotted for temporary signs from 10 days per month to 30 days per quarter.

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.

Current vs. Proposed Temporary Sign Regulations

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Construction Signs	None	4 SF (resid.) / 16 SF (non-resid.)	None	Completion of Project	None	1 per Contractor	None	No	None	
Real Estate Signs	None	8 SF (resid. < 2 acres) / 12 SF (resid. >= 2 acres) & 16 SF (non-res. < 2 acres) / 32 SF (non-res >= 2 acres)	None	Completion of Sale / Rental / Lease	None	1 per frontage	None	No	None	
Political Campaign Signs	None	None	Removed NLT 14 days after event	Removed NLT 14 days after event	None	None	None	No	None	
Street Banners	None	None	14 days before/after event	14 days before/after event	None	None	N/A	Yes, City Council	None	
Civic/Fraternal/Charitable Event Sign	None	None	Removed NLT 5 days after event	Removed NLT 5 days after event	None	None	None	No	None	
Signs advertising storage of materials	None	None	None	None	None	None	None	No	None	Not visible from off-site
Yard Sale Sign	2 SF	8 SF	From 8:00a-6:00p day of sale	3 days prior, removed upon completion	One	One	None	No	None	
Development Banner	N/A	10 SF	N/A	None	N/A	None	None	No	None	Minimum 50 feet of spacing between signs

Current vs. Proposed Temporary Sign Regulations

Type of Sign	Current Max. Size	Proposed Max. Size	Current Max. Display Period	Max. Display Period	Current Max. # of Signs	Proposed Max #	Setback	Permit Required	Height	Special
Temporary Advertising Signs	None	16 SF	10 days	30 days / quarter	None	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet*	*Unless attached to building
Temporary business identification	N/A	16 SF	N/A	45 days	N/A	1 per business/tenant	5 feet	No	4 feet*	*Unless attached to building
Portable Price/Advertising Sign	20 SF	16 SF	None	30 days /quarter (except for Downtown Assess. Districts)	1 per street frontage	1 per 50 ft of street frontage (max 4)	5 feet	No	4 feet	
Temporary Event Signs	N/A	16 SF	N/A	Duration of Event	None	2 per event	5 feet	No	4 feet	^Max 4 sign permits/year per property
Non-commercial Sign	N/A	12 SF	N/A	None	N/A	1 per property (residential properties 1/res. Unit)	None	No	4 feet	Not affixed to wall, fence, structure, vehicle, or landscaping.
Open Flag Sign	N/A	15 SF	N/A	Only during operational hours	N/A	1 per business	None	No	None	Sign bears the word "OPEN" no additional logo or text
Incidental Price / Advertising Sign	N/A	2 SF	N/A	None	**	None	None	No	None	** 1 sign per gasoline pump; 1 sign per item displayed for sale

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, which shall become effective ninety (90) days following the date of adoption:

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

DRAFT 9 – 12/02/13

*Ed. Note: The following text represents excerpts of the Zoning Ordinance that are subject to change. Words with ~~strikethrough~~ are proposed for repeal. Words that are **boldfaced and underlined** are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

WINCHESTER ZONING ORDINANCE

ARTICLE 18

SECTION 18-8. SIGNS.

18-8-1 INTENT. The intent of this Article is to establish limitations on signs in order to **ensure** ~~insure~~ that they are appropriate to the land, building, or use to which they are appurtenant and are adequate, but not excessive, for their intended purpose. Any widespread display of outdoor advertising is considered inappropriate to the character and sound development of the City, and it is intended by this Article that the streets and highways in the City shall not be made available for such display.

18-8-2 PERMIT REQUIRED. A sign permit shall be required before a sign is erected, altered, or relocated, except as otherwise provided herein.

18-8-2.1 Applications. Each application for such permit shall be accompanied by plans showing the area of the sign; the size, character, and design proposed; the method of illumination, method of fastening such sign; the name and address of the sign owner and of the sign erector. Fees for sign permits shall be in accordance with the schedule of fees for building permits as adopted by the City Council. A sign permit shall become null and void if the work for which the permit was issued has not been completed with a period of six (6) months after the date of issuance of the permit.

18-8-2.2 Permit Exceptions. A permit shall not be required for the following; but such signs shall be subject to any and all applicable provisions of this Ordinance:

a. Any **permanent** sign four (4) square feet or less in area.

b. Repainting without changing wording, composition, or color, or minor nonstructural repairs.

c. Changing the wording ~~or face of~~ a sign that was erected in accordance with the provisions of this Article.

d. Temporary signs 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.**

18-8-2.4 **The requirements of this section shall not apply to any permanent or temporary signs issued or installed by the state, local government, any political subdivision thereof, or the employees or agents of such entities.**

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 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:**

a. Construction Signs.~~, which identify the architects, engineers, contractors and other individuals or firms involved with the construction.~~ **One sign per individual or firm involved with construction is permitted, and each sign shall not exceed four (4) square feet in area for a single family residential project and sixteen (16) square feet for any other project, and shall be removed immediately following the completion of the project.**

b. Real Estate Signs, advertising the sale, rental, or lease of the premises, or part of the premises on which the signs are displayed. **Signs shall not exceed eight (8) square feet in area on residential properties or sixteen (16) square feet for non-residential properties and shall be removed immediately after sale, lease or rental. One sign per street frontage is permitted. On properties two (2) acres or larger, residential signs may be up to twelve (12) square feet and non-residential signs may be up to a maximum of thirty-two (32) square feet.**

c. Political Campaign Signs, announcing the candidates seeking public political office and other data pertinent thereto. These signs shall be confined within private property**, erected only with the consent of the owner of the private property,** and removed within fourteen (14) days after the event for which they were made.

d. Street Banners, advertising a public entertainment or event, if specifically approved by the City Council and only for locations designated by the City Council, during and for fourteen (14) days before and after the event for which they were made.

e. Signs advertising only the name, time and place of any bona fide fair, carnival, festival, bazaar, horse show, or similar event, when conducted by a public agency or for the benefit of any civic, fraternal, religious, or charitable cause: provided that all such signs shall be removed within five (5) days after the last day of the event to which they pertain. **Such signs may be installed in the public right-of-way only upon approval by the City Manager or his designee.**

~~g.~~ **f.** Signs advertising storage of materials and supplies or display of merchandise for sale or rent shall be permitted but shall not be visible from off-site**, except for one temporary sign up to twelve (12) square feet may be used as part of an outdoor vendor or outdoor display of merchandise permit as provided for in Section 18-7 of this Ordinance.** (10/17/95, Case TA-95-04, Ord. No. 053-95)

g. Signs advertising an on-site yard sale. One such sign may be placed upon the property for which the yard sale is taking place and may be up to a maximum of eight (8) square feet. Such signs may be placed on site three (3) days before the sale, and must be removed upon completion of the sale.

h. Non-commercial Signs. One such sign may be placed upon a property. If a residential property contains more than one unit, one sign per residential unit is permitted. Such signs shall not exceed twelve (12) square feet, have

a height of not greater than four (4) feet, and must be freestanding and not affixed to a wall, fence, structure, vehicle, or landscaping.

i. Open Business Sign. One such flag sign not to exceed fifteen (15) square feet may be affixed to the building that bears the word "OPEN" or other words depicting the nature of the business. Should the flag contain any corporate logo or text, the sign will not meet this definition. Such signs may only be on display during the operational hours of the business.

j. Development Banner. Banners identifying the name or simple announcement of a commercial center, medical campus, university campus or similar development, provided that such signs do not exceed ten (10) square feet and are securely affixed to a building or pole on private property, at least fifty (50) feet shall be provided between any two such signs.

k. Incidental Price and Advertising Signs, any temporary advertising sign less than two (2) square feet in area. One such sign may be affixed to the product being advertised. For service establishments, a maximum of one sign may be affixed to a gasoline or petroleum fuel pump.

Table 18-8-12.2

Type	Maximum Size	Maximum Height	Maximum Number
Construction Signs	See Section 18-8-12.2a	None	1 per individual/firm
Real Estate Signs	See Section 18-8-12.2b	None	1 per street frontage
Political Campaign Signs	None	None	None
Street Banners	None	None	None
Civic/Fraternal/Charitable Event Sign	None	None	None
Signs Advertising Storage/Display of Merchandise	None	None	None
Yard Sale	8 SF	None	None
Non-commercial Signs	12 SF	4 feet	1 per residential unit
Open Business Sign	15 SF	None	1 per business
Development Banner	10 SF	None	None
Incidental Price or Advertising Sign	2 SF	None	None

18-8-12.3 The following commercial temporary signs shall be permitted in the in the RB-1, RO-1, B-1, B-2, M-1, M-2, CM-1, and PC districts. The number of permitted signs shall be directly proportional to the amount of public street frontage for that property. If a property has multiple public street frontages, each frontage shall be included in the sign calculation. Unless otherwise provided, one (1) temporary sign may be installed per fifty (50) linear feet of public street frontage, with a maximum of four (4) temporary signs per property. Each permitted temporary sign may be up to a

maximum of sixteen (16) square feet in size and four (4) feet in height unless affixed to the face of a building. For properties that do not meet the fifty (50) linear foot requirement for a temporary sign, one temporary sign meeting the aforementioned requirements shall be permitted.

a. Temporary advertising signs on display no more than thirty (30) days per quarter.

b. Temporary Business Identification Signs during review and approval of a permanent building-mounted or freestanding sign. Such signs must be affixed to the face of a building or an existing freestanding sign structure and be on display no longer than forty-five (45) days and are limited to one sign per business.

c. Portable price or advertising signs. Such signs shall be permitted to be on display a maximum of thirty (30) days per quarter, except for signs permitted in the Primary and Secondary Downtown Assessment Districts permitted under Section 18-7.

d. Temporary sales signs, as defined in Section 18-8-18.19 provided that no more than two (2) such signs are on display,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.

e. Regional Tourism Signs. Two signs may be placed on properties containing a regional tourism destination for the purpose of making public announcements, advertising special exhibits, events, or similar advertisements. Such signs shall be exempt from the requirements of Article 14.2, and each sign may be on display no longer than thirty (30) days and no larger than twenty-five (25) square feet. For the purposes of this section a regional tourism destination shall mean a property larger than three (3) acres that routinely provides information and/or exhibits for tourists and the general public.

Deleted: If the property frontage(s) allows for multiple temporary signs, then no two temporary signs shall be located within fifty (50) feet of each other for properties fronting on a street with a speed limit of twenty-five (25) miles per hour or less, and a distance of seventy-five (75) feet for properties fronting on a street with a speed limit of greater than twenty-five (25) miles per hour.

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Table 18-8-12.3

Type	Maximum Size	Maximum Height	Maximum Number
Temporary Advertising Signs	16 SF	4 feet	See Section 18-8-12.3
Temporary Business Identification Signs	16 SF	Must be affixed to a building	1 per business
Portable Price or Advertising Signs	16 SF	4 feet	See Section 18-8-12.3
Temporary Sales Signs	16 SF	4 feet	2 per approved temporary sale event
Regional Tourism Signs	25 SF	4 feet	2

~~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 streets provided in lieu of public streets. (1/9/97, Case TA-97-11, Ord. No. 034-097; 6/9/98, TA-98-02, Ord. No 016-98; 9-9-08 Case TA-08-06, Ord. No. 2008-39)

b. Wall or freestanding signs, not exceeding a total of fifty (50) square feet in area nor eight (8) feet in height and not internally illuminated, for the identification of a subdivision or Planned Development or one freestanding sign not exceeding fifty (50) square feet in area nor eight (8) feet in height and not internally illuminated for the identification of an apartment complex containing at least 50 apartment units and covering at least three (3) acres of ground, if located at an entrance to said subdivision, Planned Development or apartment complex. If a said apartment complex fronts upon more than one public street, then one additional freestanding identification sign not exceeding twenty-five (25) square feet in area shall be allowed at a separate entrance. (3/11/97, Case TA-96-08, Ord. No. 007-97; 9/11/01, Case No. TA-01-02, Ord. No. 029-2001)

c. Names of buildings, dates of erection, monumental citations, commemorative tablets, and the like when carved into stone, concrete, or similar material or made of bronze, aluminum, or other permanent type construction and made an integral part of the structure.

d. Institutional signs setting forth the name or any simple announcement for any public, charitable, educational, or religious institute, located entirely within the premises of that institution. Freestanding signs shall not exceed twenty-five (25) square feet in area.

e. Signs painted on or hung behind windows.

f. Menu boards shall be permitted in the B-1, B-2, CM-1, M-1, and PC districts for drive-through establishments provided such signs shall be designed and oriented so as to limit primary viewing to persons using drive through facilities and menus shall be displayed only on the drive through standing space side. (3/8/94, Case TA-93-09, Ord. No. 005-94)

g. Community Signs, after a finding that such signs are consistent with the provisions of Sections 18-2-1.1a and b of this Ordinance. The intent of this section is to permit a limited number of signs at the entryways to the

community where multiple noncommercial messages are presented in a planned, orderly manner. Such signs shall not exceed 15 feet in height nor 150 square feet in sign area. No signs permitted under this section shall be more than 1,500 feet from the nearest exit ramp and no two signs shall be within 500 feet of each other. A sign permit shall be required. (10/8/96, Case TA-96-06, Ord. No. 026-96)

18-8-13 SIGNS PROHIBITED IN ALL DISTRICTS. The following types of signs are prohibited in all districts:

18-8-13.1 Any sign that obscures a sign display by a public authority for the purpose of giving traffic instructions or directions or other public information.

18-8-13.2 Any sign within the triangular area at the street corner of a corner lot described in Section 18-12 of this Ordinance.

18-8-13.3 Any sign that consists of strings of light bulbs **or illumination devices such as LEDs**.

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, or signs in Section 18-8-12.2**l.

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 such sign is placed. On double-faced signs, only one (1) display face shall be measured in computing total sign area where sign faces are parallel and are at no point more than two (2) feet from one another.

18-8-18.2 Maintenance. The replacing or repairing of a part or portion of a sign made unusable by ordinary wear, tear, or damage beyond the control of the owner or the reprinting of existing copy without changing the wording.

18-8-18.3 Outdoor Advertising Sign . A freestanding or building mounted sign bearing a message which is not appurtenant to the use of the property where the sign is located, and which does not identify the place of business where the sign is located as the purveyor of merchandise or services upon the sign, except signs permitted off-premises for Commercial Centers, as defined and except for directional signs per Section 18-8-18.11. Such signs may also be referred to as billboards or poster panels. (1/9/97, Case TA-97-11, Ord. No. 034-097)

18-8-18.4 Projecting Signs . A sign attached to and perpendicular to the building wall.

18-8-18.5 Sign . Any structure, display device, or representation which is designed or used to advertise or call attention to any thing, person, business, activity, or place and painted, printed, constructed, and displayed in any manner whatsoever out of doors for recognized advertising purposes. However, this shall not include any official court or public notices nor the flag, emblem, or insignia of a government, school, or religious group when displayed for official purposes.

18-8-18.6 Temporary Sign . A banner, ~~pennant,~~ poster, or advertising display constructed of cloth, plastic sheet, cardboard, wallboard, or other like materials, intended to be displayed for a limited period of time, and not permanently attached to a building, ~~or~~ the ground**, or other structure. Only temporary signs provided in Section 18-8-12.2 may be constructed utilizing wood materials and may be securely affixed to the ground to prevent being set in motion by the atmosphere**.

18-8-18.7 Wall Sign . A sign affixed directly to or painted on or otherwise inscribed on an exterior wall or parapet and confined within the limits thereof of any building and which projects from that surface less than twelve (12) inches at all points.

18-8-18.8 Roof Line . Either the edge of the roof or the top of the parapet, whichever forms the top line of the building silhouette. Where a building has several roof levels, this

roof or parapet shall be the one belonging to that portion of the building on which the sign is located. (3/8/94, Case TA-93-09, Ord. No. 005-94)

18-8-18.9 Roof Sign . A sign erected on the roof of a building. Roof signs shall not project above the roof line. (3/8/94, Case TA-93-09, Ord. No. 005-94)

18-8-18.10 Community Sign. A sign identifying the community and/or recognized historic and/or cultural resources therein provided such signs are situated within or visible from major tourism corridors directly connecting from limited access highways. Signs may include uniformly sized and shaped emblems, logos, insignias or simple nameplates of any civic, fraternal, charitable or religious organization based in the community. (10/8/96, Case TA-96-06, Ord. No. 026-96)

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, 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.**

18-8-18.19 **Temporary Sales Sign. A temporary sign advertising a temporary sales event as permitted by the Administrator, such as Christmas trees, fireworks, or similar sales event placed upon the property where such event is occurring. Such signs shall not include portable signs permitted in the Primary or Secondary Assessment districts, nor events sponsored by the Old Town Development Board or City of Winchester.**

18-8-18.20 **Non-commercial Sign. A sign utilized for a non-commercial purpose. Such signs shall not include real estate, construction, or yard sale signs.**

SECTION 18-19. HOME OCCUPATIONS. (10/11/83, Case 83-06, Ord. No. 034-83)

18-19-5 A yard sale shall be considered a permitted home occupation, subject to the following:

18-19-5.2 Each yard sale may be held a maximum of two consecutive days, and only during the hours of 8:00 a.m. to 6:00 p.m. ~~One two (2) square foot on-premises sign advertising the yard sale may be displayed during the hours of 8:00 a.m. to 6:00 p.m. on the day(s) of the sale.~~ (3/8/94, Case TA-94-01, Ord. No. 006-94)

ARTICLE 21
VIOLATION AND PENALTY

21-2-2 **The appeal period for violations of this Ordinance pertaining to the following uses shall be ten (10) days, pursuant to §15.2-2286:**

a. Any violation of Sections 18-8-12.1 through 18-8-12.3, pertaining to temporary signs.
b. Any violation of Sections 18-9-5 through 18-9-5.4, pertaining to yard sales.
c. Any violation of Section 18-12, pertaining to visual obstructions.
d. Any violation of Section 18-17, pertaining to mobile storage units and temporary events.

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**.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: Dec. 10, 2013 **CUT OFF DATE:** _____

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

ITEM TITLE: Resolution Consenting to the Construction of a Waste-to-Energy Project by the Frederick Winchester Service Authority.

STAFF RECOMMENDATION: Approval of resolution.

PUBLIC NOTICE AND HEARING: NA

ADVISORY BOARD RECOMMENDATION: NA

FUNDING DATA: See attached.

INSURANCE: NA

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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Finance	TB		12-2-13
2. City Attorney			12/5/2013
3. City Manager			
4. Clerk of Council			12/5/13

Initiating Department Director's Signature: _____ 12/1/13
Date

APPROVED AS TO FORM:
12/5/2013
ATTORNEY

DEC 5 2013

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Perry Eisenach, Public Services Director

Date: December 10, 2013 (Council Regular Meeting)

Re: Resolution Consenting to the Construction of a Waste-to-Energy Project by the Frederick Winchester Service Authority

---

THE ISSUE: Provide consent to the Frederick Winchester Service Authority to move forward with their proposed Waste-to-Energy Project.

RELATIONSHIP TO STRATEGIC PLAN: **Goal 1**: Grow the Economy and **Goal 4:** Create a More Livable City for All.

BACKGROUND: This item was presented to City Council at the work session on October 15th and forwarded by Council to the November 12th Council meeting for action. It was pulled from the agenda of the November 12th meeting because Frederick County and the Frederick County Sanitation Authority were still in their review process and had not taken action.

Since that time, the Frederick County Sanitation Authority has approved the resolution and the Frederick County Board of Supervisors is scheduled to take action on the resolution during their meeting on December 11.

BUDGET IMPACT: This proposed project would require the issuance of over $51 million of Revenue Bonds by the FWSA. While this is a significant amount of additional debt, the 20-year financial projections that have been prepared by FWSA show that the City would save approximately $14.3 million in operational costs over this period when comparing moving forward with this project versus not moving forward with this project. It should be noted that the majority of these projected savings occur during the latter 10 years of the 20 year period. It should also be noted that there is some financial risk in moving forward with this project if the financial assumptions used over the 20-year period do not prove to be accurate.

RECOMMENDATIONS: The Public Services Department recommends that City Council take the following action:

Approve the resolution providing the City's consent to move forward with the Waste-to-Energy Project.

OPTIONS FOR CITY COUNCIL:

Either approve or not approve the resolution.

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Perry Eisenach, Public Services Director

Date: October 15, 2013 (Council Work Session)

Re: Resolution Consenting to the Construction of a Waste-to-Energy Project by the Frederick Winchester Service Authority

---

THE ISSUE: Provide consent to the Frederick Winchester Service Authority to move forward with their proposed Waste-to-Energy Project.

RELATIONSHIP TO STRATEGIC PLAN: **Goal 1**: Grow the Economy and **Goal 4:** Create a More Livable City for All.

BACKGROUND: The Frederick Winchester Service Authority has been working on developing a large capital improvements project (Waste-to-Energy Project) during the past year. This proposed project would address several existing capital improvement needs at the facility (i.e. old equipment replacement) and would also include the construction of anaerobic digesters that would allow for generators to be installed so that the facility could produce electricity. These anaerobic digesters would also allow for high strength food waste to be disposed of at the facility. These improvements would allow for the potential to significantly reduce certain operational costs at the facility – particularly, electrical and chemical costs and landfill disposal fees.

The FWSA Board has unanimously approved moving forward with this project. The Inter-municipal Agreement for the operation of the Opequon Water Reclamation Facility requires the consent of the City, Frederick County, and the Frederick County Sanitation Authority for the FWSA to move forward with this project that would include the issuance of Revenue Bonds.

Jesse Moffett from the FWSA will provide a presentation on this proposed project at the October 15 Council work session.

BUDGET IMPACT: This proposed project would require the issuance of over $51 million of Revenue Bonds by the FWSA. While this is a significant amount of additional debt, the 20-year financial projections that have been prepared by FWSA show that the City would save approximately $14.3 million in operational costs over this period when comparing moving forward with this project versus not moving forward with this project. It should be noted that the majority of these projected savings occur during the latter 10 years of the 20 year period. It should also be noted that there is some financial risk in moving forward with this project if the financial assumptions used over the 20-year period do not prove to be accurate.

RECOMMENDATIONS:

The Public Services Department recommends that City Council take the following actions:

1. Approve the resolution providing the City's consent to move forward with the Waste-to-Energy Project.
2. Request that the FWSA utilize reserves to pay for the additional costs incurred during the first year of the project.

OPTIONS FOR CITY COUNCIL:

Either approve or not approve the resolution. If the Council approves the resolution, the Council can also either request or not request that FWSA utilize reserves to pay for the additional project costs during the first year.

RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA, CONSENTING TO NEW PROJECTS TO BE UNDERTAKEN AND FINANCED BY THE FREDERICK-WINCHESTER SERVICE AUTHORITY PURSUANT TO THE OPEQUON WATER RECLAMATION FACILITY INTERMUNICIPAL AGREEMENT AND OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the County of Frederick, Virginia (the "County"), the City of Winchester, Virginia (the "City"), the Frederick County Sanitation Authority (the "Sanitation Authority") and Frederick-Winchester Service Authority (the "Service Authority") have entered into the Opequon Water Reclamation Facility Intermunicipal Agreement dated as of April 16, 2008 (the "Intermunicipal Agreement"), for the purposes of providing for the construction of such wastewater treatment facilities as are agreed upon from time to time and the financing, operation and maintenance of all such facilities and for providing security for the bonds to be issued by the Service Authority in connection with such facilities;

WHEREAS, pursuant to such Agreement and its predecessor, the Service Authority has undertaken from time to time the construction, expansion and improvement of the Opequon Water Reclamation Facility (the "Facility") and has issued from time to time revenue bonds to finance such undertakings;

WHEREAS, the Service Authority has determined to undertake a series of projects at the Facility that will provide some or all of the improvements as further described in the executive summary attached hereto as Exhibit A (collectively, the "New Projects");

WHEREAS, the Service Authority bas further determined to finance the New Projects by the issuance of one or more additional series of revenue bonds (the "Bonds") pursuant to the Agreement of Trust dated as of October 1, 1985, as supplemented and amended from time to time (collectively, the "Trust Agreement"), secured in part by the payments to be made in accordance with the terms of the Intermunicipal Agreement;

WHEREAS, pursuant to Article III of the Intermunicipal Agreement, the Service Authority has requested the consent of the County, the City and the Sanitation Authority with respect to the undertaking of the New Projects and the issuance of the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA:

1. The Common Council (the "Council") of the City approves and consents, for purposes of the provisions of Section 3.1 of the Intermunicipal Agreement, to the Service Authority's undertaking of the New Projects and the issuance of the Bonds in an aggregate principal amount not to exceed $53,000,000 for the purposes of financing the New Projects, funding debt service and operating reserve funds and paying related issuance costs.

2. The Council acknowledges that the Bonds will be payable from and secured by amounts received by the Service Authority from the payments assessed under the Intermunicipal Agreement.

3. The Council authorizes and consents to the inclusion of City information in the Official Statement (in its preliminary and final forms) to be prepared by the Service Authority for purposes of marketing the Bonds and hereby directs City staff to assist the Service Authority in the preparation of such City disclosure.

4. The City Manager is hereby authorized and directed to execute and deliver such documents and certificates as are necessary to enable the Service Authority to issue the Bonds and to finance the New Projects, including, but not limited to, a continuing disclosure agreement and closing certificates requested by the Service Authority and its bond counsel. Any other City official so designated by the City Manager is hereby similarly authorized and directed to execute and deliver such documents and certificates.

5. All other acts of the officers of the City, heretofore or hereafter taken, that are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the financing of the New Projects by the Service Authority are hereby approved, ratified and confirmed.

6. Nothing in this Resolution or in the Intermunicipal Agreement is or shall be deemed to be a lending of the credit of the County or the City to the Service Authority or to any holder of any of the Bonds or to any other person, and nothing herein contained is or shall be deemed to be a pledge of the faith and credit or the taxing power of the County or the City within the meaning of the Constitution of Virginia.

7. This Resolution shall take effect immediately.

The undersigned [Deputy] Clerk of the Common Council of the City of Winchester, Virginia, hereby certifies that the foregoing constitutes a true and correct extract from the minutes of a meeting of the Common Council held on _____, 2013, and of the whole thereof so far as applicable to the matters referred to in such extract. I hereby further certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing resolution, a quorum was present. Members present at the meeting were:

_____

Members absent from the meeting were: _____

Members voting in favor of the foregoing resolution were:

_____

Members voting against the foregoing resolution were:

_____

Members abstaining from voting on the foregoing resolution were:

_____

WITNESS MY HAND and the seal of the City of Winchester, Virginia, this ___ day of _____, 2013.

_____
Clerk, City of Winchester, Virginia

[SEAL]

Frederick-Winchester Service Authority
Opequon Water Reclamation Facility
Energy Savings Performance Contract
EXHIBIT A

	COST
Engineering	$1,400,000
Project Scoping and Development Process	$704,000

Aeration System – blowers, diffusers, etc.	$3,039,822
Dewatering System – belt presses, GBTs, sludge feed pumps, etc.	$2,141,050
Ostara – system, lime silo mods, etc.	$4,515,432
Digesters and waste receiving – tanks, covers, receiving station, holding tank mods	$10,876,554
Digester control building – building and major equipment therein	$3,102,455
Green Power – Cogeneration, Gas cleaning , backup power	$6,440,030
Site work – excavation, roads	$2,688,322
Building systems – lighting, HVAC, controls	$2,273,898
Project Contingency	$1,383,875

Engineering Construction Support	$661,426
General Conditions (includes project management)	$1,825,671

Bonding, Insurance, and Local Fees	$908,734
Commissioning, Startup, and Training	$486,345
M&V Testing and Reporting	$53,219
Contract and Engineering Support	$161,650

Equipment and Performance Warranty	$129,789
Project Fee	$2,081,345

Total Price	$44,873,617
Project Contingency	3%
Construction Costs	**$42,769,617**

Frederick-Winchester Service Authority's Green Energy Project
A Benefit to Citizens and Businesses of the Community

In continued support of its mission to abate pollution by wastewater treatment and comply with ever increasing environmental standards, the Frederick-Winchester Service Authority (FWSA) proposes a uniquely innovative project that reduces its long term operating costs to citizens and the community while providing a new resource to businesses and future economic development.

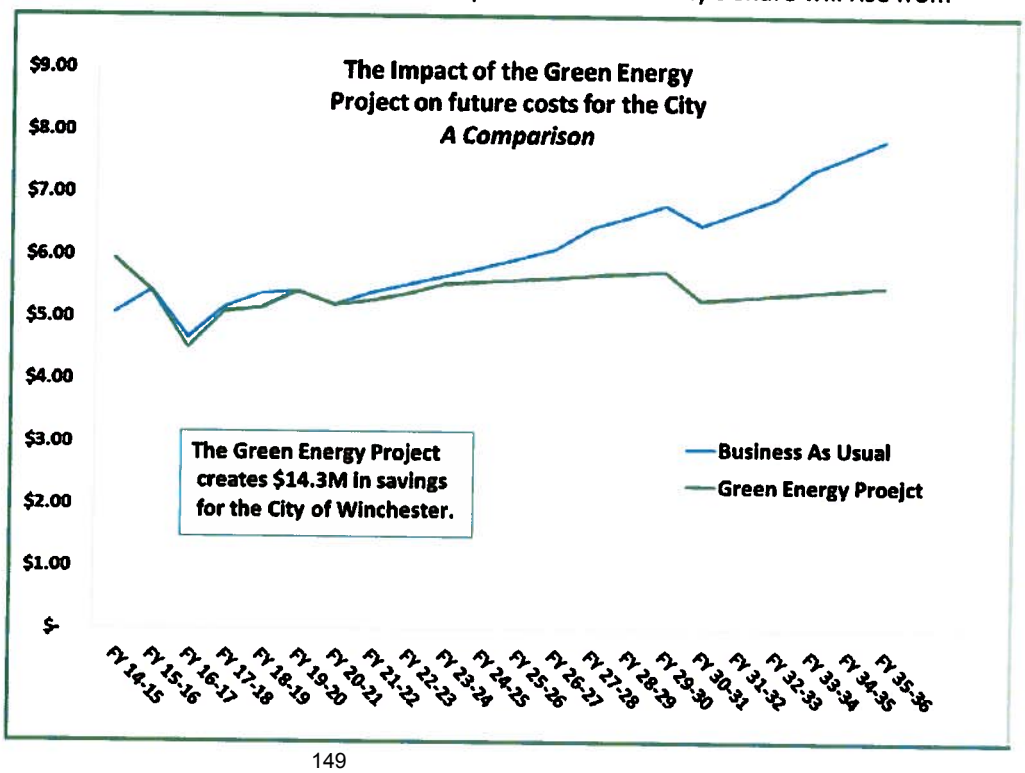
The Green Energy Project will capture the untapped energy hidden in municipal sewage and food processing waste to produce methane gas, a renewable fuel, through the process of anaerobic digestion. This methane will become the fuel to create up to 825 kilowatts of green electricity to power the Opequon Water Reclamation Facility. In addition, the project includes a variety of infrastructure improvements that reduce the plant's annual operating costs and its impact on the County landfill, extending the life of that important community resource. Finally, the facility will harvest phosphorus from the digested waste, a rare element that is an essential ingredient for fertilizer and crop production.

From its inception, FWSA set four clear objectives for the project:

1. **Reduce the need for future rate increases to citizens** – leveraging the project's cost savings to cover its debt service.
2. **Future savings of $20,000,000 for the Community** - when compared to currently planned operating and capital costs.
3. **A fully upgraded facility** - with existing capital and compliance needs included – eliminating the need for another large capital investment in the near future.
4. **New capabilities to support future community economic development** - increasing the likelihood of securing and increasing jobs and the tax base in Winchester and Frederick County

Reduce the need for future rate increases to citizens

The graph below shows City's future share of FWSA budget –comparing its current path of that which results from the Green Energy Project. The chart's blue line - FWSA's current path - shows the city's share will rise from $5M to nearly $8M over the next twenty years. In contrast, the green line - the Green Energy project - shows a stable cost between $5M and $6M for the next twenty years. The project helps eliminate the need for future rate increases and provides over $14M in future cost savings.



A Savings of $20,000,000 for the Community

The Green Energy project creates new debt service, savings in operating costs, and new revenues from the acceptance of high strength food waste. When compared to the current operating and capital improvement plan, the Green Energy Project creates a total savings of $22M over the project life. Of this $22M, the city's portion of the savings is $14.3M, as show in the table on the previous page. The remainder is the benefit to the Frederick County Sanitation Authority.

A fully upgraded facility

A benefit of the Green Energy Project is that it includes and resolves nearly all of the existing treatment infrastructure needs that must be done to keep the Opequon Plant meeting its treatment obligations for the next 20 years. The project includes a combination of needed wastewater treatment infrastructure upgrades, improvements for improved operational efficiency, and green energy production, as shown in the table.

The Green Energy Project ($42.8M)

Treatment Infrastructure Renewal ($29.3M)

- New anaerobic digesters and supporting infrastructure
- New sludge dewatering facility
- Improved wastewater disinfection system
- Treatment plant control system upgrade
- Emergency power system
- Improved wastewater aeration system

Operational Efficiency Improvements ($1.2M)

- Building energy management control system
- Lighting and mechanical system improvements

Green Energy and Resource Generation ($12.3M)

- New cogeneration facility producing up to 825 kilowatts of electricity
- Food waste receiving facility
- Phosphorus recovery system

New capabilities to support future community economic development

Currently, there is not a municipal wastewater treatment facility regularly accepting food processing waste within 100 miles. Market research shows that many food processors in the Shenandoah Valley are trucking their waste several hundreds of miles for disposal. This approach is expensive and does not support the sustainability initiatives of either the food companies or their customers. FWSA's project creates a new local, cost-competitive and reliable waste management solution for the food processing industry keeping waste disposal costs low for local industry, keeping existing industry in place and attracting new industry seeking friendly communities that support and facilitate sustainable organic waste disposal practices. It also creates a valuable new source of revenue for FWSA – one that would not be possible without these new facilities.

CITY OF WINCHESTER, VIRGINIA

CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: December 10, 2013 **CUT OFF DATE:** 12/03/2013

RESOLUTION X ORDINANCE ___ PUBLIC HEARING ___

ITEM TITLE: 2014 Legislative Agenda

STAFF RECOMMENDATION: 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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1.			
2.			
3.			
4.			
5. City Attorney			
6. City Manager			12-3-13
7. Clerk of Council			

Initiating Department Director's Signature: Douglas G. Newell 12/02/2013
Date

RECEIVED
DEC - 2 2014
CITY ATTORNEY

APPROVED AS TO FORM:
12/5/2013
CITY ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Doug Hewett, Assistant City Manager

Date: December 10, 2013

Re: 2014 Legislative Agenda

THE ISSUE: Does the City Council wish to create a 2014 Legislative Agenda?

RELATIONSHIP TO STRATEGIC PLAN: Goal 4 – Create a More Livable City for All

BACKGROUND: Traditionally the City Council has shared key City priorities with members of our State delegation. In reviewing with staff, it appears that the City has taken individual issues at times and at other times prepared a more comprehensive legislative agenda.

For 2014, the City's legislative delegation includes Senator Vogel and Delegate Elect Berg. If approved by City Council, it has been suggested a legislative briefing be conducted with the delegation prior to the General Assembly reconvening on January 8, 2014. The meeting has been tentatively scheduled for Tuesday, December 17 at 8:00 AM.

To aid the City Council in identifying items for possible consideration, staff was polled in June and again in November for possible items. In addition, please find attached the legislative agendas from the Virginia Municipal League (VML), Virginia First Cities (VFC) and Virginia Association of Counties (VACo).

Staff supports both VML and VFC's priorities and feels that the following issues deserved additional advocacy and attention given their potential impact on the City:

1. **Protect local revenue sources** - Don't restrict local revenue authority or sources without providing alternative revenue authority and sustainable revenue sources. This includes, without limitation, the Business, Professional, and Occupational License (BPOL) and Machinery and Tools (M&T) taxes. $5.7 M and $1.9 M respectively for FY13.

2. **Restrict shifting of State created program costs to local government** – An example is the Line of Duty Act (LODA) established by the Virginia General Assembly in 1972 as a program which would be funded by state government. It has been expanded since its inception and now provides eligible public safety personnel with benefits such as a lump-sum death benefit and health insurance for the employee, their spouse, and children (with limitations) for life. The 2010 Virginia General Assembly moved responsibility for funding Line of Duty Act (LODA) obligations to local governments. $92,000 for FY13.

3. **Review impact and seek possible exemption from HB 2239 Cash Proffers** - HB 2239 Cash proffers, which took effect on July 1, 2013, states that cash proffers shall not be used for any capital improvement to an existing facility that does not expand facility capacity or for any operating expense of an existing facility such as ordinary maintenance or repair.

At the very least, staff believes VML should evaluate the impact that this law could have on older cities where existing facilities could be impacted by new developments in a way that doesn't warrant expanding the capacity, but rather ensuring the sustainable life of an existing facility (e.g. the indoor pool at the Park). It seems to be written with suburban counties in mind where sprawl warrants new facilities rather than taking into account mature urban centers where reinvesting in existing facilities might make more sense.

4. **Street Maintenance** - First Cities spent $76M more than state street maintenance payments provided in FY11. City and town streets are a vital part of the regional transportation network. They are more costly to maintain due to heavy use, age, and the need to accommodate pedestrian, bus, auto and truck service and complex adjacent utilities.

    a. Make all lane miles eligible for street maintenance payments to be consistent with state policies for Henrico and Arlington County streets.

    b. Make primary roads in cities and towns eligible for state primary funds. These roads are technically primary "extensions". Legislation passed in 2012 inadvertently excluded this vital part of the primary road network from this key funding stream.

5. **Water Infrastructure** - $50 million in FY 2015 for the Stormwater Local Assistance Fund, to continue improvements for the installation of effective storm-water controls on urban lands to reduce the flow of excess nutrients and sediment to local streams, rivers and the Chesapeake Bay.

The Commissioner of Revenue also advanced the following items for City Council's consideration:

1. **Email Privacy** - Authorization to shield taxpayer/citizen email addresses collected as part of our utility billing or revenue collection activities from Freedom of Information Act requests.

2. **Modification to Virginia State Code§ *58.1-3981*.** *Correction by commissioner or other official performing his duties* that currently limits refunds treasurers can issue to $2500, with governing body approval. The suggestion is that the Code be amended to allow the treasurer to issue refunds, pursuant to this section, of any amount deemed appropriate by the governing body.

    As such, the revised Code section would read as follows: *§ 58.1-3981. Correction by commissioner or other official performing his duties.*

    A. If the commissioner of the revenue, or other official performing the duties imposed on commissioners of the revenue under this title, is satisfied that he has erroneously assessed such applicant with any such tax, he shall correct such assessment. If the assessment exceeds the proper amount, he shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city. If the assessment has been paid, the governing body of the county or city shall, upon the certificate of the commissioner with the consent of the town, city or county attorney, or

if none, the attorney for the Commonwealth, that such assessment was erroneous, direct the treasurer of the county, city or town to refund the excess to the taxpayer, with interest if authorized pursuant to § 58.1-3918 or in the ordinance authorized by § 58.1-3916, or as otherwise authorized in that section. However, the governing body of the county, city or town may authorize the treasurer to approve and issue any refund ~~up to $2,500~~ as a result of an erroneous assessment **up to a limit deemed appropriate by the governing body.**

Staff reviewed the VACo's legislative priorities and felt that the following items were also worthy of inclusion:

1. **Pay Day Lending** - VACo supports legislation to set a total cap of 36 percent for all interest, fees and other charges for payday lending and other similar businesses such as car title loans.

2. **Land Use/Growth Management Tools** - Authority to plan and regulate land use should remain with local governing bodies and VACo opposes any legislation to weaken that authority. Furthermore, the General Assembly should grant localities additional tools necessary to adequately meet citizens' increasing transportation, education, public safety and other vital public infrastructure needs that are driven by new development. Such additional tools may include broad impact fee authority for all counties, adequate public facilities provisions in subdivision ordinances, state funds for the purchase of development rights, and real estate transfer charges. Current residents should not be expected to bear the cost of new growth through increased real estate taxes.

On November 26, 2013 staffed presented these items to City Council during a Work Session. Council seemed receptive to the ideas, but Vice Mayor Veach felt that revisions to the Virginia *State Code § 58.1-3981. Correction by commissioner or other official performing his duties*, should be removed. As such, that item has been removed from the enclosed Resolution.

BUDGET IMPACT:

Significant. Some changes may be termed revenue neutral, but in a worst case scenario if the State repeals BPOL (Business Professional and Occupational License) without a hold-harmless provision, we could be looking at approximately $5.7M reduction to the general fund. Other changes may not have an immediate impact. Still staff will work with our advocacy groups to tract these issues once the General Assembly reconvenes.

OPTIONS:

1. Approve the enclosed resolution
2. Modify the enclosed resolution
3. Provide additional direction to staff, and/or take no action at this time.

RECOMMENDATIONS: Approve the enclosed resolution.

COMMON COUNCIL

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A RESOLUTION ADOPTING THE 2014 STATE LEGISLATIVE AGENDA

WHEREAS, the City of Winchester has comprehensive Strategic Plan that has the stated goal to "Create a More Livable City for All," and

WHEREAS, the state government is a vital partner in advancing this goal, through setting policy and funding priorities in parallel with the City Council; and

WHEREAS, City Council values this partnership and believes that the best results for the people of Winchester follow from the concerted efforts of both local and state government, and

WHEREAS, the City is a member of both the Virginia Municipal League and Virginia First Cities, both of whom advocate on Winchester's behalf through the creation and adoption of the attached 2014 Legislative Priorities;

NOW, THEREFORE BE IT RESOLVED, that the Winchester City Council endorses the priorities of both the Virginia Municipal League and Virginia First Cities; and

BE IT FURTHER RESOLVED, that the Winchester City Council also supports the legislative priorities identified by staff that seek to:

1. Protect local revenue sources;
2. Restrict shifting of State created program costs to local government;
3. Review impact and seek possible exemption from HB 2239 Cash Proffers;
4. Support VFC's Street Maintenance Equity Proposal;
5. Support VFC's Water Infrastructure Funding Request;
6. Provide greater protection to shield email addresses collected from private citizens by the City;
7. Support VACo's Pay Day Lending Modifications; and
8. Support VACo's efforts for more local authority on use of Land Use/Growth Management Tools.

City Council also authorizes the creation of a 2014 Legislative Agenda to share with our local delegation of the Virginia General Assembly. This Agenda shall express to legislators the priorities of City Council in advancing goals to "Create a More Livable City for All." The Agenda shall support proposals which advance goals in the strategic plan and oppose proposals in conflict with them, and it shall respect the current fiscal condition of state and local governments.

RESOLUTION No. _____

ADOPTED by the Common Council of the City of Winchester on the *10th day of December 2013*

2014 Preliminary Policy Statements

Virginia Municipal League

2014 COMMUNITY & ECONOMIC DEVELOPMENT POLICY STATEMENT

Community and economic development are essential to the continued vitality of the Commonwealth of Virginia. VML urges the state to partner with localities to develop and carry out the state economic development strategic plan.

Realizing the importance of the sense of community, VML also supports legislation to encourage state and local cooperation efforts that would deter crime, promote maintenance of property in neighborhoods, and improve the livability of Virginia's cities, towns and counties.

VML encourages local governments to work together in regional efforts to improve the quality of life and economic development opportunities and encourages the state to support such regional efforts in collaboration with local elected officials.

Incentive programs, such as the Governor's Development Opportunity Fund and the Virginia Enterprise Zone Program are important economic development tools, particularly in a challenging economy. The state should strive to fully fund programs that strengthen local governments' commercial and industrial tax bases to reduce pressure on the residential real estate tax base.

HOUSING

VML urges state and local governing bodies to develop and maintain a balanced housing mix, including affordable housing. Local officials are in the best position to determine that mixture. Local governments must be fully involved in the decisions on the placement of affordable housing in their jurisdictions. Procedures involving the granting of tax credits for projects must involve local governing bodies. Any locality that issues a Section 8 housing certificate should have housing available in the jurisdiction for the certificate's holder, to prevent persons who are granted Section 8 certificates from having to leave their home jurisdiction in order to find housing. VML supports state funding for affordable housing.

BLIGHT AND NEIGHBORHOOD PRESERVATION

The General Assembly should broaden the laws on dealing with blight and dealing with building permits issued for repairs or renovation to require timely completion of the work or, failing a legitimate plan by the owner, diligently pursued, to complete the work, authorizing local government action to correct the health and public safety problems created by projects that are not completed and to either seize available assets of the owner and use them to fund corrective action, or recover the locality's costs on a priority basis in the same manner as unpaid taxes. Further, the definition of derelict building should be expanded to include buildings which are never completed to a state that would meet the definition in *Virginia Code* Section 15-2.907.1

VML supports strengthening the minimum housing maintenance code.

ZONING INCENTIVES FOR IN-FILL DEVELOPMENT AND REDEVELOPMENT

The state code provisions on zoning authority should continue to ensure that local governments have a full range of authority to promote affordable housing, including authority to facilitate in-fill development, redevelopment and mixing of

uses in redevelopment projects. Therefore, the code must not be changed to limit local governments' authority to enact land use regulations for the benefits of all citizens of a locality.

PLANNING AND LAND USE

The Governor and General Assembly should continually evaluate the limitations on local authority and land use management tools provided in the state code to ensure that the policies of the Commonwealth encourage and support healthy cities and towns. The Commonwealth must end state laws that encourage sprawl. Instead, the policies of the Commonwealth should support sustainable growth in and around urban centers to help local governments create more livable, environmentally responsible communities, thus reducing the environmental impact of growth. In addition, the policies should alleviate transportation funding problems for the Commonwealth and should promote transportation priorities to promote public transportation modes as well as pedestrian and bicycle transportation. VML supports multi-modal transportation options for regions and localities.

Further, to make movement into urban centers attractive, the education policies and funding must promote high quality educational facilities, opportunities and services in urban centers. Further the Commonwealth must provide funding to help urban centers attract and retain high quality jobs.

Planning and land use control are two of local government's most important functions. Localities must maintain control of local land use decisions. Neither the state nor federal government should usurp a locality's power to make such decisions. All localities should be guided by their comprehensive plan for future development. The General Assembly should allow local governments to exercise land use authority in the manner that the local government deems appropriate for its circumstances. Coordination of local land use planning and transportation planning improves the ability of all levels of government to deal with and manage growth-related issues the Commonwealth faces in the long-term.

The General Assembly should enhance local government's ability to implement their comprehensive plans by authorizing a complete spectrum of land use and growth management tools and should allow and provide localities more creative, locally initiated planning and land use mechanisms. However, sufficient fiscal capacity is necessary to take advantage of more robust planning and land use mechanisms. The General Assembly should enact laws to broaden impact fee authority to allow the adequate assessment of the fees for all public infrastructure, including school construction costs, caused by growth. The General Assembly should take all steps needed to assist towns and cities to work with the surrounding counties to promote growth in patterns that help the vitality of the municipalities. Any change must not shift the burden of paying for new infrastructure to existing citizens through increased real estate taxes.

When a county's transfer of development rights program includes lands adjacent to a city or town, the General Assembly should provide the municipality authority to fully participate in the decisions on transferring such rights when it is determined by the municipality that the land-use change will impact its citizens.

VML supports the state's exploration of sustainable development, provided that there is not an effort to supplant the authority of local governments to determine their own

land use policies, and encourages the consideration of incentives for localities to implement sustainable development approaches.

State agencies should be required to comply with local comprehensive plans and local land use regulations and policies, subject to override by the governor.

VML supports enhanced redevelopment opportunities through the adoption of an urban policy for the commonwealth, and implementation of growth management policies that encourage growth and economic development in urban areas. VML supports the position that the vested rights law is prospective only and that local governments have the authority to amend zoning ordinances in the future.

The law on nonconforming uses and structures must not be diminished. The desires of a single property owner should not outweigh the interests of the neighbors, who benefit from properties coming into conformance with the zoning ordinance over time through the effects of the law on nonconformity.

The General Assembly should not enact any legislation, under the name of private property protection law, that seeks to weaken local powers to regulate land uses and protect the community's health, safety and welfare, or that requires additional compensation beyond judicial interpretation of the Fifth Amendment of the U.S. Constitution and Article I, section II of the Virginia Constitution.

VML opposes any additional legislation that would exempt religious organizations from neutral, generally applicable local ordinances, and in particular, local zoning and public safety ordinances.

RESPONSIBLE GROWTH MANAGEMENT

Current state land use authority is often inadequate to allow local governments to provide for growth in a manner that protects and improves the quality of life in our communities. Therefore as expressed above, the General Assembly should authorize local governments to implement growth management policies including impact fees in order to enable localities to facilitate orderly, rational growth in a manner appropriate to their communities. Until a comprehensive impact fee system is authorized, the code should extend to all localities full authority for conditional zoning to meet the needs of new citizens for public infrastructure.

The General Assembly should enact laws to broaden impact fee authority to allow the adequate assessment of the fees for all public infrastructure, including school construction costs, caused by growth. The General Assembly should take all steps needed to assist towns and cities to work with the surrounding counties to promote growth in patterns that help the vitality of the municipalities by authorizing impact fees for public infrastructure. Any change must not shift the burden of paying for new infrastructure to existing citizens through increased real estate taxes.

DESIGN FOR ALL CITIZENS.

As life expectancy rises and as the number of citizens with significant physical disabilities and limitations increases, Virginia's local governments recognize that the man-made environment must be made accessible to all citizens, whether aging, disabled or facing other limitations. Therefore, the state's laws, regulations and policies must serve to increase accessibility for ageing and disabled populations. Such laws, regulations and policies that do not assist reaching these goals should be

amended or repealed. Building codes should be amended to help achieve these goals in new and existing construction. Further, state laws, regulations and policies must be amended, as needed to give local governments full authority to provide accessible private and public infrastructure.

MANUFACTURED HOUSING BY RIGHT

Local governments must retain the authority to plan for the appropriate mix of residential structures in their communities, and must retain full authority to regulate the placement of manufactured homes, without state intervention.

Localities should retain the right to tax manufactured homes as personal property, and not be forced to classify them as realty.

SUBDIVISION STREET STANDARDS

Local governments should have authority to modify standards for street pavement and right-of-way widths, including streets brought into the system that do not meet VDOT standards, that are beneficial to good planning; public safety; and the well-being of the residents, without diminishing state funding for street maintenance payments.

PRESERVATION OF RIGHTS-OF-WAY

Road projects take many years from the planning stage to construction. Often localities need to reserve miles of right-of-way years in advance of any funding availability for these projects, or risk development in the path of these road projects. Localities need tools to enable them to reserve rights-of-way for longer periods of time. The official map legislation allows reservation but localities are often unable to provide for the upfront funding needed to purchase these rights-of-way in the allotted timeframe.

VARIANCES, SPECIAL EXCEPTIONS & CONDITIONAL USE PERMITS

VML maintains that the law on variances should be retained in its current form. Because land use is controlled at the local level, the General Assembly should not require any specific procedures for special exceptions, conditional use permits or similar land use decisions.

2014 ENVIRONMENTAL QUALITY POLICY STATEMENT

Protecting natural resources and sustaining efficient environmental stewardship is an overarching mission of government. Additionally, VML recognizes the importance and challenge of maintaining natural resources and managing environmental services while simultaneously encouraging economic growth and greater human development in our cities, towns and counties.

To achieve these ends, VML pursues these goals:

1. Promoting environmental quality through a coordinated, comprehensive approach that addresses air and water quality, hazardous and solid waste management, protection of special lands and features including biological diversity, prudent land use policies, noise abatement and energy use.
2. Attaining an equitable distribution of responsibilities among governments for resource protection and environmental services, and attaining sufficient financial resources from the federal and state governments to implement mandates, without duplicating efforts.
3. Recognizing the inter-jurisdictional nature of many environmental resources and pursuing dispute resolution for the continued viability of natural, living, and cultural resources and for the sustainability of efficient environmental services.
4. Pursuing the orderly and planned development of communities and encouraging the revitalization of older communities.
5. Promoting cooperation and coordination among governments, citizens, institutions, and organizations to achieve these goals.
6. Advocating legislation and policy initiatives that provide sufficient resources to implement the least costly and most efficient mandates.
7. Encouraging cost-effective regional approaches to protecting natural resources and providing environmental services.

WATER RESOURCES, QUALITY & CONSERVATION

Quality

Point and nonpoint sources of pollution continue to create significant challenges in protecting water quality: wastewater treatment plant upgrades, urban and agricultural storm water runoff, sedimentation, stream channelization, specific agricultural activities, pet wastes and indiscriminate use of agricultural, yard, lawn care and homecare chemicals. Water resource protection is critical throughout all watersheds of Virginia. Local governments, the state government, the federal government and private interests must recognize these threats and implement precautions and protections that reflect the level of responsibility for offensive activity, as well as technical and economic competence to correct problems.

Additionally, the federal and state governments cannot ignore the financial limitations that local governments face in attempting to resolve these threats. Without adequate funding sources and data to assist local governments water quality will not improve. Local governments managing combined sewer overflows (CSOs), including the cities of Lynchburg and Richmond, require adequate federal and state grant resources. Local governments managing sanitary sewer overflows (SSOs) also require financial assistance.

VML supports dedicated and adequate state appropriations to the Water Quality Improvement Fund to make full and timely payments under point source upgrade contracts with local governments. Additionally, VML requests the General Assembly to address costs associated with the permit requirements of Municipal Separate Storm Sewer Systems (MS4) and new EPA regulations.

Primacy

The state should work to maintain the State Health Department's primacy role in implementing the federal Safe Drinking Water Act.

Conservation

Overuse and indiscriminate use of water, coupled with recurring drought conditions, require state and local leaders to promote water conservation to help to avoid future water supply problems. Local or regional comprehensive water conservation plans should urge conservation through construction building material choices, native and drought tolerant landscaping, appliances (such as dual flush toilets), rate structure, education and water allocation.

Conservation Easements

Water authorities and similar local agencies should have the power to receive conservation easements under the authority of the Conservation Easement Act.

The Virginia Outdoors Foundation's operating costs should be fully funded. State incentives (in-lieu of tax credits) need to be created for local governments seeking to place land designated for watershed protection in conservation easements.

Water Supply

VML believes these principles governing the role of the Commonwealth must guide state water supply planning:

1. The availability of a safe, adequate and reliable water supply is essential to the public health and the economic vitality of the Commonwealth and its local governments. The state should participate in providing funding mechanisms for local and regional water supplies.

2. As a partner with local government in providing water supplies, the state should invest in regional projects to maximize the use of infrastructure and minimize environmental impacts.

3. Maintaining and analyzing a sound surface and ground water database is an essential state responsibility.

4. The state must take an advocacy role to support local water supply projects that conform to state regulations. This includes taking the lead in negotiating multi-state issues.

5. VML supports adequate state environmental staffing in the areas of research and development, including legal research into issues such as inter-basin transfers, which results in stronger technical assistance to municipal government.

6. The State should encourage water conservation measures to promote wise use and prevent and minimize waste through incentives and educational programs.

7. The Commonwealth should consider use of reclaimed water to meet nonpotable needs as part of its water resources to reduce the demand on high quality potable water supplies where practicable and environmentally beneficial. State officials should assist local governments and communities in promoting wastewater reclamation and reuse.

8. Managing water resources should include protecting water sources by such techniques as open space conservation easements held by state and local land trusts.

9. Water is essential to a healthy ecosystem. Stream flows to support beneficial in-stream uses should be protected in the process of providing sufficient water to meet public drinking water requirements.

Local governments must continue to participate in the discussion of any water resource proposals, including the current statewide water supply planning process.

Water supplies are important to local governments for many reasons and constitute a common resource that should be managed as such.

Representation on the State Water Control Board

VML supports legislation requiring the Governor to appoint at least one member of the State Water Control Board from each of the Department of Environmental Quality's six geographic regions. The requirement would ensure balance on the statewide board, which is both the permitting and enforcement authority for all Virginia water quality and water-supply programs.

ENVIRONMENTAL EMERGENCIES

The state should assist with paying for flood protection where localities take precautions, through land use controls, to limit the cost of flood damage restoration.

Localities need increased funding for dam safety updates.

In the event of an environmental emergency, or an act of God, local government officials need maximum discretion to determine measures to be taken beyond those dictated by the state and federal government, as well as ready access to information and training.

SOLID WASTE MANAGEMENT

VML supports the continuation of certifying compliance with local ordinances for waste management facility proposals.

VML endorses developing local waste-to-energy and co-generation facilities as practical alternatives to landfill facilities. To achieve these goals, VML asks the federal and state agencies, as well as the Virginia General Assembly, to fund research into new technologies and processes leading to the development of alternative solid waste management practices.

VML supports efforts to ensure that Waste to Energy (WTE) is consistently defined as a renewable energy source in any renewable energy standards relating to the Commonwealth. Currently the Code of Virginia defines "renewable energy" as including energy derived from waste.

VML supports increased recycling and state efforts to share best recycling practices, to provide seed money for innovative local recycling approaches, and to provide special assistance to smaller communities for recycling by establishing recycling centers.

HAZARDOUS WASTE

Advanced technology, waste minimization, and waste exchange should be used, to the extent possible, to eliminate or reduce hazardous waste.

VML recognizes the need for hazardous waste treatment and disposal facilities to provide adequate capacity for wastes generated within state borders. VML encourages the Commonwealth to establish, and if necessary, to operate, hazardous waste facilities appropriate for improving the treatment, storage, or disposal of hazardous waste generated within Virginia.

Adequate state and federal funding should be provided for cleaning up abandoned and hazardous waste sites. Expedient clean-up of sites is essential.

The Commonwealth should address the collection of household hazardous waste by collecting it or providing liability coverage for local collection programs. Consumer education and discouraging reliance on household chemicals should be encouraged. The state needs to address pharmaceuticals and associated endocrine disruptors, including collection/disposition, and to encourage pharmacies to accept unused pharmaceuticals. State research institutions should examine and provide policy recommendations on the impact of pharmaceuticals and endocrine disruptors to water quality, agricultural products, and human health.

AIR QUALITY

The Commonwealth of Virginia has an on-going responsibility to continue efforts to achieve emission reductions in accordance with Federal Clean Air Act requirements. VML urges the state to recognize the efficiencies of certain low-cost pollution control technologies, such as Stage 2 vapor control devices, and encourages the application of the requirements in areas beyond designated non-attainment areas for improving air quality and meeting air quality standards by the federal deadlines.

When affected by regional short-range or long-range pollutant sources, the state should give an opportunity to participate in developing a regional plan to reach attainment of air quality standards, rather than be excluded by arbitrary boundary lines, especially in non-attainment areas. The state should enhance and maintain its acid rain monitoring network.

PARKS, OPEN SPACE AND CULTURAL RESOURCES

VML supports the renewal of federal funding for parks, historical structure preservation and recreational opportunities. The federal Land and Water Conservation Fund (LWCF) program provides matching grants to States and local governments for the acquisition and development of public outdoor recreation areas and facilities. VML encourages state officials to work with local officials in combining matching dollars for LWCF grants for local and regional facilities. VML also supports additional state funding for local land preservation through Virginia Land Conservation Foundation (VLCF) grants and matching grants to localities for qualifying purchase of development rights (PDR) programs

NOISE CONTROL

State and federal governments must assume the regulatory and financial responsibility of attaining satisfactory noise levels adjacent to major highways and airports.

ENERGY USE & CLIMATE CHANGE

The state should maintain an overall state energy plan that includes provisions for energy emergencies. Regulations and emergency orders should include alternatives that consider the economic impact on political subdivisions that border neighboring states.

A balanced use of all energy sources should be emphasized. The state should amend its regulations and requirements, such as the Statewide Building Code, to remove barriers to experimenting with alternative forms of energy usage in buildings.

Both long- and short-range energy usage should be designed to maximize conservation of energy resources.

Conservation should be the highest priority in formulating state and local energy policies and plans.
Virginia should require energy conservation measures for all utilities operating in the state. These measurers will help the state to reduce energy costs to consumers and increase the available supply of energy without further degradation of the environment.
VML supports the creation of an independent office of the consumer advocate within the state government to actively participate in transmission line issues.

VML supports state assistance to help local governments, businesses and residents obtain energy audits. VML also supports state tax incentives for (1) energy efficiency; and (2) homeowners using renewable energy, including solar, geothermal, wind and others.

VML encourages the Commonwealth to develop building code standards that enhance environmental sustainability and energy efficiency and to enact policies that enable local governments to promote environmental sustainability and energy efficiency in construction.

VML recognizes that the impacts of global climate change, as it relates to relative sea-level rise, habitat destruction and alteration, temperature increase, and variations in seasonal rainfall patterns, has the potential to negatively impact our communities. State officials should provide tools to localities to take inventory of greenhouse emissions output and assist with greenhouse gas emission reduction plans.

CHESAPEAKE BAY

The Chesapeake Bay provides vital economic and recreational benefits to all Virginians. The Commonwealth and federal government must assume responsibility for leading the clean up of the Bay and work with its local governments -- in addition to the neighboring states -- to develop interstate as well as intrastate strategies designed to "Save the Bay." The Chesapeake Bay is a national treasure, and the state must work with the federal government to ensure adequate financial resources are available to implement the plan for complying with federal Clean Water Act. At the federal level VML supports the Chesapeake Bay Accountability & Recovery Act of 2013 which seeks to achieve greater cost-effectiveness in meeting pollution reduction targets. This will help localities address the expensive costs associated with the Chesapeake Bay cleanup.

Living resources such as oysters, crabs and underwater grasses are critical to water quality. Oysters in particular have the capacity to filter sediments and reduce pollutants. While reductions from sewage treatment plants and urban runoff are important to restoring the bay it will become increasingly expensive to reduce a smaller amount of pollutants from these sources resulting in a diminishing return for investment. Increasing those living resources that improve water quality should be considered as an alternative to expensive retrofits of urban areas.

The Commonwealth must continue to share in the funding of local government water quality improvement projects in Virginia at appropriate levels designed to clean up the Bay. The Commonwealth would defeat the spirit of community partnership if it required local governments to undertake unfunded mandates designed to remove the Chesapeake Bay from the EPA's impaired waters list.

HIGHWAY BEAUTIFICATION

VML is discouraged that modification to the Federal Highway Beautification Act has

undermined local authority and continues to allow tree-cutting simply for billboard visibility. The General Assembly should enact legislation that restores local government authority to remove billboards along federal highways through amortization; supports local governments' ability to require non-conforming signs along federal highways to comply with size and height requirements without cash payments; allows local governments to require the removal of billboards in inappropriate locations, especially in rurally-designated scenic, historic, and residential areas; and provides local governments with the authority by local ordinance to prohibit the construction or to determine the placement of any new billboards.
VML encourages the local identification of roads with special natural, historical, scenic, or cultural values and encourages local enhancement and protection of these scenic byways.

TRANSPORTATION AND LOCAL LAND USE PLANNING

VML supports the re-initiation of the state's former environmental review procedure for state highway projects. VML recognizes the potential benefits of such a procedure including the benefits to transportation planning and resource management. However, any such procedure and/or review is incomplete if it does not evaluate the proposed impacts against the state-required local comprehensive plans. VML believes that the environmental review process for public roads should incorporate the local comprehensive plan and involve and take into the account the views of local officials. In all permitting, the DEQ should defer to local zoning decisions prior to the issuance of any permits. Moreover, in exercising its permitting authority, DEQ should recognize the possible cumulative impacts of its permitting activities.

HAZARDOUS LIQUID PIPELINES

The Commonwealth and local governments should adopt appropriate restrictions on development near liquid pipelines and require liquid pipeline operators to take safeguards to reduce the risk of oil spills, particularly in environmentally sensitive areas.

BIOSOLIDS

VML supports and encourages the beneficial recycle/reuse of biosolids on farms and as a crop nutrient and soil amendment in accordance with federal and state handling and disposal regulations, and supports local authority to monitor and reasonably regulate biosolids. VML supports full compliance with all applicable federal, state and local requirements regarding production at the wastewater treatment facility, and management, transportation, storage and use of biosolids away from the facility. This includes good housekeeping practices for biosolids production, processing, transport and storage, and during final use or disposal operations.

GREEN BUILDING

VML supports the construction of buildings that are energy efficient, maximize natural light, minimize stormwater runoff, use recycled materials, and use other environmentally responsible practices. Local governments, state agencies and developers can obtain guidance from the U.S. Green Building Council and the LEED (Leadership in Energy and Environmental Design) Green Building Rating System.

VML applauds the efforts of the Virginia Department of Conservation and Recreation, the Virginia Department of Housing and Community Development, the Department of Environmental Quality and others to implement green building design and construction, and encourages greater use of these environmentally sound and energy

efficient techniques. Ideally, all public buildings should be LEED, or the equivalent, certified.

URANIUM MINING

Uranium mining, milling and waste disposal of generated wastes poses health and environmental problems for Virginians. Prior to uranium mining activities being permitted in Virginia, VML supports studies, including those currently underway, that would evaluate the impacts of radiation and other pollutants from mill tailings on (1) downstream water supplies; and (2) the health and safety of uranium miners.

VML supports the current moratorium on the mining and milling of uranium in the Commonwealth of Virginia until studies demonstrate that it is safe for the environment and health of citizens. Any studies or efforts to develop a regulatory framework should address the concerns, warnings, and conclusions contained in the National Academies of Sciences report to the Commonwealth entitled "Uranium Mining in Virginia" and dated December 2011. Furthermore, the state should take no action to preempt, eliminate, or preclude local government jurisdiction with respect to whether uranium mining would be allowed in the respective jurisdiction.

HYDRAULIC FRACTURING

Advances in technology for the extraction of natural gas known as "hydraulic fracturing" has the potential to tap vast reserves in what are known as the Marcellus shale and Taylorsville Basin deposits. Concerns about how the process of hydraulic fracturing could impact both public and private groundwater supplies have been raised both regionally and nationally. VML supports a state regulatory program that addresses these concerns while protecting the authority of local governments to regulate this type of mining activity through its land use ordinances.

Goals and Principles

The state and local tax structures must be able to sustain core government responsibilities, providing resources for mandated and high-priority services in the most efficient and effective ways possible.

To that end, these principles are essential:

- Local revenue sources should be balanced and diversified over three broad bases – assets (property), consumption (sales), and income;
- The local tax system should be logical and professionally administered. Taxpayers should be treated fairly, and compliance costs should be minimized;
- The burden of taxation, as well as the benefits of services, should be shared and enjoyed by all whether they are residents or local businesses.
- Tax policy should recognize the different economic, demographic, and service demands among localities, and should foster local control to develop tax policies best suited for their communities;
- Tax policy should recognize and be responsive to the competitive nature of the free market, should refrain from enacting policies that are too generous for one group, and should not place undue burdens on particular groups, including business and industry;
- State-imposed changes on local tax structures should be simple to administer and, at a minimum, be revenue neutral; and
- State-mandated tax relief programs should not use local revenues. State-adopted tax relief programs should rely only on state revenues.
- Local government representatives should be included on any "blue ribbon" commission or other body established by the state that has as its purpose changes to local revenue authority or governance.

Fiscal Challenges Confronting Local Governments

- The existing local tax structure is overly dependent upon general property taxes, specifically real estate taxes.
- Unfunded and inadequately funded state mandates and commitments strain local government budgets and place additional pressures on the real estate tax. State-initiated services and programs should be supported by state funds, not rely on local funds to supplant state dollars.
- Public demands for public services continue to increase. These services include education, mental health, other human services programs, juvenile programs, environmental initiatives, economic development, recreation, and public safety. These services have both operating and capital costs.
- Local revenue collections and service demands are also influenced by variables outside the control of councils and boards of supervisors. These include changes in federal tax, budget, and fiscal policies; long-term economic trends; the aging of our citizens; and global events.

Strengthening the Local Tax Base

Depending on the particulars of any given proposal, possible options to broaden local tax bases include reserving a portion of the state income tax for locally-delivered

programs, authorizing a local option income tax for both general and special purposes, increasing the local option sales tax rate, reducing the number of sales tax exemptions, expanding the sales tax base, and reducing the number of exemptions from the business license tax.
The state can also take actions to prevent the further erosion of local revenues **by not** restricting local tax authority, imposing new spending requirements or expanding existing ones on services delivered by local governments, shifting state funding responsibilities onto local governments, expanding retirement benefits, and placing administrative burdens on local governments for state or joint programs.

Specific Tax Issues
VML opposes the repeal or restriction of BPOL, machinery and tools, or excise taxes unless, at a minimum, suitable revenue-neutral replacement sources are provided.

The state and federal government should make payments-in-lieu-of-taxes for tax-exempt properties in amounts equal to the cost of the local services provided.

Counties should be granted taxing powers equal to those granted cities and towns, without decreasing, limiting or changing town taxing authority. County excise taxes must not be levied on town residents without the explicit approval by a town's governing body.

VML supports the constitutional requirement for fair market valuation of property. State-imposed changes to the real estate tax must be "local option."

VML supports current state statutory requirements governing the setting of real estate tax rates and the integration of this process with the budget development process. Changes to these processes cannot be addressed separately without placing undue hardship and increased costs on local taxpayers. Any future state legislative change should be simple to administer and not contradict, impede or hinder the others. The communication sales and use tax is a local tax and should be treated as such.

VML supports state legislation to make clear that transient occupancy taxes and sales taxes are applied on the cost of the room paid by the consumer, regardless of the means (such as on-line travel companies) used to reserve a room.

Specific Budget Issues
VML urges full state financial support of the '599' program in accordance with the provisions set out in state law. This program is important to local police departments throughout the Commonwealth.

The state must be a reliable funding partner in accordance with the Virginia Constitution and state statutes. The Standards of Quality should recognize the resources, including positions, required for a high-quality public education system. The SOQ should reflect prevailing practices across the state, and the actual costs to educate Virginia's children. This includes the cost to educate at-risk students, students in jeopardy of failing the state's Standards of Learning tests, students with special needs, and school construction/renovation/maintenance.

The state should fully recognize and fund the costs of re-benchmarking of the various educational programs, including the Standards of Quality, incentive, categorical, and school facilities programs as well as support services. Changing the process of re-benchmarking to artificially lower recognized costs like inflation does not change what it actually costs to provide

education. Instead, it simply transfers additional costs to local governments and the real estate tax base.

The state should provide sufficient funding for highway construction and maintenance, public transportation infrastructure and maintenance, ports, airports, and freight and passenger rail to promote economic development and public safety.

The state should base its funding of retirement plans based on the contribution rates certified by the Virginia Retirement System.

VML supports transparency in budgeting at both the state and local level. To that effect, the state should not disguise its budget reductions by using unidentified or non-specific reductions for aid to localities.

As a matter of fiscal reform, the state should develop financial priorities that take into account both spending and revenue actions. The debate on such priorities should be public, and should be transparent to the public in the Governor's Budget Bill and the General Assembly's Appropriation Act. For example, should education funding be afforded less priority than certain tax preferences?

GASB

For the first time, GASB creates standards regarding the reporting of unfunded liabilities of cost-sharing plans. A cost-sharing plan is one in which participating government employers pool their assets and their obligations for a defined benefit pension, such as Virginia's teacher retirement plan.

GASB requires that the unfunded liability be apportioned among the participating employers that pay the retirement contributions to the pension plan. Teachers are employees of the school boards, which send retirement contributions to VRS. Because of this the unfunded liability falls solely on the school boards, even though the retirement contributions are funded by the state and the school board. This means that the liability will be shown on the city, county or town financial statement.

Because there was not a process for apportioning the liabilities for these cost sharing plans, they previously had not been reported at the local level.

The unfunded liability should be shared by the state and localities.

VML supports legislation that would provide for the Virginia Department of Education to pay its share of retirement costs directly to the Virginia Retirement System in order to facilitate the sharing of these liabilities.

Government Reform

VML supports a comprehensive review of the services provided by state and local governments. The purpose of the review is to ascertain which services are truly essential to support a productive economy and healthy society; determine the performance level of public services now in place; evaluate the policies and practices used by the state to assign responsibility and accountability between the state and local governments for providing public services; and determine the most effective, efficient and equitable ways to fund essential public services. Such a review must start with a dialog including state and local officials, business interests, academia, and other interested parties.

2014 GENERAL LAWS POLICY STATEMENT

The basic purpose of local government is to provide essential services and protection for the community that citizens cannot provide for themselves. Local governments should decide which services and programs are of primary importance to the community. Virginia has hamstrung its cities, counties and towns with 19th-century legislation. The financial ability of municipalities to survive is threatened.

I. EFFECTIVE GOVERNMENT

GOVERNMENT STRUCTURE

The General Assembly should allow significant diversity among municipal charters and not impose uniformity.

The General Assembly should promote the sharing of the economic, social, cultural, fiscal and educational benefits and burdens of urbanization among all local governments involved.

The addition of sub-state and special district governments should be controlled. New districts should not be created unless services cannot be furnished by local governments. In addition, no sub-state districts, including planning district commissions, should be granted real or quasi-legislative authority to undertake other functions except when expressly directed by their member jurisdictions, including those towns not directly represented in the entity.

VML urges a careful review of the statutes concerning consolidation of local governments to ensure (a) that citizen-initiated petitions are signed by a reasonable number of affected citizens who reside in the jurisdiction, and (b) adequate periods of time elapse between consolidation or annexation actions. The Virginia Municipal League supports the General Assembly's provision of financial incentives to promote consolidation of local government services and cooperative agreements among local governments.

INTERGOVERNMENTAL ISSUES

Local governments have a vital role in the Commonwealth. They must have sufficient powers and flexibility to meet this role. The General Assembly should adopt legislation to promote and expand, to the extent necessary, municipal powers, to (a) enhance the ability of local governments to provide services required by their citizens, and (b) allow local governments to meet their responsibilities in state/local partnerships. VML opposes intrusions into the way local governments conduct their business, including burdensome regulations relating to:

1. meetings of governing bodies;
2. purchasing procedures;
3. matters that can be enacted by resolution or ordinance;
4. procedures for adopting ordinances; and
5. procedures for filling vacancies on local governing bodies.

State intervention in local affairs is only warranted in significant matters where regional or statewide issues that are of great importance exist. No changes should be made in the laws affecting local government without substantial local input from affected jurisdictions and participation in developing those changes.

VML opposes legislation that:

- bars courts from awarding attorney's fees to local governments when a frivolous suit is filed;

- eliminates the notice of claim requirement found in the *Code of Virginia,* § 15.2-209. *(Updated reference.)*

Membership on all state and regional commissions or committees dealing with matters affecting local governments must include local officials who represent a demographic and geographic cross-section of counties, cities, and towns.

VML supports legislation to transfer responsibility from local governments to the state government for the liability, administration and cost of community service options for persons upon whom court costs and fines are levied.

TOWNS

The General Assembly and the executive branch should recognize towns as essential units of local government, with important roles in providing services to citizens living in a concentrated environment. As such, towns with their centrality and economic efficiency represent the future of the urbanizing areas of the Commonwealth. Towns should have clear and full authority to be formed and to act in a timely manner on matters which protect public health, safety, and welfare.

The General Assembly should respect and support the sovereignty, utility, and urban powers of towns. No legislation should be enacted that allows counties to usurp or diminish the authorities of towns. Excise taxes that counties are authorized to levy generally must not apply within towns without the explicit approval by the town's governing body.

The General Assembly should scrutinize bills dealing with laws of general applications to local governments, to avoid enacting any laws that would be sources of possible conflicts between counties and towns. The following list provides examples of conflicts between towns and counties exacerbated by legislative action:

a. taxation of town residents by county governments at the same rate as that applied to those living in the county's unincorporated areas, when comparable benefits and services are not provided;
b. county imposition of a merchants' capital tax on businesses located within the town at the same rate as that applied to businesses located in unincorporated areas of the county, when the town levies a business, professional and occupational license tax;
c. unequal town zoning and planning authority for land straddling or abutting town corporate boundaries and unincorporated county areas;
d. funding of county sheriffs' and deputy sheriffs' salaries by the State Compensation Board and other state-funded amenities not provided to town police departments; and
e. unequal statutory authority of towns in relationship to that of cities and counties.
f. allowing county excise tax within a town without approval of the town government.

The General Assembly should recognize the unintended consequences of inadvertently omitting towns or cities or counties from legislation.

Towns should retain the right to annex lands and otherwise expand their boundaries. Towns over 5,000 population should have the right to become an independent city; and cities should have the right to revert to town status.

STATE AND FEDERAL MANDATES

The state and federal governments must provide adequate funding for any local

programs or responsibilities that are mandated or expanded by state and federal laws or regulations.

The federal and state governments should not use project funding as a means of forcing local land use decisions in contravention to local land use plans. These actions violate the principles of local authority and weaken the local tax base.

Federal and state mandates must be reduced when funding is reduced, so that localities are not required to spend additional local dollars to comply with the mandates. Further, funds should be distributed in the most efficient way possible with the least regulatory control.

The Governor and General Assembly should promote state-local partnerships by requiring:

1. A review of mandates in specific program areas to (a) establish the full cost to local governments of implementing mandates and (b) develop an appropriate basis for determining state-local funding responsibilities.
2. Completion of cost estimates for proposed legislation prior to its first full review by a legislative committee, with legislation negatively affecting local governments' revenue-raising ability being submitted to the COLG for a fiscal impact analysis.
3. A performance-based approach to mandates that (a) focuses on outcomes, (b) offers incentives for achieving state objectives, and (c) gives local governments autonomy to determine the best way to achieve the desired result.
4. Simplified state reporting requirements associated with mandates eliminating nonessential information and duplication, coordinating state deadlines for information submittal, and making better use of reporting technology.

The alarming tendency of state and federal agencies to treat guidelines authorized by enabling legislation as having the stature of law itself must cease. In addition, the state should avoid unessential and arbitrary implementation of federal regulations.

STATE AND LOCAL RESPONSIBILITIES

The state requires local governments to provide certain services, such as education, corrections, social services, health and community mental health. The local government does not have the option of not being the state's service provider in these areas. "State aid" to localities is the state's payment for the implicit contractual arrangement for this assignment of duties. In addition, local governments have to contribute local funding to these services.

In addition to the state-mandated services, localities provide other services that are either necessary (water and sewer, police and fire protection, etc.) or desired by local residents (parks and recreation, cultural activities, etc.). Local governments need the flexibility and resources to collect revenues to meet these local responsibilities.

Two fundamental problems in Virginia's intergovernmental structure are first, the state does not fund adequately existing services, particularly education, that it requires local governments to provide; and second, local officials have very limited revenue options, which forces them to rely heavily on real estate, personal property taxes and other local revenue sources to pay for services.

Further, to improve the relationship of the state and local governments, the state should

1. Not restrict the taxing authority and revenue sources of local governments without local concurrence.

2. Strengthen the partnership of the state with local governments by granting local governments full authority to deal effectively with social problems.
3. Participate as a financial partner with local governments in the costs of education, including school construction and renovation, and, as an active partner, fully fund the state's fair share of the costs of education.
4. Follow specific procurement procedures before purchasing property, including adequate inquiry into the purchase, public hearings and notice, and notice of intent to settle sent to the locality. In addition, the state should consider remuneration to the locality for the loss of real estate taxes as well as any loss in economic development potential.

The General Assembly should continue its involvement with and financial support of the Virginia Institute of Government.

FREEDOM OF INFORMATION

VML strongly supports the free flow of information to citizens and the media through the conduct of governmental affairs at all levels in the open, in good faith compliance with the Freedom of Information Act. VML also supports efforts to educate local government officials about the Act, and the importance of extensive and accurate reporting of government affairs.

Citizens have the right to have personal information protected. Government also has to be able to control its work processes so that public business can be conducted. It is in the public's interest to conduct some matters outside public view prior to official action. Accordingly, VML strongly opposes extending limitations on closed meetings and exempt records, which would upset the Act's careful balance among a fully informed public, the protection of individuals' privacy, the ability of government to conduct its work and those matters for which the premature release would not be in the best interest of the locality or its citizens.

In addition, localities should be able to continue charging reasonable fees for any and all records, including for research time and for computer records that must be provided under the Act to avoid shifting the cost of copying from the requestor to the general taxpayers. The Act should continue to limit rights to documents to citizens of the Commonwealth and news organizations that publish here.

VML opposes legislation to limit the use of any legitimate means of communications from one elected official to others, including letters, emails and conversation.

GOVERNMENTAL & MUNICIPAL OFFICIAL LIABILITY

VML calls upon Virginia's congressional delegation to support legislation to restore suits brought under 42 U.S.C. Section 1983 to traditional civil rights actions, and to preclude the award of damages if the court finds that the government or its officials were acting in good faith.

Expanding liability and eroding immunities at the state level across the nation have had a chilling effect on the actions of local government officials contributing to local government insurance problems, creating immense financial risks (particularly for legal costs), and posing a substantial obstacle to the provision of needed public services.

The Virginia General Assembly should strengthen and must maintain the principles of sovereign immunity for local governments and their officials.

VML strongly opposes bringing local governments under the Virginia Tort Claims Act. This action would seriously erode the sovereign immunity now enjoyed by Virginia local governments and lead to a substantial increase in frivolous suits.

The tort reparations system in the U.S. creates many difficulties in the administration of justice. VML supports efforts at the national and state levels to address tort reform, such as limitations on the tort liability of local governments in areas where local governments do not enjoy sovereign immunity.

The General Assembly should adopt legislation to codify the proposition that real property of local governments shall be exempt from liens created by statute or otherwise. This proposition has already been recognized by the Virginia Supreme Court for mechanics liens.

PERSONNEL

Management has the responsibility to ensure that employment, training, and promotional opportunities are provided without regard to race, creed, sex, national origin, age, or any other factors not related to job performance.

VML supports:

- an equitable heart/lung/cancer presumption statute as was the intent of the original legislation. Compensability should be determined by establishing whether work or non work related risk factors are more likely the primary cause of the claimant's condition. Additional employee classes and/or medical conditions should be added only when supported by credible medical evidence.
- the current injury by accident definition in the Virginia Workers' Compensation Act.
- the current Workers' Compensation Act provisions for use of an employer selected panel of physicians to treat injured workers.
- maintenance of the exclusive remedy provisions of the Virginia Workers' Compensation Act.
- local governments' authority to establish hours of work, salaries and working conditions for local employees.

VML opposes:

- any attempt to impose collective bargaining or 'meet and confer' requirements for public employers or employees.
- any attempt by the federal government to stipulate grievance procedures for state and local employees, such as the police officers bill of rights.

TELECOMMUNICATIONS, LOCAL GOVERNMENT PRINCIPLES

VML sets forth the following principles to guide any federal or state legislative action regarding telecommunications issues.

a. Public Rights-of-Way.

Local rights-of-way are public property. The rights-of-way contain numerous utility and other facilities. Proper management and maintenance of rights-of-way are essential to ensure public safety, to protect the integrity of the property, to guarantee the safety of workers and to maintain the efficiency of local streets, utility systems and transportation facilities and networks. Private use of public rights-of-way significantly increases management and maintenance costs.

b. Franchise authority.

Neither the federal government nor the state should enact any laws to shift the award of franchises to use the public rights of way from the local governing body to any state or federal agency.

Individuals and businesses in the community help to buy and maintain rights-of-way

through their taxes. Rights-of-way should not be used for private purposes without approval by and compensation to the local government for the right to use the space, and local governments must have authority to control the rights-of-way.

c. Equitable Taxation. Telecommunications providers are valued members of our corporate community. All members of the corporate community must pay taxes on an equitable basis, as appropriately determined by the local government. No legislation should restrict the ability of local governments to impose equitable taxes on telecommunications providers.

d. Universal Service and Consumer Access. Important educational and community services are provided via telecommunications. Telecommunications providers must be responsive to citizen needs and concerns and provide appropriate customer services to all segments of our community so that disparities due to income or geographic location affecting citizen access to new technology are minimized.

e. Competition. Local governments are interested in healthy competition in the_field of telecommunications. To ensure a competitively neutral and non-discriminatory market, all service providers must pay fair compensation for the use of public property. Governments should not be forced to subsidize some participants in this fee-market competition through lower-than-fair-market charges or any other means.

f. Local Government as Customers. Local governments are important consumers of telecommunications services. In many communities, the local government is the single largest customers of telecommunications services through its government offices, education facilities and emergency communications. As valuable customers, local governments should be treated equitably.

TECHNOLOGY

State law should allow all counties, cities, and towns to make full and appropriate use of modern technology to promote public safety. Localities should have maximum flexibility to contract with the private sector to implement all aspects of such technology.

State policy must assist local governments to contact and notify their citizens in the most efficient and cost-effective manners possible given the telecommunications infrastructure in the locality. Ads required by the code of Virginia are expensive to run in the newspaper and often are only seen by a small minority of the citizens. In some cases, newspapers that charged reasonable advertising rates closed leaving localities with only expensive newspapers for legal notices. A locality's internet presence, social media, local cable access channels, local radio and TV provide alternative methods to contact the citizens much more broadly and effectively than newspaper ads in many areas of the Commonwealth. In addition, the cost of contacting the citizens through new technology can be much lower than advertising in the newspaper. The state code should be amended to allow local governments electronic and other alternative means of communicating with their citizens when providing required legal notices.

In addition, small towns should be allowed to use first class mail instead of newspaper advertising to notify the citizens of government actions such as advertising a budget hearing or advertising a land use hearing in order to save the citizens money and to communicate more effectively with the citizens.

Pursuant to the 1996 Telecommunication Act, the cellular phone industry is developing technology to provide for the identification of the origin of cellular emergency calls. Until this technology is implemented and revenue sources have been

identified to finance it, the state police should continue to handle the E911 calls they currently handle.
(Moved from public safety section)

UTILITIES

Fundamental policies should be honored by the state in promoting the delivery of utility services by local governments and the authorities they create:

a. Each provider of service must be free to set its rates without interference from other local governments or the state.

b. Each local government providing utility services must be able to compete fairly with any other providers without state interference.

c. Each local government that provides utility services must be able to manage its revenues and expenditures related to the services without state interference.

Virginia's localities and water and sewer authorities must retain the ability to enforce liens against landlords' properties for the unpaid water and sewer bills of their tenants in order to maintain a dependable income stream.

Municipal electric systems should continue to have the authority to set their own rates. Any attempt by the State Corporation Commission to regulate rates for utility services furnished by local governments would violate the Virginia Constitution.

The Virginia Electric Utility Restructuring Act of 1999, as amended in 2001, requires that incumbent electric utilities functionally separate their generation facilities from their transmission and distribution facilities prior to implementing retail choice. VML supports functional separation but is opposed in principle to an arrangement whereby a Virginia utility would transfer its generation facilities to an affiliate corporation.

II. PUBLIC SAFETY

VML supports legislation that preserves law and order and promotes the safety, quality of life and administration of justice within our communities. The Commonwealth should enhance its efforts to prevent juvenile crime, minimize violence in the schools, reduce the formation and operation of gangs by providing funding for programs that prepare our youth to be productive, responsible, self-reliant members of society.

The state should continue to provide leadership and technical assistance to localities in their efforts to coordinate public safety activities including emergency services.

VML supports legislation that will clearly establish the relationships between the Virginia State Police and municipalities to assure efficient command, control and communications during local emergencies.

Additional authority should be granted to law enforcement agencies to impound the vehicle owned by a person charged after having been convicted more than once of operating the motor vehicle without a driver's license.

Greater latitude should be given to localities in encouraging innovative methods of combating traffic violations and crime.

WEAPONS IN PUBLIC BUILDINGS

VML supports legislation to allow local governments to prohibit or restrict the carrying of weapons in city and town halls, county administration buildings, and any other building where a meeting of a local governing body meets, to the same extent weapons are prohibited in public schools.

COMMUNITY CORRECTIONS

VML requests both increased funding and an equitable distribution formula for services provided under the Comprehensive Community Corrections Act (CCCA) and the Pre-Trial Services Act (PSA). Since the advent of these programs in 1995, caseloads have effectively doubled at the local level, while state resources have remained constant. These resources are allocated to localities on a discretionary grant basis. Given the statewide character of this program, it is now time to allocate these funds through an equitable formula that recognizes regional costs and benefits of these services. The program is cost effective.

COURT FEES

A user of the court system should not force increased costs on the general population. VML supports legislation to increase court fees to pay for courthouse maintenance, renovation and construction and other court-related projects.

DOMESTIC VIOLENCE

Virginia's law defines domestic violence as incidents involving those who are or have been married, those who cohabit or have cohabited within the past 12 months, or couples that have a child in common. As it has been demonstrated that incidents of domestic violence between couples who previously cohabited can occur several years or more after they cease to cohabit, incidents of violence between these individuals should be treated as domestic violence, no matter how much time has passed since the cohabitation ceased. The *Code of Virginia* definition of domestic violence should be changed to reflect this broader scope of cohabitation.

Currently cases involving statutory-defined domestic violence go to the juvenile and domestic relations district court, while those that do not meet the code definition go to the general district court. Giving the juvenile and domestic relations district court jurisdiction over these cases to the greatest degree practical would allow that court to develop a greater expertise and consistency in dealing with this type of violence. A code change is recommended.

FAMILY COURTS

Any legislation to implement a family court system should include 100 percent state financing of new operating and capital costs of that system.

INTERNAL AFFAIRS INVESTIGATIONS

Legislation should be enacted to restrict the use, in civil matters, of information gathered in internal investigations.

OVERCROWDING/STATE SUPPORT

The state should live up to its commitment to remove state prisoners from local jails.

The state should fully fund the per diem reimbursement for all state prisoners.

Jails built by a single large locality should be made eligible for the same state reimbursement rate for construction as a regional jail facility.

TRAINING ACADEMIES

The state should fully fund all mandated criminal justice training provided through certified academies.

VIOLENCE

The General Assembly should enable localities to help communities deal with violence issues by:

a. reducing the accessibility of weapons by criminals through tools such as a ban on assault weapons,
b. expanding state and local cooperative efforts in neighborhoods,

c. promoting additional prevention and intervention programs to deal with youths who may adopt a violent way of life, and
d. granting localities more flexibility to handle problems of abandoned and blighted structures.

COURT SECURITY

The General Assembly should adopt legislation making it clear that local judges do not have the authority to order localities to fund more deputy positions for court security than are provided for in the State Code and Appropriations Act.

YOUNG DRIVERS

VML urges Virginia's lawmakers and leadership to study a Graduated Drivers License program with intermediate testing and review after 1 year and to study a more extensive and challenging driver's education program to better prepare young drivers.

PRIMARY SEAT BELT LAW

VML strongly endorses adoption of a Primary Seat Belt Law in the Commonwealth in an effort to save lives, reduce injuries on our roads, and be eligible to receive $16.5 million in grant money for law enforcement.

NOISE CONTROL

VML supports state and local programs to control unacceptable noise. Local governments should have the authority to determine the appropriate measure for establishing unacceptable levels of nuisance noise and to enact local ordinances to address its curtailment.

Federal, state and local governments share the same citizens and same taxpayers. The state and federal governments are increasingly shifting funding and responsibilities for mandated services to local governments. Local governments seem to have no meaningful role in this partnership except to obey federal and state mandates. Local governments request a restoration of a meaningful intergovernmental partnership in human services and education.

I. HUMAN DEVELOPMENT

The strength of our communities determines the strength of our democracy. Emotional, social, and economic poverty weakens the fabric of our society and threatens our democracy. Policy leaders must ensure access to opportunities and invest the proper resources necessary for all children to grow up in nurturing surroundings, and to reconnect and strengthen the bonds of individuals and institutions in communities so that they thrive and favorably compete in the global economy.

State budget cuts to local human services programs during a time of unprecedented need due to the recession puts families and communities at greater risk; local governments cannot make up for these reductions.

A PLATFORM FOR CHILDREN & FAMILIES

VML endorses the National League of Cities' Platform for Children and Families that recognizes that strong communities are built on a foundation of strong families and empowered neighborhoods that support every child. VML supports and encourages efforts by our communities and the state that emphasize:

- **Opportunities to learn and grow** (family literacy programs, quality out-of-school time programs and early childhood programs);
- **Safe neighborhoods to call home** (sufficient state support for local law enforcement, juvenile justice, and prisoner re-entry programs);
- **Healthy lifestyles & environment** (improving access to healthy foods, physical activity and recreation programs, and child nutrition programs); and
- **Financially fit families** (workforce development, clamping down on predatory lenders, getting more families access to low-cost bank accounts and mainstream financial services)

INTERGOVERNMENTAL ISSUES & FUNDING

A working partnership.

- The federal and state governments should allow local governments maximum flexibility in developing public/private partnerships to address human service needs.
- The state should provide tax incentives, and allow local governments to provide them, to promote these public/private partnerships.

- Local government must be a partner with the state and federal government in the process of developing regulations, guidelines and allocation methods.
- The State should require interagency review of regulations to reconcile existing conflicts and to avoid duplication or conflict among agencies.
- The State should share data with communities and build a comprehensive human services data base to promote better program planning, evaluation, and integration of services.
- VML opposes any efforts by the state to dictate the membership of local human services policy or advisory boards.

Funding commitments. Human services funding formulae should reflect identified needs, should be adequate to meet those needs, and should not pit localities against each other. Equity in funding cannot be achieved by simply redistributing insufficient existing state aid among jurisdictions.

Cost shifting and unfunded mandates. VML opposes the imposition of new federal or state requirements without the funding to pay them. In the case of state mandates, as the state reduces its funding and assistance to localities, it must show enough common sense to ease or eliminate requirements it is not willing to support. In the case of federal mandates, the state must at the very least maintain its share of responsibility for program supervision and funding. For example:

- Do not pass onto local governments and local taxpayers the responsibility for funding the administration of the FAMIS eligibility and case management without state support.
- Do not pass onto local governments and real estate taxpayers the cost of federal penalties when the state does not meet its obligations for human services programs, including adequate administrative funding, technology, training, and technical assistance necessary to properly do the job.
- Do not shift onto local governments and real estate taxpayers the costs for federally-mandated and state-supervised programs such as adoption assistance, just because a few policy makers at the state level decide they do not want to pay for it any longer.
- Restore the state funding ratio for local welfare administrative costs, in which the state pays 80 percent and the localities pay 20 percent, beginning in the FY2013 budget.

Medicaid. Federal actions to limit the use of Medicaid funding in communities cost the state and localities more money for services to Medicaid-eligible populations. Federal funding must keep pace with the growth in Medicaid-funded services in communities.

BEHAVIORAL HEALTH

Planning for the future of the community & facility system. VML supports the restoration of state support for the community-based system, including increased funding of

Medicaid waivers to eliminate waiting lists. VML also supports creation of pilot programs that allow communities to focus on ways to better help individuals with behavioral and developmental disabilities to live and thrive in their communities.

VML supports community services boards (CSBs) as the single point-of-entry into the publicly-funded system of care. CSB direct services should remain as a choice for consumers and their families.

Any plan for the future of the publicly-funded behavioral health and developmental services system should include adequate state funding for:

- a comprehensive system of community-based care and treatment, including case management, residential and in-home supports, PACT/ICT teams, and other wrap-around services;
- rapid response to urgent care needs in each community;
- 100 percent of the costs for the services and supports for persons returning to the community from state facilities, as well as for those persons diverted from state facilities.
- Children's mental health services, including the Mental Health Initiative.

Further, any restructuring plan should assure the following:

- Local flexibility in planning and service provision, particularly for local-only funds;
- No changes in the local community services match that would increase the burden on local taxes and budgets;
- Extensive consultation with local officials and community members, particularly those in communities with state facilities and those most affected in the past by de-institutionalization, during any discussion of facility downsizing or closure;
- Consultation with local officials and community services boards regarding feasible strategies and funding proposals for publicly-funded services;
- Sufficient time and opportunity for public comment on any proposal that is presented to the Governor and General Assembly;
- Strategies to overcome past de-institutionalization errors, in particular the shifting of the burden of care to communities;
- Strategies to return consumers to their home communities to discourage the concentration of consumers in facility communities and in urban centers;
- State facilities are not so drastically reduced in size and scope that the potential for inpatient care is effectively eliminated; and
- An action plan to address the economic impact of facility downsizing or closure on facility communities.
- Continued funding for additional communities to qualify for crisis intervention team grants.

Part C early intervention. VML urges the General Assembly to assure full funding for infants and toddlers eligible for therapeutic services under Part C of IDEA to improve their school readiness and quality of life. VML opposes any state actions to further shift the funding of this program to local governments.

Medicaid accountability and quality of care. The league encourages adequate state oversight of, and accountability for community-level services funded by Medicaid, whether those services are furnished through private or public providers.

- Virginia should ensure adequate funding and reimbursements for the developmental disability waiver program.
- Virginia should create a provider network to furnish flexible, consumer- and recovery-focused services in communities.
- The Department of Medical Assistance Services (DMAS) should regularly update use and inflation data for all behavioral health services, and annually adjust its rates.
- DMAS should be responsible for seeking funding to meet Virginia's projected need for Medicaid-covered behavioral health services.
- Virginia should incrementally raise the Medicaid income eligibility requirements to 100 percent of federal poverty guidelines, thereby assuring more needy consumers access to Medicaid-covered services and reducing dependence on state general funds.
- VML urges DMAS to continue and expand Medicaid reimbursement for substance abuse services.

VML encourages the state to guarantee adequate funding to allow uninsured people who are not Medicaid-eligible to receive comprehensive mental health and substance abuse services at the community level.

Substance abuse and behavioral health treatment in jails and juvenile detention centers. The state should fully fund behavioral health services, drug courts, drug education, and treatment in the state, regional, and local correctional system, given the overwhelming percentage of adults and juveniles in the system diagnosed with behavioral health and substance abuse conditions. To be most effective, treatment and support services are needed both within institutions and in the community to decrease recidivism.

Availability of Services. The state must ensure that consumers seeking voluntary treatment receive such services, without regard to their ability to pay.

Additionally, funding for rapid response urgent care access should be available within every community as well as increased capacity to address mandated outpatient commitment.

Drug courts and day reporting centers.
The state should restore funding of drug courts and day reporting centers, both of which help keep individuals out of the criminal justice system.

Needs of military veterans and families
An estimated 170,000 returning soldiers from Afghanistan and Iraq require some type of behavioral health care services or treatment. Children of U.S. military troops sought outpatient behavioral health care two million times in 2008, twice the number that sought help at the start of the Iraq war. Given the number of active military, veterans, and military families living in Virginia, it is clear that the behavioral health needs of soldiers and their families must be swiftly and adequately addressed. VML urges the federal government to increase funding

and access to behavioral health and addiction treatment services for active members of the military (including National Guard and Reserves), returning veterans, and their family members.

AGING

Community programs. As alternatives to institutionalized care wherever appropriate, the state should develop Medicaid waivers or otherwise fully fund community-based programs like companion services, respite care, homemaker services, adult group homes and adult day care for the elderly. Additionally, communities must have the resources to address the complex medical and behavioral health needs of aging persons with intellectual disabilities, who may, with appropriate services, remain in the communities with their natural support system of families and friends.

Housing. The state should support policies that increase the affordability and availability of senior housing throughout the commonwealth.

COMPREHENSIVE SERVICES ACT

In the last 20 years Virginia has implemented just half of the CSA program. When the CSA was developed in the early 1990s, the plan called for comprehensive prevention programs for at risk youth and families. Unless and until the state commits to developing and funding programs that address the roots of issues that bring children and families into CSA, the CSA program will continue as an increasingly expensive "catch-up" approach to addressing the complex needs of children and families.

A realistic partnership. The Commonwealth should establish a statutory provision for operation of this state-local partnership that appropriately reflects the shared responsibilities, the need for sufficient "rules and tools", and recognizes the practical reality that correcting policy and procedural errors may take substantial time and resources.

Sum sufficiency. CSA serves many children who are entitled to sum sufficient services; the state must keep its commitment to fund its share of services costs for this population.

Base-budget funding. The costs of the Comprehensive Services Act (CSA) for at-risk youth and their families should be fully funded in the state's base budget.

Administrative funding. State administrative funding has not increased since 1998. VML supports greater funding from the state to support the program's substantial administrative requirements carried out at the local level and to improve the program's functioning.

Administrative Process Act. CSA should be covered under the Virginia Administrative Process Act.

Incentive funding. The CSA funding formula should include an incentive component that rewards those local governments implementing innovative and cost-effective alternatives to residential placement.

Behavioral health services for youth.

- The General Assembly should build upon its funding and seek federal-state funded waivers to

provide behavioral health and prevention services for youth.

- The state has greatly decreased state facility beds and state-funded services for children, including those with long-term or hard-to-treat conditions. VML urges the state to continue its support of the Commonwealth Center for Children and Adolescents as a part of the array of behavioral health services.
- Private insurance often does not sufficiently cover behavioral health treatment. The result is more families turning to the CSA program. Local governments support greater state funding to the Mental Health Initiative to serve children with behavioral health needs who do not otherwise require CSA's sum sufficient services.
- VML opposes any expansion of the CSA mandated population that requires additional local funding, or any movement to turn CSA into a parallel mental health system for children.
- State efforts to expand the base level of community-based services for children statewide must be accompanied by full state funding of such services.

Service capacity. VML encourages the state to establish a children's behavioral health workforce development initiative to build service capacity throughout the state.

Service coordination. State and local governments should work together to ensure the greatest degree of coordination between Individual Education Plans (IEPs) and CSA service plans.

State agency policy coordination. The State Executive Council must ensure that the administrative and policy requirements of the state agencies involved in the CSA are consistent with one another and consistently applied to local governments.

Utilization review. Local governments must maintain the flexibility to develop utilization management processes that are approved by the State Executive Council.

FACILITIES FOR ADULTS AND YOUTH

Auxiliary grant program. The state should assume full responsibility for the cost of the auxiliary grant program for elderly persons and people with disabilities.

Licensure and regulation of group homes. VML urges the state to continue to work with local governments to assure adequate licensure and regulatory requirements are in place to assure community safety and well-being.

HOMELESSNESS

VML supports measures to prevent homelessness in Virginia and to assist the chronic homeless, including veterans, in obtaining appropriate rehabilitative and recovery services, job training and support, and affordable and appropriate housing. VML supports measures to remove barriers this population faces in meeting identification and residency requirements for valid state-issued identification cards. VML urges the state to create a housing trust fund and to

work with communities to develop and otherwise support housing for this population.

JUVENILE JUSTICE PROGRAMS

Virginia Juvenile Community Crime Control Act (VJCCCA). The Virginia Municipal League urges the General Assembly to restore the 71 percent funding reduction to the Virginia Juvenile Community Crime Control Act (VJCCCA) program and to support an equitable and stable funding allocation process for the program. The VJCCCA directs localities, in cooperation with judges, to implement programs that divert youth from state or local confinement or help ensure the success of those re-entering the community from confinement. Every city and county participates in the program. VJCCCA gives judges the ability to order first-time and less serious offenders to services such as electronic monitoring, intensive counseling, and group homes. Such appropriate services reduce more costly and less suitable placements in local secure detention or state correctional facilities. It also effectively serves youth that are part of the non-mandated population under the Comprehensive Services Act.

SOCIAL SERVICES & WELFARE REFORM

Child and family services program improvement plan. The state must fund the technology and systems to improve the quality of all casework activities related to child welfare services (prevention of child abuse/neglect; prevention foster care, foster care and adoption)

Foster care: Protections for children. VML urges the federal and state governments to closely monitor the balance between the rights of parents versus the safety of children entrusted to this system.

Phase III of welfare reform. State and local governments must jointly develop and implement a plan for the next phase of welfare reform. The overarching goals should be to achieve family independence for current TANF recipients and to promote child well-being as a way to prevent future reliance on TANF. More effective strategies must be developed to address the extremely challenging employment barriers among the hard-to-serve and to meet the needs for parent education, child care, and medical and behavioral health care among TANF beneficiaries and the working poor who face the loss of TANF benefits.

Child care. Affordable, high-quality child care is crucial to parents in the TANF program and to low-income parents whose wages simply cannot cover child care costs. The state must help fund child care costs to help these families. The state should consider ways to ensure safe, affordable child care, such as grants for nonprofit or public organizations offering child care, and employer incentives to provide child care centers for their employees.

Healthy families. VML supports expanded use of state general funds for the Healthy Families program, a voluntary program that offers parental education, support, and assistance to help prevent the need for more costly human services and public safety programs in the future.

Social Services Block Grant. Virginia uses Title XX-Social Services Block Grant (SSBG) funding for a variety of non-cash-assistance services, including in-home services for the elderly, child and adult abuse investigators, and domestic abuse and family preservation services. Congress has consistently underfunded the SSBG at the levels authorized in the 1996 federal welfare reform law. VML urges Congress to live up to its commitment to fully fund the SSBG. Until the federal budget fully funds SSBG, VML urges the General Assembly to continue to first use any Temporary Assistance for Needy Families (TANF) balances to replace SSBG funds.

HEALTH

Cooperative health budget. The General Assembly should provide sufficient funding local health departments.

Prevention programs. Health services should include a focus on educational concerns and prevention programs, including teen pregnancy programs, dental care, well-baby care, immunizations, early childhood services and prenatal care.

Local flexibility. District health offices should be locally controlled to the maximum extent consistent with protecting public health.

HEALTH CARE REFORM

Expansion of state Medicaid eligibility would increase the workload and costs for local departments of social services, which perform eligibility determination and redetermination on behalf of the state. Any expansion of the caseload must be accompanied by sufficient state funding for staffing and technology to properly do the job.

PREDATORY LENDING PRACTICES

VML supports legislation to place a 36 percent cap on payday, car-title, open-ended and similar loans.

SERVICES FOR THE NON-ENGLISH SPEAKING POPULATION

The 2010Census confirmed that the number of non-English speaking residents has grown substantially throughout the commonwealth. Services offered through the departments of social services, health, public safety and the public schools are particularly affected by this demographic change.

VML urges the Secretaries of Education, Health and Human Resources, and Economic Development to institute changes in funding programs and services to non-English-speaking people to ensure that programs can meet the increased need. VML supports budgetary changes to furnish funding for translation services, possibly through block grants based on census data, increase funding for adult and K-12 ESL education, and to use a portion of TANF unspent balances to help fund services for this population. Finally, VML encourages localities to adopt a regional approach and to work with local civic groups, community colleges and other higher education institutions to develop translation banks and other language services.

II. EDUCATION

The Virginia Municipal League supports the goal of ensuring quality, well funded

and effective teaching in every classroom in the Commonwealth. Localities have greatly exceeded their responsibilities for K-12 education funding. It is essential for the state to meet fully its responsibilities to fund education.

VISION

A strong public education system is the pillar of American society and a passport to the future. Our country cannot be strong without an excellent education system that students leave armed with the critical thinking skills that will enable them to be productive citizens. A solid foundation of learning is essential for our communities, state, and country.

A strong educational system requires accountability; parental, community and business involvement and the wise and efficient use of resources. Standards are an essential part of the accountability system, but cannot be measured simply by standardized tests. Students need to learn not only facts and figures, but also those critical learning skills that will enable them to leave high school prepared for either the workplace or higher education.

Students, parents, administrators and teachers all have roles in the educational system and have to be part of that accountability system. Parents have to be involved with their children's education, but family support for parents is essential, particularly in dealing with children with mental, physical or substance abuse problems. Not all children should or need to prepare to attend college, but students across the economic spectrum should have equitable opportunities to learn.

A sound education system puts resources where they can be most effective, includes collaboration between school boards and local governing bodies, uses technology effectively, embraces innovation and regional opportunities and focuses on early intervention to tackle problems at the earliest time possible.

FUNDING

The SOQ should be broad enough to include the major components of what is required for a quality educational program. VML supports full funding of the state's share of the actual costs of the SOQ based on prevailing practices, and full funding of the state's share of categorical educational mandates in areas such as special education, alternative education and gifted education. While Virginia has been granted a waiver from the U.S. Department of Education for the legislative requirements under No Child Left Behind, meeting the standards required under the waiver will necessitate the dedication of additional funds to ensure that children who are at risk of educational failure will have the resources available to help them succeed.

The state should fully recognize and fund the costs of rebenchmarking of the various educational programs including the Standards of Quality, incentive, categorical, and school facilities programs. Changing the process of rebenchmarking to artificially lower recognized costs does not change what it actually costs to provide education. Instead, it simply transfers additional costs to local governments, and ultimately to the local real estate tax base.

STANDARDS OF QUALITY

VML supports full implementation of the revisions proposed in 2003 by the State Board of Education to the Standards of Quality. VML supports implementation of the recommendations contained in the 2003 JLARC study of education funding to ensure that the SOQ are conducive to reaching the goal of having a state educational system that is nationally recognized for excellence and adequately reflect prevailing practices among the school divisions. VML also supports revisions to the SOQ to reflect changes made in the Standards of Accreditation and Standards of Learning in order that the cost of meeting the SOQ is more realistic.

SOQ FUNDING

The state must be a reliable funding partner in accordance with the Virginia Constitution and state statutes. The Standards of Quality should recognize resources, including positions, required for a high-quality public education system.

Funding for the SOQ should include:

1. Establishment of a predictable and meaningful source of funding for construction, including funding for new construction, renovation, maintenance and land purchase. The Literary Fund and the Virginia Public School Authority are not sufficient means for the state to help localities pay for capital needs.
2. A predictable and reliable source of funding for technology infrastructure and personnel costs.
3. Realistic state funding for salary increases for professional and non-professional school employees. Salary increases should be funded for a full year starting July 1, the start of the fiscal year.
4. Funding to initiate and continue to enable school systems to address school safety issues.
5. Recognition of adequate support costs based on realistic measures of the importance of support positions to achievement on state accountability standards. Current state funding for support positions are not based on prevailing practices or on any scientifically-derived staffing ratios.
6. Flexibility where possible in areas such as funding of student health services.
7. Support for funding of recommendations made by JLARC to promote reading by grade level by the third grade.
8. Development of realistic cost estimates that are based on prevailing practices and not on the availability of state funding.
9. Review by JLARC in order that data and information can be provided to the State Board of Education on the cost of meeting the SOQs, SOLs and SOAs.
10. Lottery funds that are distributed to localities without a corresponding reduction in direct aid.

The state should not require any maintenance of local effort other than that associated with the SOQ. A maintenance of effort requirement that is not connected to the SOQ will punish those localities that voluntarily spent beyond the required minimum in an effort to achieve a high quality system of

education. Further, it will simply perpetuate the current mismatch in state-local funding for education.

The General Assembly should recognize that local governments traditionally have funded their share of costs of meeting the SOQ and, in fact, most have funded education beyond their required share in efforts to provide quality education. These higher funding levels have meant that localities have had to raise local taxes and fees and defer spending on other important local priorities including public safety.

Because spending increases alone may not produce desired levels of student achievement, the State Board of Education and other responsible bodies are urged to develop measures of results to determine the actual effectiveness of expenditures on education.

VML believes that the methodology for costing the SOQ does not take into account the differences in costs in the state's various regions, nor does it adequately address unique local conditions such as small, large, declining, or diverse student populations.

First, the new methodology artificially lowers the state average salary by using the "L-estimator" instead of average salary figures. Second, the methodology uses an artificially low limit on the number of professionals per 1,000 pupils for which state aid is given. Third, the methodology does not address the differences in providing education to students with special needs or the heavy additional cost of educating English as Second Language students. The add-on funding for at-risk students is a start toward meeting unique local circumstances and should be increased in accordance with the At Risk Student Achievement Program.

The problems with the funding methodology have been exacerbated by the failure of the state to keep current cost estimates affecting the calculation of the L-estimator, as discussed by the Joint Legislative Audit and Review Commission in its 2003 study of education funding. As a result, the L-estimator currently produces an even lower measure of salary than would be the case were the methodology originally proposed by JLARC to be used.

The state administration, General Assembly and school boards should intensify their efforts to secure increased federal funding for special education mandates and for meeting the costs incurred under the No Child Left Behind Act, including application for Race to the Top funding.

The first priority for the use of a state surplus should be the funding of mandated educational programs.

Disparity should not be addressed by simply redistributing existing state aid among jurisdictions.

LOCAL AUTONOMY

Because public education should be as close as possible to the people, local school decisions cannot and should not be made by the state. Local schools boards should be responsible for the direct supervision and management of local schools.

The state should not take any actions that limit or reduce authority of local

school boards and local governing bodies to finance and manage local schools. Some school boards and localities may prefer to have the operation of their schools that are consistently low-performing taken over by the state. Others, however, are pursuing initiatives to improve educational outcomes for their students. In these cases, pursuant to agreements entered into by the school boards and the Opportunity Educational Institution, the local school board should be given an opportunity to implement these initiatives. If progress is being made, that progress should not be interrupted by a transfer to state control.

VML supports delay for the implementation of the OEI. The OEI currently is scheduled to take over operation of public schools in the 2014-2015 school year. The JLARC report on options for improving low-performing schools will not be released until June 2014. Further, with the upcoming change in administration, there is not adequate time for the OEI to be prepared to operate schools by September 2014.

ALTERNATIVE EDUCATION

Traditional approaches to discipline—long-term suspensions and expulsions—transfer the problems of the student from the school division to the general government. There should be school alternatives to the normal school environment for students who do not behave appropriately. The state should develop and fund alternatives for students suspended and expelled from school, such as programs designed to encourage obtainment of GEDs, career education, job skills, self control training and drug and substance prevention. Finally, there is little effective enforcement of truancy laws for students who are over 16 years of age. Some of these students have full time jobs and school divisions have difficulty in locating them. VML encourages the development of initiatives to better enable schools to track these older students.

EARLY CHILDHOOD DEVELOPMENT & EDUCATION

Research has shown that the early childhood years (from infancy to age five) are critical years for brain development. These early years are also critical for establishing healthy lifestyles – eating nutritious foods, engaging in activities and exercise (i.e., playing), and learning basic health and safety practices.

Children who are regularly read to and gain basic language skills; who participate in healthy activities and learning experiences; and who learn basic social skills, are more likely to enter kindergarten ready to learn. They are also more likely to read at grade level by the third grade. This early progress can lead to continued success in school and ultimately in the workforce.

VML supports state and local policies and initiatives that spotlight and encourage greater early learning opportunities for children, along with access to information and resources that will help parents and caregivers give young children the greatest chances to learn and grow in healthy ways. This will ensure a better economic future for families and communities.

VML supports increased state funding for pre-kindergarten students to ensure that all children entering the public

system have the social and intellectual skills necessary to be successful students.

HIGHER EDUCATION

Virginia's colleges and universities serve as engines of economic growth, cultural enrichment, and intellectual development for communities across the commonwealth. The decline in state support for institutions of higher education and the state's unwillingness to invest in these institutions endangers the economic health of the commonwealth and its cities, towns, and counties.

In addition to ensuring a stronger and more diversified economic base, a healthy and vibrant higher education sector, which includes two-year as well as four-year institutions, supplies our communities with an educated and well-trained workforce that attracts new businesses and allows existing businesses to compete effectively in an increasingly competitive global economy. Further, beneficiaries of higher education tend to earn higher incomes, thus expanding the revenue stream to the state, and thereby ensuring the continued provision of quality services for its citizens. Finally, the involvement of institutions, their faculty, and their students in communities across the commonwealth and the expanded cultural opportunities these institutions offer communities enhances the quality of life for all Virginians.

VML supports additional funding for higher education institutions to enable them to meet their educational mandates, thereby meeting the needs of Virginia's citizens and businesses.

Currently, community colleges are required to offer reduced tuition for high school students. Local schools, however, are required to make up the difference in tuition. This clearly is an unfunded mandate. The state should find other resources within its higher education budget to pay for the tuition for these students.

Critical investments are needed to maintain and improve Virginia's transportation network; the structural imbalance between critical needs and available resources persists, even with the recent HB2313 transportation and public transit legislation. TransAction2040, published by the Northern Virginia Transportation Authority (NVTA) shows a need for $86 billion highway and transit expenditures in this region alone over the next 25 years just to keep congestion at 2007 levels, never mind reduce it. Over this same period, DRPT's Management Plan Update shows a statewide need for public transit investment of $60 billion for operations and $35 billion for major capital projects.

VML acknowledges the contribution of HB2313 as an important first step in addressing the transportation needs of Virginia's localities. The legislation does provide:

A. Sustainable Funding. - A stable and predictable plan which is comprehensive, which addresses investment across the state and which does not rely upon general fund revenue..

B. Fiscal responsibility. - Dedicated revenues, which are activity-based, will strengthen as the economy does. Further, revenues will be allocated to jurisdictions in proportion to their transportation tax contribution, preserving a balance of equity

C. Statewide focus. Transportation is a state-wide issue, not a regional, urban or rural issue. Every area of the state is economically hampered by insufficient infrastructure management.

D. Shared responsibility. Transportation planning and authority are delegated to regional bodies where they exist and to localities. These bodies prioritize and authorize individual projects within their jurisdiction, an essential element of equity which does require coordination among involved localities.

E. Infrastructure modernization. Our transportation efforts must include a comprehensive statewide plan to provide transportation options for rail and transit which minimize the use of petroleum. Such plans must ensure that all Virginians - rural, suburban and urban – are able to contribute to and benefit from statewide economic opportunities.

F. Congestion mitigation. Alleviation of commuter congestion is essential to economic development and to enhance citizens' quality of life. Corridor-wide solutions which promote alternative modes including highways, transit and non-traditional solutions still need to be developed.

REVENUES

Since the transportation needs of the state are so much greater than the current funding provisions, it remains essential that the General Assembly continue and expand transportation and infrastructure investment which is fiscally sound, well documented and serve local, regional and state-wide needs by:

- Raising revenue from those who use the transport systems;
- Increasing dedicated funding for public transportation to meet transit operating

expenses and make Virginia competitive for federal transport funds;

- Providing or extending as a local option transportation impact fee authority to all localities;
- Authorizing practical options for using long-term financing for major transportation projects;
- Providing full state funding for the revenue sharing program as provided for in §33.1-23.05;
- Seeking equity among various road users by ensuring that trucks pay their share of road costs. VML also advocates for increased local influence when the state considers mitigating negative impacts resulting from excessive truck traffic.

PASS-THROUGH OF FEDERAL FUNDS

Localities are often successful in receiving federal funds such as special appropriations and enhancement funds. These funds are passed through the State to localities and the transfer of these funds is often delayed. The federal government and the state need to streamline the transfer of these funds and allow localities to move forward with these projects. The state needs to anticipate increases in federal funding and prepare to raise and dedicate matching funds.

SAFETY

Pedestrian

VML recommends that the Virginia Code be amended to clarify the respective rights and duties of pedestrians and vehicle drivers. Drivers should be required to stop, not just yield, for pedestrians in all marked and unmarked crosswalks. In addition, police need the ability to issue simpler citations than currently allowed under Virginia law to more effectively enforce the laws against jay walking.

PRESERVATION OF RIGHTS-OF-WAY

Transportation projects take many years from the planning stage to construction. Localities need additional authority to reserve miles of right-of-way years in advance of any funding availability for these projects, or risk development in the path of these transportation projects.

TECHNICAL ASSISTANCE

Smaller communities and regions require additional and enhanced transportation planning and technical assistance from VDOT and DRPT. VDOT and DRPT, therefore, have a continuing obligation to assist these areas, including establishing equitable equipment rental rates and administrative costs.

TRAFFIC CALMING

VML supports continued improvements to VDOT's traffic calming program to improve safety for users of public streets. Additionally, VML has supported, and continues to support, expanding the availability of photo-camera traffic enforcement for all localities.

METROPOLITAN PLANNING ORGANIZATIONS (MPOs)

VML opposes broadening MPO voting membership to include private sector representatives. VML believes that representation by public officials makes MPOs accountable to citizens.

PUBLIC TRANSIT

Public transit includes all available multiple occupancy vehicle services and technologies designed to transport passengers on local and regional routes.

VML supports 1) increased federal and state funding for public transit, and 2) policies that allow for the equitable distribution of such funding.

RAIL TRANSPORTATION

VML recommends the expansion of interstate and intra-state passenger and freight rail service corridors, with no requirement for local match to provide transportation alternatives, and to help to stimulate economic development and tourism.

State government and railroad executives must work cooperatively with local officials to improve and enhance railroad maintenance, safety, traffic and conflicts (for example at at-grade crossings).

The Commonwealth needs to:

- Work with railroad executives to provide greater access for passenger service (for commuters and tourists).
- Fund the operating costs for intercity passenger rail along with the federal government.
- Work with surrounding states to foster greater interstate passenger rail service and to promote the development of the Northeast high-speed rail corridor, the New York to Atlanta corridor and the TransDominion Express.

While the state has plans for specific high-speed rail projects, it does not have funds to support the operation of a system of high-speed trains. The federal government is unlikely to provide billions of dollars to construct a system that has no source of operating funds. VML urges the state to develop a source of funds for high-speed rail operations.

AIR TRANSPORTATION

VML wants the state and federal governments to actively work to develop and sustain comprehensive air service throughout the Commonwealth, connecting it to the mid-Atlantic region as well as the entire country. Additionally, VML wants the state and federal government to invest in and deploy new technologies intended to improve air service and safety.

The federal government is urged to appropriate federal funds for airport infrastructure improvements at authorized levels and to develop a national airport access strategy intended to stimulate local economic development opportunities. Additionally, the state is urged to complement federal infrastructure investments as well as expand state support for capital improvements.

PORTS AND WATER TRANSPORTATION

VML requests the protection and promotion of an effective port and water transportation system by:

a. developing alternative water transportation mechanisms to alleviate congestion, such as ferries, that will move people, goods and vehicles as an alternative to road travel;
b. enhancing rail service to move goods in and out of ports;
c. deepening major water ports and navigable rivers; and
d. relieving congestion in the ports by enhancing rail and highway access out of ports.

Concerning the deepening of channels, VML requests the state to 1) work closely with local governments regarding spoils disposal from channel deepening, and 2) develop policies on the disposal/reuse of shipping containers.

The revenues derived from Virginia's public ports are dedicated exclusively to the state. Some portion should be shared with localities to account for street and road maintenance and police and fire protection services directly related to the impacts of tax-exempt port properties.

VML urges a significant study of the state's water transportation system, including the expanded use of barge traffic for freight transportation.

REGIONAL TRANSPORTATION AUTHORITIES

VML supports by-right authority for the creation of regional transportation authorities to promote coordination of transportation and related facilities. Also, VML supports town voting membership on regional transportation authorities based on population percentage; with minimum of one town representative on each regional transportation authority per ten percent of population.

LIVABILITY

Streets do much more than move cars; they often define community character and serve as important public spaces. Small towns and larger cities alike are using complete streets policies to reclaim public space and solve traffic problems at the same time. Many complete street solutions are low-cost--some are as simple as changing paint-striping on pavement. VML supports securing mainstream transportation funds for non-motorized improvements and policy changes that result in construction of complete streets and improved bicycle and pedestrian infrastructure within the existing right of way.

Virginia FIRST CITIES

2014 LEGISLATIVE AGENDA

Adopted by the VFC Board 11/8/1*

RESTORE THE STATE-LOCAL PARTNERSHIP FOR STATE MANDATED SERVICES
VFC supports added funding for the Priority Programs that disproportionately benefit core cities:

At-Risk Education Incentive Programs
Comprehensive Services Act (CSA)
Juvenile Justice Assistance
Enterprise Zone Programs
Street Maintenance Payments
State Aid to Local Police Depts. (HB 599)
Local Jails and Per Diems
Community Service Boards (CSB's)
Brownfields
Public Transit

TRANSPORTATION/ LAND USE/ URBAN INFRASTRUCTURE
Focus resources on existing infrastructure and support land use policy initiatives that use existing infrastructure, augment city redevelopment, and discourage dispersed development patterns.

Street Maintenance/Primary and Urban Funds
First Cities spent $76M more than state street maintenance payments provided in FY11. City and town streets are a vital part of the regional transportation network. They are more costly to maintain due to heavy use, age, and the need to accommodate pedestrian, bus, auto and truck service and complex adjacent utilities.

- **Adequately fund city and town street maintenance by increasing lane mileage rates.** The General Assembly increased these rates for Henrico in 2012, but city and town rates have not changed for many years.
- **Make all lane miles eligible for street maintenance payments** to be consistent with state policies for Henrico and Arlington County streets.
- **Make primary roads in cities and towns eligible for state primary funds.** These roads are technically primary "extensions". Legislation passed in 2012 inadvertently excluded this vital part of the primary road network from this key funding stream.
- **Support improvements to the Public-Private Transportation Act to increase transparency and local input.**

Water Infrastructure
- **$50 million in FY 2015 for the Stormwater Local Assistance Fund,** to continue improvements for the installation of effective storm-water controls on urban lands to reduce the flow of excess nutrients and sediment to local streams, rivers and the Chesapeake Bay.
- **Protect the Water Supply;** A Top State Priority. VFC opposes lifting the ban on uranium mining. Further, the state should develop regulations to ensure safe horizontal hydraulic fracturing.

K-12 EDUCATION INITIATIVES TO CLOSE THE ACHIEVEMENT GAP – Increase and target funds to student programs and hard to staff schools to improve achievement among at- risk students, improve Standards of Learning (SOL) and NCLB scores, graduation rates, strengthen Virginia's workforce and long-term economy. Add investment to these proven effective strategies:

- **School Rebenchmarking – Remove the cap and restore school support positions to pre-recession levels.**

- **Virginia Preschool Initiative - Index funding for inflation like other education programs.** The per-pupil amount has remained at $6,000 per enrolled child since 2008. Cost is approximately $2M annually.
- **Provide Additional Funding for Extended Year and Extended School Day Programs.** JLARC found that year round schools with additional instruction during intercessions can improve student performance, especially among minority students. The FY14 budget provided planning funds for schools interested in exploring this option. The additional costs will be known.
- **Continue to improve fund for Reading and Math Specialists.** VFC urges first priority be given to schools with a majority of at-risk students.

VFC POSITIONS ON OTHER K-12 FUNDING PROPOSALS

- **The State should fully fund its constitutional responsibility for public education prior to funding private education programs.**

- **Support policies to improve the Local Composite Index (LCI).** JLARC proposed a population density adjustment which recognizes higher service costs and demands in urban localities.

- **Amend the mandate of SJR 328 (2013), *the JLARC study of the efficiency and effectiveness of elementary and secondary school funding in Virginia* to include a review of the impact of the local composite index on school effectiveness**

PUBLIC SAFETY- Creating Safer Communities

- **Full funding for State Aid to Local Police Departments (599) to maintain low crime rates in Virginia's urban areas.**
- **Restore funds to the Virginia Juvenile Community Crime Control Act (VJCCCA)** which provides court-approved individualized services to delinquent juveniles to avoid intake placement.
- **Provide additional drug court funding.**
- **Increase substance abuse and mental health rehabilitation funding for juvenile detention, jail, and DOC units.** Expand existing mental health pilot programs.
- **Support prisoner reentry programs and alternatives to incarceration** that reduce overcrowding and mitigate future growth in prisoner populations. This reduces recidivism and creates safer communities.

EMPLOYMENT AND ECONOMIC DEVELOPMENT

Give priority for training and economic development programs to urban <u>and</u> rural localities with high unemployment. VFC localities had 19%, of the state's unemployed. As of July 2013, Virginia First Cities had a 7.5% unemployment rate versus the statewide rate of 5.5%. This is comparable to Southwest and Southside rates.

- **Job Training and Creation**: A comprehensive approach should include priority funds for the education of at-risk students and expanded funding for workforce training at community colleges.
- **Increase Regional Transit Access to Jobs**: Encourage financial participation by all urban/suburban localities in a region.
- **Support increasing the state minimum wage and indexing to inflation**
- **Industrial Site Redevelopment**: Continue funding the Derelict Structures Fund to rehabilitate industrial sites for reuse.

- **Restore Brownfields Funding:** The state fund is depleted. It has been used with local and federal funds to restore land parcels and buildings with environmental problems so they can be marketed to new economic development prospects.
- **Fully fund the Enterprise Zone Program:** This is a successful public-private program that stimulates investment and job creation in economically distressed urban and rural localities.
- **Neighborhood Preservation: Support incentives and policies that maintain vibrant neighborhoods and eliminate blight by:** 1) Increasing the economic feasibility of reusing vacant, abandoned, and derelict structures 2) encouraging private investment to rehabilitate buildings in older neighborhoods and commercial districts such as Historic tax credits.
- **Direct the Department of Agriculture and Consumer Services to examine the issue of food deserts in the state and strategies for their elimination including establishing incentives for:** 1) Production, distribution and procurement of foods from local farms, 2)Public-private partnerships to open and sustain full-service grocery stores in communities without access to healthy food (food deserts, 3)Encouraging food retailers to locate in and/or food and beverage choices in underserved areas.

TAXATION

- **BPOL /Machinery and Tools Tax**: Oppose efforts to eliminate these important revenue sources due to the impact their loss would have on local revenue.

HEALTH

- **Increase funding for the "Smart Beginnings" and "Healthy Families"**; these are effective programs that enhance school achievement and prevent poverty.
- **Expand Medicaid to include adults up to 138% of Federal Poverty Level (FPL) under the Affordable Care Act.**

OTHER POSITIONS

- **Curtail Predatory Lending**: Pass legislation to prohibit and deter predatory, usurious lending practices, include provisions that:
- **Gubernatorial Succession**: Support legislation allowing Virginia's governor to serve a maximum of two successive terms.
- **Regional Strategies:** The state should incentivize regional cooperation and service delivery to promote efficiency, mitigate inequities, and overcome barriers that result from Virginia's unique local government structure and moratorium on annexation.
- **Enact recommendations of the Governor's Task Force for Local Government Mandates:**
    - **Restore the requirement that bills with a local fiscal impact must be introduced on the first day of a General Assembly Session** to allow time to assess fiscal impact prior to committee action.
    - **Extend the Task Force to 2016** to allow them to complete their work.
- **Remove Barriers to Lawful Voting** by providing adequate funding for local registrars, allowing no excuse early voting, and restoring voting rights for felons who have served their time.

* The 2014 VFC Legislative Agenda was approved by the Virginia First Cities Coalition Board of Directors, comprised of representatives from each Member City. Each item included in the VFC Legislative Agenda may not be officially supported by every Member City.

VACo's Preliminary 2014 Legislative Program

October 10, 2013

2014 Draft Legislative Program
Virginia Association of Counties

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***PR**-denotes tentative priority statement

Statements requiring federal action noted: (Federal)

Administration of Government, Public Safety and Telecommunications

Aid to Localities
VACo requests that the Commonwealth use the most current population statistics available for the purposes of determining state aid to those localities that have experienced population growth in the ten-year period between the decennial enumerations. During that period, population statistics from the Weldon Cooper Center for Public Service, the American Community Survey and from other established entities should be used by the Commonwealth. The General Assembly should consider the many fixed costs of services in determining aid to those localities that have remained stable or lost population.

Annexation Moratorium
VACo supports full funding of the Commonwealth's HB 599 commitments. VACo also supports the continuation of the current moratorium on city annexations regardless of whether those commitments have been met. The moratorium has promoted more intergovernmental cooperation between cities and counties, allowed counties to plan for future growth and economic development within their borders and has allowed counties to be able to protect their tax base in order to provide needed services to citizens.

Broadband (State and Federal)
VACo urges the Commonwealth and the Federal Government to assist communities in their efforts to deploy universal affordable access to broadband to all areas, particularly in underserved and rural areas while preserving local land use, permitting, fees and other local authority. Widespread deployment of broadband should be a top priority for the Commonwealth to ensure competitive economic advantages, provide quality educational opportunities and facilitate telemedicine and other modern health care initiatives. Assistance should include economic incentives as well as budgetary and statutory policies that facilitate broadband deployment and adoption. VACo also urges state support of local and regional authorities created under the Virginia Wireless Service Authorities Act, the preservation of the powers granted under the Act, support for Virginia Resources Authority and other favorable financing mechanisms for broadband projects and improvement of the quality and accuracy of the state's broadband availability map.

Collective Bargaining for Public Employees (Federal)
VACo opposes any effort to mandate collective bargaining for public employees.

Dillon Rule/Local Authority
VACo supports relaxation of the Dillon Rule and the granting and maintaining of authority to provide counties greater autonomy in all areas including land use, revenue measures, procurement and other issues of local concern. The General Assembly should extend powers currently granted to some local governments to all other local governments.

Elected Officials
VACo respects the presumption of innocence until proven guilty and seeks to work with the General Assembly to address the issues that arise when an elected official faces prosecution for

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crimes of moral turpitude. This includes a process for appointing a temporary replacement to carry out the duties and responsibilities of the office until the legal process is complete.

Election Costs

VACo supports legislation that would decrease the costs of elections to localities. These costs include primaries, voting equipment, personnel and voting places. Cost reduction could include requiring parties to pay for primary elections, using paper ballots, establishing countywide voting places and other similar measures. The state should provide adequate funding to localities for optical scan voting machines and registrar costs.

Grievance Hearings

VACo supports legislation authorizing localities to utilize an administrative hearing officer instead of a three-member panel. VACo also supports providing immunity to local government employees, officers, volunteers, administrative hearing officers and panel members for claims arising out of participation in personnel grievance procedures.

Immigration Reform (Federal)

VACo maintains a strong commitment to ensuring the security and safety of our communities. Legislative reforms must recognize the contributions of immigrants to a complex economy, as well as the costs associated with welcoming immigrants into our communities. The U.S. Congress must enact comprehensive immigration reform that provides a funding stream sufficient to address the fiscal impact on state and local governments for any guest worker program and earned legalization program. The state and local governments require a national immigration system that is fully funded at the federal level, recognizes the realities of the marketplace, eases the fiscal stress on states and localities and properly secures our borders. It is important that the federal government establish a clear and understandable path to citizenship for those who are eligible.

Interoperability (State and Federal)

VACo supports the state's goal that by 2015 agencies and their representatives at the local, regional, state and federal levels will be able to communicate using compatible systems to respond more effectively during day-to-day operations and major emergencies. Local governments require new dedicated federal and state funding sources to achieve this goal.

Pay Day Lending

VACo supports legislation to set a total cap of 36 percent for all interest, fees and other charges for payday lending and other similar businesses such as car title loans.

Public Notice, Public Hearing and Public Procurement

VACo supports legislation to reduce required advertising for public notices, public hearings and public procurement including legislation to give localities the option to use electronic or other forms of notification as an alternative to newspaper advertising.

Sovereign Immunity

VACo opposes any substantive change in local governments' present defense of sovereign immunity. VACo opposes bringing counties under the Virginia Tort Claims Act.

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Transmission Lines

VACo supports legislation to encourage the undergrounding of high voltage transmission lines and supports effective and practical undergrounding and preservation practices when locating new transmission lines. VACo also supports legislation to preserve existing trees and vegetation in transmission line right of ways to mitigate the visual and environmental impacts resulting from clear cutting practices and widespread use of herbicides.

Unfunded Mandates

VACo opposes unfunded mandates by the Commonwealth. When funding for a mandated program is altered, the mandate should be suspended until full funding is restored. When legislation with a cost to localities is passed by the General Assembly, the cost should be borne by the Commonwealth, and the legislation should contain a sunset clause providing that the mandate is not binding on localities until funding by the Commonwealth is provided. VACo opposes the shifting of fiscal responsibility from the state to localities for existing programs. Any unfunded mandate or shifting of responsibility should be accompanied by a full fiscal and program analysis to determine the relative costs to the state and to the locality and to assure the state is meeting its full funding responsibility before taking effect.

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Community Development and Planning

Affordable and Workforce Housing (Federal)
VACo supports increased federal and state funding and appropriate incentives to assist localities in fostering affordable housing, as well as workforce housing for employees such as teachers and first responders.

Economic and Workforce Development
VACo supports continued state funding and support for workforce training and economic development programs as effective means for making the necessary investments in infrastructure and human capital. VACo supports state economic development policies that bolster local economic development efforts. VACo also supports incentives that encourage regional economic development projects. Consultation and partnership with these local and regional efforts are critical to economic expansion. ***PR**

Impacts of Federal and Military Projects (Federal)
VACo supports increased federal and state funding to mitigate the impacts on counties affected by major federal projects, including the most recent recommendations of the Defense Base Closure and Realignment Commission (BRAC). This support is also needed to sustain the federal and military presence in Virginia and to compete for the location of additional facilities in the Commonwealth.

Land Use/Growth Management Tools
Authority to plan and regulate land use should remain with local governing bodies and VACo opposes any legislation to weaken that authority. Furthermore, the General Assembly should grant localities additional tools necessary to adequately meet citizens' increasing transportation, education, public safety and other vital public infrastructure needs that are driven by new development. Such additional tools may include broad impact fee authority for all counties, adequate public facilities provisions in subdivision ordinances, state funds for the purchase of development rights, and real estate transfer charges. Current residents should not be expected to bear the cost of new growth through increased real estate taxes. ***PR**

Maintain Public Sector Role in Onsite Sewer Program
VACo supports an onsite sewage program at the Virginia Department of Health that protects public health and the environment in all regions of the Commonwealth. The state's program should allow localities to develop and implement policies that support the state's program. VACo supports the private sector providing onsite sewage system design, installation and repair services, as long as the services can be provided at affordable rates and in a timely manner, and as long as VDH continues to provide these direct services as well.

Reimbursement for Offsite Improvements
VACo supports allowing all localities to require a future developer to reimburse the initial developer a pro rata sum for offsite improvements provided by the initial developer.

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Siting of Utilities
VACo supports requiring utilities to seek input from localities and property owners before any actions to construct, modify or enlarge their facilities.

Regional Cooperation
VACo supports increased state funding and additional grants of authority to promote regional initiatives. VACo also supports the overall funding of Virginia's planning district commissions at a level of $0.35 per capita.

Water and Sewer
VACo supports allowing counties to enact water and sewer availability fees and mandatory water and sewer connection powers. VACo also supports clarifying language that explicitly authorizes localities to deny an application for a new water system on the basis that it does not conform to the comprehensive plan and/or is not in the best interests of the locality.

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Compensation and Retirement

Compensation Board
VACo supports requiring the Compensation Board to seek a local governing body's approval before authorizing personnel changes that affect localities. VACo also supports a study of alternatives to the current funding and budgeting processes used by the Compensation Board.

Funding of State Mandated Positions
VACo urges the Commonwealth to meet its full funding obligations for constitutional officers and other state mandated positions. ***PR**

Liability Insurance
Constitutional officer liability insurance has shifted from the state to local governments, which are assuming 100 percent of the cost and are mandated to purchase the insurance from the state risk management program (VARISK). VACo opposes this shift and the mandate to purchase from the state. Localities should have the option to seek competitive pricing for liability insurance.

Line of Duty
VACo calls on the General Assembly to fully fund the Line of Duty Act (LODA) obligations and return LODA to a state program. An alternative would be for the state to make LODA coverage optional at the local level or provide localities the option to only pay basic death benefits. LODA benefit eligibility determinations should be the responsibility of the Virginia Workers' Compensation Commission and not the State Comptroller's Office.

Sheriffs' Departments Staffing Standards
VACo supports legislation to change the Compensation Board's minimum staffing standards to fund at least 10 deputy sheriffs per county. The current standard provides one deputy per 1,577 people, with a minimum state funding level of five deputies per county. In a county with a small population but a large land area, five deputies are simply not adequate to perform 24-hour law enforcement, court security and other legally required duties.

State Assistance for Police Departments
VACo supports maintaining state assistance for police departments through "599" Aid to Localities. This funding is designed to equalize state funding between counties in which the sheriff department provides law enforcement and those cities, counties and towns with a police department.

Unfunded Teacher Pension Liability
Local governments and the state share responsibility for paying the cost of teacher pensions, but under GASB 68, localities will have to claim all unfunded liabilities for teacher retirement plans after June 15, 2014 on their financial statements. VACo urges the state to avoid this liability shift by paying its share of teacher pension contributions directly to VRS. This would demonstrate to credit rating agencies and localities that the state is committed to paying its fair share of unfunded teacher pension liabilities. It would also better protect the bond ratings of Virginia's localities by more accurately reflecting the local share of the unfunded liability. ***PR**

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312 **Workers' Compensation Medical Costs**
313 VACo supports the adoption of Medicare-based fee schedules for setting medical provider fees
314 in worker's compensation cases in Virginia, instead of the prevailing community rate standard
315 now used. This will make worker's compensation coverage more affordable for Virginia's
316 employers and provide fair compensation to medical providers in Virginia.

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Education

CPR defibrillator Certification

To respond to emergency situations VACo believes an adequate number of school employees certified in CPR and defibrillator use should always be available when school activities are occurring. However, VACo believes the costs associated with requirements for all teachers to be certified in CPR and defibrillator use are excessive and should therefore be revised.

Education Funding

VACo supports full funding for the biennial re-benchmark of Virginia's Standards of Quality (SOQ). It is essential for the state to fund fully its constitutional responsibilities and all mandates associated with K-12 public education. VACo encourages the state to expand the SOQ to better recognize localities funding efforts towards local school divisions.

VACo supports full state funding for public education including the SOQ, targeted incentive programs, capital and maintenance support and teacher salaries. Full state funding should be achieved without reduction to other parts of state public education budgets or to the other core services. Should state general funding diminish, local autonomy should be increased and state education mandates reduced. VACo continues to oppose unfunded mandates.

VACo supports the current practice whereby all year-end funds appropriated to the school divisions by the locality revert to the locality, retaining discretion with the governing body to evaluate and approve the reallocation of year-end fund balances to address the capital or one-time expenditure requirements of local school districts. ***PR**

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Environment and Agriculture

Agriculture Production
VACo supports increased availability of local food for purchase. To accomplish this, VACo supports the establishment of farmers' markets and the use of food stamps for purchases at farmers' markets, policies to increase direct delivery of food from growers to consumers and funding for the design and construction of regional processing facilities to facilitate delivery of locally-produced food.

Biosolids
VACo contends that the land application of biosolids, when conducted properly, provides important benefits to the public and Virginia's agricultural sector. To reduce risks that might occur because of improper land application, VACo supports an effective statewide program and regulations governing land application of biosolids that protect the environment, public health and safety. VACo also supports the ability of local governments to monitor compliance with such regulations and the ability of local governments to submit recommendations for site-specific conditions into the permitting process.

Chesapeake Bay Accountability and Recovery Act (Federal)
VACo supports the proposed Chesapeake Bay Accountability and Recovery Act of 2013, which seeks to achieve greater cost-effectiveness in meeting pollution reduction targets. This legislation will help localities address the expensive costs associated with Chesapeake Bay cleanup.

Dam Safety Standards
VACo supports a review of Dam Safety Standards administered by the Department of Conservation and Recreation to evaluate ways of reducing their financial impacts upon local government and property owners while also protecting public safety.

Energy Efficiency
VACo endorses aggressive initiatives among all levels of government to reduce dependence upon foreign sources of energy, to reduce emissions of greenhouse gases and to improve energy efficiency. VACo also supports production of renewable energy in Virginia through the implementation of Renewable Portfolio Standards while continuing to support energy policies that take advantage of our abundant coal deposits and natural gas reserves while protecting the welfare and safety of agriculture and our water supplies.

Humane Investigators
VACo opposes legislation requiring local governments to accept court appointed humane investigators. Humane investigators should only be appointed when specifically requested by a local governing body. Local governments should have the option of terminating a humane investigator program.

Industrial Hemp
VACo urges the Commonwealth of Virginia to support Congressional action to adopt the Industrial Hemp Farming Act and grant states the authority to license and regulate the production of hemp as an industrial and agricultural commodity which, in turn, will open markets for

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farmers, manufacturers, businesses and entrepreneurs in the emerging and growing hemp industry.

Invasive Species
VACo supports adequate funding to implement the Virginia Invasive Species Management Plan.

Land Conservation
VACo supports targeted initiatives to facilitate the protection of 400,000 additional acres of land for conservation purposes. VACo also supports a Purchase of Development Rights program that includes state funding for the Virginia Land Conservation Foundation, and that provides incentives for landowners at all income levels to participate in the program. Such programs preserve prime soils for food production and protect important forestal land and environmentally sensitive areas in the Commonwealth.

Local Regulation of Timbering
VACo supports amendments to legislation to state explicitly that, once a subdivision plan is submitted for local approval at the request of the property owner for a development project, any timbering on the property is subject to local development regulations.

Non-point Source Pollution
VACo supports a well-financed state program to address the problem of non-point source runoff from agricultural operations. The program should effectively encourage implementation of priority best management practices such as nutrient management planning, use of cover crops, continuous no-till farming, development of forested riparian buffers and livestock stream exclusion.

Onsite Wastewater Systems
VACo supports a legislative study of problems encountered by localities when enforcing requirements relating to onsite sewage systems, including the five-year pump-out requirement by localities subject to the Chesapeake Bay Preservation Act. VACo also supports legislation ensuring that potential buyers of real property are told about the type, size and maintenance requirements and associated costs of the wastewater systems on the property prior to the signing of the initial sales contract and the recordation of engineered systems on the plat and deed at the time of the sale.

Recycling
VACo supports the development of more aggressive strategies by the state to develop markets for recycled materials.

Renewable Fuels Standard (Federal)
VACo request that the Environmental Protection Agency should immediately rescind the Renewable Fuel Standards II. for the calendar year 2013 to relieve upward pressure on the price of corn and economic hardships.

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Southern Rivers Watershed
VACo supports continued funding for the Southern Rivers Watershed Enhancement Program to improve water quality in non-Chesapeake Bay watersheds.

State Water Control Board
VACo supports legislation requiring the composition of the State Water Control Board to be regionally balanced while at the same time selecting appointees with the necessary education and experience.

Stormwater
VACo supports adequate funding to enable local governments to start-up new stormwater management programs that must be established by July 1, 2014. Prior to implementation, VACo supports a comprehensive study of the long-term fiscal impacts on localities and reallocation of funding from the stormwater "integration" legislation that passed the 2012 General Assembly. VACo believes it will be critical to evaluate the effectiveness of the fee structure in the Virginia Stormwater Management Permit regulations as the chief source of revenue for funding local stormwater management programs.

Stormwater Fees
VACo supports an amendment to Virginia's Stormwater Management Law that would distribute a maximum of 10 percent of revenues from statewide stormwater fees to the Virginia Stormwater Management Fund with the remaining 90 percent remaining with local governments.

Uranium Mining
VACo supports continuation of a moratorium on uranium mining and milling within the Commonwealth of Virginia pending further study.

Virginia Cooperative Extension
VACo supports sufficient funding for the Virginia Cooperative Extension Service.

Virginia Outdoors Foundation
VACo supports legislation that would increase the general fund appropriation to the Virginia Outdoors Foundation, permit an increase in transfer fees, or provide full funding to the Foundation through alternative means.

Waste Management
VACo supports broad authority for local governments to adopt flow control ordinances. VACo supports funding for infrastructure to increase energy harvest from the waste system.

Water Quality Improvement Funding
VACo supports effective partnerships among and across all levels of government to improve water quality.

VACo urges state and federal agencies to carefully consider impacts on local governments of any initiatives intended to reduce loadings of pollutants into state waters from both point and non-point sources. In order for comprehensive, watershed-wide water quality improvement strategies

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to be effective, major and reliable forms of financial and technical assistance from federal and state governments will be necessary. VACo supports the goal of improved water quality, but will vigorously oppose provisions of any strategy that threatens to penalize local governments by withdrawing current forms of financial assistance or imposing monitoring, management or similar requirements on localities without providing sufficient resources to accomplish those processes. VACo strongly opposes the imposition of a state fee, tax or surcharge on water, sewer, solid waste or any service provided by a local government or authority. ***PR**

Water Supply Planning

VACo supports additional appropriations adequate to ensure full funding by the state for the ongoing development and implementation of state-mandated water supply plans.

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Finance

Steering Committee Principles:

- Support the authority of county governments to levy and collect revenue from local business taxes.

- Support county government representation on study or legislative commissions that impact local government through local revenue or services.

- Oppose mandated new or expanded funding requirements on counties.

Positions:

County Authority Including Equal Taxation
VACo supports granting counties the authority cities and towns currently have to enact local excise taxes including the cigarette tax, admissions tax, transient occupancy tax and meals tax. VACo also supports granting counties specific powers enumerated to cities and towns under the Uniform Charter Powers Act.

Fiscal Impact Statements
In furtherance of the objectives to evaluate the local fiscal impact of proposed legislation, VACo recommends that §30-19.03 of the Code of Virginia be amended to provide a better filter to stop new unfunded mandates from moving through the legislative process without a timely fiscal impact analysis. Specifically, VACo recommends the reinstatement of the first day introduction requirement for bills with local fiscal impact.

Funding of State Mandated Positions and Jails
VACo urges the Commonwealth to meet its full funding obligations for constitutional officers and other state mandated positions. Moreover, any change to the definition of state-responsible prisoner or other terms that result in increased cost or operational issues for local or regional jails should be fully funded by the state.

Local Government Revenues
VACo opposes elimination or reduction of specific local tax revenues, including local business taxes.
VACo supports granting counties the option or authority to increase the local sales and use tax by 0.5 percent to help offset state budget reductions affecting localities, without referendum.
VACo supports legislation that extends the imposition and collection of the local transient occupancy taxes to state owned parks and campgrounds that provide lodging.

Local Government Mandate Review
VACo supports legislation that continues the work of Gov. McDonnell's Task Force for Local Government Mandate Review. The Task Force will cease to exist in July 2014 and should be reauthorized in statutory language.

Local Ordinance Violations

VACo requests the repeal of budget language enacted by the 2012 General Assembly that authorized the deposit of all collections from General District Courts, Juvenile and Domestic Relations Courts, Combined District Courts and the Magistrate System to the State Treasury for local ordinance violation penalties. This legislative action removed a source of local revenue for many localities.

State Tax Reform

VACo calls upon the Commonwealth to strengthen the stability of the general fund by initiating state tax reform. Significant tax reform will help to buttress the Commonwealth's general fund that finances most core government functions. Tax reform should include a restructuring of state income and sales and use taxes with the intent to stabilize and increase revenues to meet current and foreseeable core service demands. Reform should include revisiting specific state tax reductions the Commonwealth enacted in better economic times that may no longer be affordable.

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Health & Human Resources

Aging/Long-Term Care
VACo supports efforts that allow the elderly to remain at home in a safe and secure environment. VACo urges the General Assembly to provide sufficient funding for companion services, in-home services and home delivered meals.

Behavioral Health Care
VACo supports continued funding by the Commonwealth sufficient to allow community services boards to meet adequately the charge of providing services through a community-based system of care.

Comprehensive Services Act
VACo supports a requirement that the State Executive Council and Comprehensive Services Act follow the Administrative Process Act in promulgating, amending, or repealing regulations. Furthermore, VACo supports state CSA policies that prevent the shift of costs of services for at-risk children fully to local government CPMT-approved services.
VACo supports reasonable efforts by the state to give localities an opportunity to improve practice following audit findings, and that denial of funds be implemented in a rational, progressive fashion similar to that proposed by IV-E funding and other state and federal funding sources.

Early Intervention
VACo supports sustainable funding for Part C Early Intervention, which is an entitlement program that provides services for Virginia's infants and toddlers. VACo also requests the General Assembly address immediate funding concerns by increasing state general funding in FY 2013 by $8.5 million and similarly in FY 2014. Underfunding this entitlement program puts pressure on local revenues to fill funding gaps for this mandated service.

Group Homes
VACo supports the ability of a locality to hold a public meeting when a group home is established in the locality's jurisdiction. Further, VACo encourages the state to enforce appropriate regulation of group homes.

Health and Human Resources Funding
VACo supports state policies and funding to ensure the Commonwealth's at-risk families have access to high quality and appropriate services. The Commonwealth should fully fund localities for state mandated human services and provide the necessary program flexibility to enable localities to provide comprehensive and case-tailored services. Additionally, increased state funding for the Virginia Juvenile Crime Control Act will enhance the ability of local governments to plan and receive youth offenders back into the community (re-entry services).
***PR**

Healthcare
VACo supports continued state funding for offered dental care, school nurses and preventive services and maternal and child health programs through local health departments and local

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school systems. VACo encourages the state to prepare for emergency health services and develop and fund incentives that would alleviate the nursing shortages felt in many communities.

Prevention Services

VACo supports increased state general funding for startup costs associated with community-based service programs. VACo recognizes that programs, such as Healthy Families, Comprehensive Health Investment Project (CHIP) of Virginia, Smart Beginnings, and the Resource Mother, are models that are operated throughout the state and requests the General Assembly to provide additional funding for these and other home-based activities. Reductions in prevention programs will put numerous youth at risk of high-end CSA placements.

Transparency

VACo encourages state transparency in the delivery of human service programs with highest standards of accountability, delivery of services, funding of programs, and any fundamental changes.

Volunteer EMS and Rescue Squad Training

VACo supports practical and reasonable Initial certification and ongoing continuing medical education (CME) requirements for county EMS and rescue squad volunteers. VACo recognizes the vital importance of volunteer EMS and rescue squad training but does not support unreasonable education requirements that discourage public volunteer service.

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Transportation

Billboards
VACo supports a requirement that proposed billboards in the Virginia Department of Transportation's (VDOT) right of way conform to local zoning and other applicable ordinances and local approval processes.

Corridors of Statewide Significance
VACo opposes the reduction of local control that is associated with the Commonwealth Transportation Board's process of designating Corridors of Statewide Significance.

Devolution of Secondary Roads
VACo vigorously opposes legislative or administrative initiatives that would transfer to counties the responsibility for the construction, maintenance or operation of new and existing roads. ***PR**

Local Public Hearings
VACo supports the local ability and option to request a second public hearing when new federal funds are allocated to the Virginia Department of Transportation for projects in a locality's jurisdiction.

Highway Tolls
VACo opposes the installation of toll facilities on Virginia's interstate highways until the Commonwealth Transportation Board has thoroughly reviewed and assessed the components of a long-term capital improvement program, has identified and compared all available funding alternatives and has adopted a proposal that matches capital improvements with realistically available funding sources. Further, VACo supports legislation to require that prior approval of the General Assembly shall be obtained prior to the imposition and collection of tolls on any interstate highway in Virginia.

Inter-Directional Signage Program
VACo supports a requirement that any signs installed under VDOT's Inter-directional Sign Program, including the Tourist Oriented Directional Signs Program, conform to local ordinances, including any local approval processes.

Local-State Transportation Funding and Cooperation
VACo would like to thank the Administration and the General Assembly for their actions during the 2013 Session to pass HB 2313. The Governor and many members of the General Assembly worked together and passed an historic transportation funding bill that will provides substantial resources to begin addressing the region's transportation needs.

While we believe this is a great step towards addressing our infrastructure needs, we remain concerned about the lack of secondary and urban construction funding. Due to legislative changes in 2012, the Commonwealth Transportation Board has the authority to allocate up to $500 million to priority projects before funds are provided to the construction fund. It is imperative that each region receive its share of this funding. Additionally, due to this provision,

757 the secondary and urban road programs are not expected to receive new funds until FY
758 2017. This is concerning, as our localities have not received funds for this program since FY
759 2010.
760
761 Another concern is that the 2012 bill provided VDOT and the CTB the ability to decide whether
762 a local transportation plan is consistent with the Commonwealth's priorities. While efforts to
763 better coordinate local and state transportation planning are appreciated, we want to ensure that
764 land use planning remains a local responsibility. ***PR**
765
766 **Maintenance Priorities**
767 VACo supports a requirement imposed upon VDOT to implement a notification plan with the
768 local governing body to establish maintenance priorities.
769
770 **Parking**
771 VACo supports general authority for counties to adopt ordinances regulating, including
772 prohibiting, the parking of boats, RVs, utility trailers, campers, etc. on subdivision streets.
773
774 **Rail Enhancement Fund**
775 VACo supports authority for counties to approve Rail Enhancement Fund projects funded by the
776 state and constructed within their jurisdictions.
777
778 **Rest Stops**
779 VACo supports federal legislation to allow commercialization of rest stops on the interstate
780 highway system in Virginia.
781
782 **Road Construction and Maintenance**
783 VACo supports legislation that would prohibit VDOT from requiring localities to administer any
784 transportation project without the consent of the local governing body. In addition, VACo
785 supports amendments to legislation that would require VDOT to administer all projects financed
786 by VDOT, unless otherwise agreed to by the county. If VDOT cannot administer the projects due
787 to limited resources, then VDOT's consultant services shall be utilized or the locality shall have
788 the option to use VDOT's consultant services on locally administered projects financed by
789 VDOT.
790
791 **Securities for Subdivision Streets**
792 VACo supports authority for a local governing body to determine requirements for developer
793 securities for the construction of subdivision streets.
794
795 **Separation of Federal Funds (Federal)**
796 VACo supports granting authority to counties, working with VDOT, to determine the percentage
797 of federal funds applied to all secondary road projects within their jurisdiction. In addition, for
798 any locally administered road projects, the county should be allowed to use all state funds, as
799 long as they can obligate their federal funds on other projects.
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Service Contracts
VACo supports administrative changes allowing all localities to use professional service contracts similar to other agencies of the Commonwealth (i.e., Virginia Department of General Services).

Truck Size and Weight (Federal)
VACo strongly opposes any legislation that seeks to increase truck size or weight beyond the current federal standards, thereby stressing the capacity of the Commonwealth's road systems and putting highways, roads and bridges at risk of increased damage or deterioration.

Homeland Security Emergency Preparedness and Volunteer Recruitment & Retention (Federal)
VACo urges the General Assembly to maintain current state funding and make certain that localities, often the first responders, are included in the planning process for homeland security and emergency preparedness measures. Federal funds received for homeland security and emergency preparedness must flow through the state to local agencies, departments, and authorities to pay for eligible costs. In furtherance of this goal, VACo supports legislation that provides a local option for increased incentives for the recruitment and retention of volunteer public safety personnel who are crucial in these situations.

* * *

DRAFT

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: _November 12, 2013__ **CUT OFF DATE:** __

RESOLUTION ___ **ORDINANCE** ___ **PUBLIC HEARING** ____
MOTION ___X___

ITEM TITLE:
Motion to Authorize the City Manager to Execute the NRJDC MOU Regarding the Provision of HR and Other Ancillary Services to the Northwestern Regional Juvenile Detention Center

STAFF RECOMMENDATION:
Approve as recommended

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION:
N/A

FUNDING DATA:
N/A

INSURANCE:
As required

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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. ____Finance			10-23-13
2. ____Human Resources			10/23/13
3.			
4.			
5. City Attorney			10/28/2013
6. City Manager			10-28-13
7. Clerk of Council			

Initiating Department Director's Signature: _____ 10/23/13 Date

Erin Maloney, JDC Superintendent

RECEIVED
OCT 28 2013
CITY ATTORNEY

APPROVED AS TO FORM:
10/28/2013
CITY ATTORNEY

Revised: September 28, 2009

CITY COUNCIL ACTION MEMO

Honorable Mayor and Members of City Council

Erin Maloney, Juvenile Detention Center Superintendent

November 12, 2013

MOU to amend the 2004 Juvenile Detention Center agreement

THE ISSUE: In year 2004, the NRJDC Service Agreement was amended with the consent of all participating jurisdictions to place the operational control over the NRJDC facility under the NRJDC Commission. No action was taken to memorialize the continuity of the provision of HR related services to the NRJDC including the applicability and enforcement of the CEMS with regard to NRJDC personnel. The NRJDC Commission has expressed a desire for Winchester to continue to provide these services to the NRJDC and wishes to memorialize it through the attached Memorandum of Understanding which has been approved by the NRJDC Commission.

RELATIONSHIP TO STRATEGIC PLAN: With this change, we can work with our community to create a more livable City for all.

BACKGROUND: The NRJDC Service Agreement sets forth the general agreement between the participating jurisdictions with regard to the funding and operation of the Northwestern Regional Juvenile Detention Center. These "member jurisdictions" include Clarke County, Frederick County, the City of Winchester, Shenandoah County, Page County, and Warren County. The original Service Agreement set forth the operational control of the facility and vested this authority in the City of Winchester. Over the years, this was interpreted to include the provision of Human Resource related services. NRJDC employees were hired, trained, and subjected to the same disciplinary processes as City of Winchester employees.

The Service Agreement was amended and readopted several times over the years. Each amendment to the Service Agreement requires approval of each of the participating member jurisdictions. The most recent amendment in year 2004, eliminated the responsibility for operational control over the facility from the City of Winchester and vested the operational control over the facility in the Northwestern Regional Juvenile Detention Center Commission.

In order to continue to receive the benefits of the Human Resources and other specified ancillary services that have been provided by the City of Winchester since the opening of the NRJDC facility, the attached documents are required to formally (1) grant the authority to the City of Winchester to provide these services; and (2) memorialize the understanding between the City of Winchester and the NRJDC with regard to the provision of these services.

At the October 15, 2013 City Council Work Session, no amendments were made and Council voted to move the resolution forward to the November 12, 2013 meeting for consideration.

BUDGET IMPACT: No budget impact to the City is anticipated. The City has already been providing the services identified in the MOU for decades. Nothing contained in this document shall have any effect upon the duties and responsibilities of the respective entities with regard to other obligations to provide and receive other services including but not limited to the City of Winchester's obligations as fiscal agent for the facility. This MOU is not a fiscal funds obligation, or disbursement document.

OPTIONS: The City will provide services and assistance to the NRJDC in the uniform administration and enforcement of the personnel policies, including amendments, additions, delegations, and administrative policies, upon all NRJDC employees in the same manner that the City administers and enforces such policies with regard to City employees.

This MOU also outlines what services the City will provide to the JDC, without cost:

- Assist in and conduct searches for employees to fill open job positions; conduct job interviews; make recommendations for hiring; and provide related employee hiring assistance.
- Provide advice and assistance to the Center in the application, interpretation, and enforcement of the personnel policies.
- Conduct grievance procedures proceedings pursuant to the personnel policies.

- The provisions of Comprehensive Employment Management System (CEMS), and subsequent revisions thereto, as well as any policies and procedures formally adopted by the Commission shall be administered and enforced on NRJDC employees in the same manner that it is administered and enforced on City employees.

The Juvenile Detention Commission approved the resolution and MOU at it's September 24, 2013 meeting. Please See exhibit "A" for the adopted resolution.

RECOMMENDATIONS: Staff recommends that Common Council authorize the Manager to execute the MOU as proposed on behalf of the City. The NRJDC Commission maintains that the 2004 amendment to the Service Agreement (adopted by the participating jurisdictions) gives operational control to the facility which allows the NRJDC Commission to approve the MOU on behalf of the participating member localities.

RTM/ks
08/26/13

MEMORANDUM OF UNDERSTANDING FOR PERSONNEL SERVICES

THIS MEMORANDUM OF UNDERSTANDING, dated the _____ day of _____, 2013, is by and between the NORTHWESTERN REGIONAL JUVENILE DETENTION CENTER COMMISSION ("Commission") and the CITY OF WINCHESTER, VIRGINIA ("City").

Insert dated Copy from Bob

RECITALS

WHEREAS, by virtue of the provisions of the Amended and Restated ment dated December 11, 2004 ("Agreement") establishing the Northwestern Regional Juvenile Detention Center ("NRJDC"), the Commission is vested with the power and authority to make regulations and policies governing the operation of the NRJDC; and

WHEREAS, the Commission, by resolution, has adopted the personnel policies of the City as the personnel policies applicable to all employees of the NRJDC; and

WHEREAS, the Commission has authorized and requested that the City provide services and assistance to the NRJDC in the uniform administration and enforcement of the personnel policies upon all NRJDC

employees in the same manner that the City administers and enforces such policies with regard to City employees, ; and

WHEREAS, the Commission and the City desire to herein set forth their understanding as to the providing of such services and assistance by the City.

TERMS

The understanding of the Commission and the City with respect to the City providing services and assistance to the NRJDC in the administration and enforcement of the City personnel policies is as follows:

1. The City will provide services and assistance to the NRJDC in the uniform administration and enforcement of the personnel policies, including amendments, additions, delegations, and administrative policies, upon all NRJDC employees in the same manner that the City administers and enforces such policies with regard to City employees. All decisions regarding the administration and application of such policies shall be determined solely by the City. Such services shall be provided without cost to the NRJDC, which services and assistance shall, without limitation, include the following:

(a) Assist in and conduct searches for employees to fill open job positions; conduct job interviews; make recommendations for hiring; and provide related employee hiring assistance.

(b) Provide advice and assistance to the NRJDC in the application, interpretation, and enforcement of the personnel policies.

(c) Conduct grievance proceedings pursuant to the requirements of the Code of Virginia and applicable personnel policies.

2. The provisions of the City Comprehensive Employment Management System ("CEMS"), and subsequent revisions thereto, as well as any policies and procedures formally adopted by the Commission shall be administered and enforced on NRJDC employees in the same manner that it is administered and enforced on City employees. The Commission shall require all directors, staff, and employees of the NRJDC to comply with CEMS and to attend any required human resources training, including but not limited to, trainings and informational sessions regarding benefits and other personnel matters for the duration that the NRJDC relies on the City of Winchester to provide these services to the directors, staff, and employees of the NRJDC.

3. The NRJDC shall promptly provide current copies of all NRJDC policies and procedures upon their formal adoption by the NRJDC to the Winchester Director of Human Resources and City Attorney who shall review and approve or recommend modification of all policies as they may affect administration and enforcement of personnel policies by the City.

4. Except as expressly stated, nothing contained in this document shall

be construed in any way to create an employment relationship between the City of Winchester, its employees, agents, and assigns and the NRJDC. The City of Winchester shall be considered an independent service provider to the NRJDC with regard to the performance of this Agreement. At all times herein mentioned the City of Winchester and NRJDC shall remain separate and distinct legal entities.

5. Nothing contained in this document shall have any effect upon the duties and responsibilities of the respective entities with regard to other obligations to provide and receive other services including but not limited to the City of Winchester's obligations as fiscal agent for the facility. To the extent that this document conflicts with the terms of any other lawfully adopted agreement between the parties or other legal authority, the terms of the lawfully adopted agreement or other legal authority shall supersede.

6. This MOU is not a fiscal funds obligation, or disbursement document. Any monetary obligations, requests, or disbursements shall be made according to Governing Law and previously signed and executed Agreements related to the NRJDC, and between the City of Winchester, other Member Jurisdictions, and the Commission.

7. This MOU does not impart any additional or future obligations on either City of Winchester or the NRJDC with respect to the role of the City of Winchester as a fiscal agent for the NRJDC.

DURATION/MODIFICATION/TERMINATION

8. This MOU is to take effect upon signature of the City of Winchester and the NRJDC and remain in effect until terminated pursuant to paragraph 10, below.

9. Modifications to this MOU shall be made by mutual consent of the City of Winchester and the Commission, through issuance of a written modification, signed and dated by both parties, prior to any changes.

10. Either the City of Winchester or the Commission may terminate its participation in this MOU by providing written notice to the other at least thirty (30) days in advance of the desired termination date.

11. To the extent permissible under the laws of the Commonwealth of Virginia, the NRJDC shall indemnify and hold the City of Winchester harmless for any claim arising from an act or omission committed pursuant to this Agreement. The City shall not be liable for acts or omissions of the Commission, the NRJDC, or its employees, agents, or contractors in the administration and/or enforcement of the personnel policies.

12. If any provision contained in this Agreement shall be deemed to be inconsistent with the laws of the Commonwealth of Virginia or other lawful authority, said provision shall be deemed severed and stricken from this Agreement and the remaining provisions shall continue in full force and effect.

13. This Agreement shall be construed exclusively under the laws of the Commonwealth of Virginia.

14. Any dispute arising from the performance or non-performance of this Agreement shall be litigated solely in the Circuit Court for the City of Winchester, Virginia or in the U.S. District Court for the Western District of Virginia in Harrisonburg, Virginia.

NORTHWESTERN REGIONAL JUVENILE
DETENTION CENTER COMMISSION

Date: _____ By: _____
Erin Maloney, Superintendent NRJDC

CITY OF WINCHESTER, VIRGINIA

Date: _____ By: _____
_____, _____

Exhibit "A"

RESOLUTION

WHEREAS, the Northwestern Regional Juvenile Detention Center ("NRJDC") is a Regional Juvenile Detention Facility formed and operating under the laws of the Commonwealth of Virginia; and

WHEREAS, the NRJDC is run under the operational control of the NRJDC Commission (the "Commission") which is an independent public body corporate in accordance with Virginia Code §§16.1-315 *et. seq.*; and

WHEREAS, the City of Winchester, Virginia ("City") is a participating member jurisdiction with a member appointed to the Commission; and

WHEREAS, by virtue of the provisions of the Amended and Restated Agreement dated December 11, 2004 ("Agreement") establishing the NRJDC, the Commission is vested with the power and authority to make regulations and policies governing the operation of the Center; and

WHEREAS, the Commission finds it advisable to establish personnel policies to apply to all employees of the NRJDC; and

WHEREAS, the Commission desires to adopt the personnel policies of the City to apply to all employees of the NRJDC; and

WHEREAS, the Commission desires to have the City provide services and assistance to the Center in the administration and enforcement of the personnel policies;

NOW, THEREFORE, be it RESOLVED as follows:

1. The Commission hereby adopts the personnel policies of the City, including, without limitation, the City Comprehensive Employment Management System ("CEMS"), as the personnel policies applicable to all employees of the NRJDC.

2. The Commission hereby authorizes and requests that the City of Winchester provide services and assistance to the NRJDC in the uniform administration and enforcement of the personnel policies, including amendments, additions, delegations, and administrative policies, upon all NRJDC employees in the same manner that the City administers and enforces such policies with regard to City employees, as determined solely by the City.

3. Such services and assistance by the City shall be provided in accordance with the attached Memorandum of Understanding between the Commission and the City, which Memorandum of Understanding is hereby approved by the Commission, and which the Superintendent is hereby directed to execute on behalf of the Commission.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 11/26/13 (Work Session), 12/10/13 (First Reading) 1/14/14 (Second Reading/Public Hearing) **CUT OFF DATE:** 11/20/13

RESOLUTION ___ **ORDINANCE** _X_ **PUBLIC HEARING** _X_

ITEM TITLE:
TA-13-493 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT (*Proposal to allow home occupations in accessory structures with a conditional use permit)*

STAFF RECOMMENDATION:
Approval.

PUBLIC NOTICE AND HEARING:
Public hearing required at second reading on 1/14/14.

ADVISORY BOARD RECOMMENDATION:
Planning Commission unanimously 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.

DEPARTMENT	INITIALS FOR APPROVAL	INITIALS FOR DISAPPROVAL	DATE
1. Planning	TS		11/20/13
2. City Attorney	[illegible]		11/20/2013
3. City Manager	[illegible]		11-20-13
4. Clerk of Council			

Initiating Department Director's Signature: [signature] 11/20/13
(Zoning and Inspections)

CITY ATTORNEY'S OFFICE Received NOV 20 2013 WINCHESTER, VA

APPROVED AS TO FORM:
[signature] 11/20/2013
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Aaron Grisdale, Director of Zoning and Inspections

Date: November 26, 2013

Re: Zoning Text Amendment (TA-13-493) – Home Occupations in Accessory Structures

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THE ISSUE:
The proposed Zoning Ordinance text amendment will modify the existing Zoning Ordinance language pertaining to allowing home occupations to occur in an accessory structure with a conditional use permit from City Council.

RELATIONSHIP TO STRATEGIC PLAN:
This text amendment correlates to the 2018 Goal #1 of "Grow the Economy" by providing for additional opportunities for residents to conduct gainful employment at their residential properties while mitigating potential negative impacts on neighboring properties.

BACKGROUND:
This publicly sponsored Zoning Ordinance text amendment is to allow for home occupations in accessory structures with a conditional use permit. Staff has received inquiries from citizens over the last several years regarding the ability to have a home occupation in their garage or similar detached accessory structure. Additionally, the amendment clarifies some types of occupations which are not permitted. (Full staff report attached).

BUDGET IMPACT:
No funding is required.

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

RECOMMENDATIONS:
The Planning Commission recommended approved unanimously.

City Council Work Session
November 26, 2013

TA-13-493 AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT

REQUEST DESCRIPTION
This Zoning Ordinance text amendment was initiated by City Council as a publicly sponsored text amendment to revise the ordinance to allow for home occupations in accessory structures with a conditional use permit. Staff has received inquiries from citizens over the last several years regarding the ability to have a home occupation in their garage or similar detached accessory structure.

STAFF COMMENTS
Presently, the Zoning Ordinance provisions only permit a home occupation to be conducted in a dwelling unit in the main building on a property, with the exception of accessory garden uses. Staff recognizes that in today's economy there are greater numbers of individuals that are working from home or are looking to start a home business. This amendment would support this economic trend by allowing for a resident to request a conditional use permit (CUP) for a home occupation in an accessory structure by City Council.

In the slow economy over the past several years, citizens have been proactive in the utilization of the home occupation as a tool for self-employment and also as a starting point for growing a larger business before moving to a commercial location. In the years 2009-2012, the Zoning and Inspections department has approved on average 135 home occupations per year.

The intent to include the CUP requirement for these requests is due to the difference between main buildings and accessory structures regulations. Accessory structures, depending on the height, can be exempt from the setback provisions in a zoning district and may be located in greater proximity to a rear or side property line than main buildings. As a result there is a much higher likelihood of impacts on adjoining properties. By utilizing the conditional use permit review process, the Planning Commission and City Council can evaluate the potential impacts on neighboring properties and include conditions on the operation of the home occupation.

An application for a CUP for the home occupation would require the inclusion of the following:

- Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and the proximity of structures on adjoining properties.
- A scaled interior site sketch illustrating the proposed home occupation in the accessory structure.
- A letter outlining the scope and nature of the occupation, involving operating hours, days of the week and similar details.

Additionally, this proposed text amendment clarifies some of the types of home occupations which are not permitted. Presently there are only five explicitly prohibited home occupations, including animal hospitals, auto repair, dance instruction, restaurants and tourist homes. Staff is recommending removal of dance instruction from this list. Staff also recommends inclusion of a few additional uses in this list,

most of which are use requests made by citizens over the past several years: massage therapy, motor vehicle uses, and kennels and pet daycare.

A provision was included which clarifies the intent of the home occupation standards (Section 18-19-2.2). The language added clarifies that there should be no interruption, congestion or change to character of the neighborhood in terms of traffic or vehicular parking resulting from a home occupation.

During the Planning Commission work session and public hearing there was discussion about the possibility of allowing some uses within accessory structures by-right, without a conditional use permit. After discussion there was not a unified opinion on the Commission about establishing such by-right uses at this point. Commissioners believed that this amendment is a solid first step in allowing additional opportunities for residents to conduct meaningful employment at their residence. They viewed this as an incremental process in first allowing uses with a CUP, and then exploring in the future the possibility of allowing a home occupation in accessory structures by right possibly at some point in the future.

RECOMMENDATION

At their November 19, 2013 meeting, the Planning Commission forwarded **TA-13-493** with a favorable recommendation because the amendment, as proposed, presents good planning practice by providing for expanded opportunities for residents to conduct home occupations in accessory structures while providing for case by case review of potential impacts on neighboring properties.

RESOLUTION ADOPTING AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT

TA-13-493

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 existing Zoning Ordinance home occupation provisions have been established to provide for opportunities for residents to conduct gainful employment in their dwelling units while having minimal impacts on the neighboring community; and,

WHEREAS, the proposed Ordinance amendments will allow for residents to use an accessory structure as part of a home occupation provided that a conditional use permit is obtained; and,

WHEREAS, this proposed Ordinance amendments will support City Council's goal of "Grow the Economy" as provided for in the adopted 2013 Strategic Plan.

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

AN ORDINANCE TO AMEND AND REENACT ARTICLES 3, 4, 5, 5.1, 6, 7, 8, 9, 13, AND 18 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO HOME OCCUPATIONS PERMITTED IN ACCESSORY STRUCTURES WITH A CONDITIONAL USE PERMIT

TA-13-493
Draft 2 – 11/5/13

Ed. Note: The following text represents an excerpt of Articles 3, 4, 5, 5.1, 6, 7, 8, 9, 13 and 18 of the Zoning Ordinance that is subject to change. Words with strikethrough are proposed for repeal. Words that are ***boldfaced and underlined*** *are proposed for enactment. Existing ordinance language that is not included here is not implied to be repealed simply due to the fact that it is omitted from this excerpted text.*

ARTICLE 3
LOW DENSITY RESIDENTIAL DISTRICT – LR

SECTION 3-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

3-2-7 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 4
MEDIUM DENSITY RESIDENTIAL DISTRICT – MR

SECTION 4-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

4-2-11 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 5
HIGH DENSITY RESIDENTIAL DISTRICT - HR

SECTION 5-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5-2-19 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 5.1
LIMITED HIGH DENSITY RESIDENTIAL DISTRICT - HR-1

SECTION 5.1-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

5.1-2-12 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 6
RESIDENTIAL OFFICE DISTRICT - RO-1

SECTION 6-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

6-2-10 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 7
RESIDENTIAL BUSINESS DISTRICT - RB-1

SECTION 7-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

7-2-24 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 8
HIGHWAY COMMERCIAL DISTRICT - B-2

SECTION 8-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

8-2-27 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 9
CENTRAL BUSINESS DISTRICT - B-1

SECTION 9-2. USES PERMITTED WITH A CONDITIONAL USE PERMIT.

9-2-26 **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 13
PLANNED DEVELOPMENT

13-1-3.17 **USES PERMITTED WITH A CONDITIONAL USE PERMIT.**

a. **Home occupations in accordance with Section 18-19-2.6.**

ARTICLE 18
GENERAL PROVISIONS

SECTION 18-19. HOME OCCUPATIONS. (10/11/83, Case 83-06, Ord. No. 034-83)

18-19-1 Home occupations are permitted in any dwelling unit.

18-19-2 A home occupation is an accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods and/or service, including the sale of food and/or non-food crops produced on the site; and conducted in a dwelling unit **except as allowed in an accessory structure per the Conditional Use Permitting provisions identified in Section 18-19-2.6. Home Occupations shall only be engaged in** by a person or persons residing in the dwelling unit, provided that: (10/12/10, Case TA-10-418, Ord. No. 2010-51)

18-19-2.1 It is clearly incidental and subordinate to the dwelling unit's use for residential purposes by its occupants;

18-19-2.2 With the exception of an accessory garden use **and as provided in Section 18-19-2.6**, it is conducted in the main building and does not result in alteration of the appearance of the dwelling unit or the lot on which it is located**. There shall be no interruption, congestion or change to the character of the neighborhood in terms of traffic or vehicular parking resulting from the operation of the home occupation.** (10/12/10, Case TA-10-418, Ord. No. 2010-51);

18-19-2.3 With the exception of displaying food and/or non-food crops produced on the site, it is not identified by any sign or by a display of merchandise visible from the exterior of the building (10/12/10, Case TA-10-418, Ord. No. 2010-51);

18-19-2.4 It does not involve the storage of goods and materials in excess of fifty (50) square feet of floor area. This storage may be either in the main building or an accessory building, but it shall not be permitted outdoors.

18-19-2.5 No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference beyond what normally occurs in the applicable zoning district.

18-19-2.6 A conditional use permit shall be required for any home occupation that proposes to involve the use of an accessory structure as part of a home occupation. In addition to the provisions of this Section, home occupations must conform to the entirety of Section 18-19. In no case shall the floor area used in the accessory structure exceed fifty (50) percent of the gross floor areas of the residential dwelling unit. A conditional use permit application for home occupations under this Section shall include the following:

a. Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and distances to each of the property lines as well as the distances to structures within 50 feet on immediately adjacent properties.

a. **Property survey or sketch drawn to scale detailing the setbacks of the accessory structure and distances to each of the property lines as well as the distances to structures within 50 feet on immediately adjacent properties.**

b. **A scaled interior layout sketch illustrating the proposed home occupation in the accessory structure.**

c. **A letter outlining the scope and nature of the occupation, involving operating hours, days of the week, and similar details, as well as an explanation of conformance with Section 18-2-1.1 of this Ordinance.**

18-19-3 The operation of a family day home for not more than five (5) children shall be considered as residential occupancy by a single family; and, therefore does not require a Certificate of Home Occupation. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall obtain a Certificate of Home Occupation and shall be licensed by the Virginia Department of Social Services. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. A family day home where the children in care are all grandchildren of the provider shall not be required to be licensed or obligated to obtain a Certificate of Home Occupation. (9/14/10, Case TA-10-337, Ord. No. 2010-40)

18-19-4 Permitted home occupations shall not in any event include:

- Bookstores or motion picture theaters
- Animal hospitals **and kennels**
~~- Auto repair~~
- ~~Dance instruction~~
- Bed and breakfasts homestays and boarding houses
- Massage therapy (other than strictly a home office used for record keeping)
- Motor vehicle sales, repair, equipment installation, and similar activities
- Pet Daycare, training or grooming exceeding care of more than one (1) pet at a time, excluding those of the tenant of the dwelling unit
- Private Clubs or Lodges
- Restaurants
- Tourist Homes
- Vehicle towing, demolishing, or salvaging