

**WINCHESTER COMMON COUNCIL SPECIAL MEETING
CAFETERIA - QUARLES ELEMENTARY SCHOOL
TUESDAY, JULY 22, 2014
AGENDA
7:00 p.m.**

1.0 CALL TO ORDER AND ROLL CALL

2.0 PUBLIC COMMENTS

3.0 AGENDA

- 3.1** Motion to ratify the execution of the Settlement Agreement and City's Withdrawal of its Notice of Participation in the SCC Energy Case involving Shenandoah Valley Electric Cooperative - Case No.: PUE-2013-00132

- 3.2** Motion to authorize the City Manager to execute the Economic Development/Redevelopment Consulting Agreement with Freestone LLC (pages 2-14)

- 3.3** Motion to direct the City Manager to proceed with [*demolition/repair/other*] of the property located at 414 S. Braddock Street in accordance with the Order of the Winchester Circuit Court in Case Number 840CL13000 385-00 entered on January 23, 2014 using currently budgeted capital funding pending supplemental appropriation (pages 15-25)

4.0 ADJOURNMENT

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: July 22, 2014 **CUT OFF DATE:** __

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

ITEM TITLE: Resolution Authorizing the City Manager to Execute an Agreement for Economic Development Consulting Services from Freestone, LLC

STAFF RECOMMENDATION: City Staff Recommends Council's Approval of this Resolution

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Hourly fee for services would be \$75/hour. Monthly billing will not exceed 75 hours. Money used to pay consulting fee will come from City's general fund. Freestone, LLC's services are determined to be sole source procurement by the City's Purchasing Agent.

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Finance _____	CB	_____	7/17/14
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	7/17/2014
6. City Manager	<i>[Signature]</i>	_____	7/17/14
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature: <i>[Signature]</i> _____	_____	_____	7/17/14 Date

Economic Development Coordinator



APPROVED AS TO FORM:

[Signature] 7/17/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Eden Freeman, City Manager
Date: 7/22/2014
Re: Resolution Authorizing the City Manager to Execute an Agreement for Economic Development Consulting Services from Freestone, LLC

THE ISSUE: The Winchester Common Council has a desire to seek economic development consulting services from an organization with substantial familiarity and experience with the Winchester market to expedite/facilitate current and upcoming economic development projects

RELATIONSHIP TO STRATEGIC PLAN: Goal One: Grow the Economy

BACKGROUND: Due to the current/upcoming number of City economic development projects and current understaffing of the department, the Winchester Common Council is seeking assistance from a consulting company to expedite/facilitate economic development initiatives within the City. Freestone, LLC's services are determined to be sole source procurement by the City's Purchasing Agent.

BUDGET IMPACT: Hourly fee for services would be \$75/hour. Monthly billing will not exceed 75 hours. Money used to pay consulting fee will come from City's general fund.

OPTIONS: Council may either approve or disapprove this Resolution.

RECOMMENDATIONS: Council is asked to approve of this Resolution.

A RESOLUTION THAT AUTHORIZES THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR ECONOMIC DEVELOPMENT CONSULTING SERVICES FROM FREESTONE, LLC

WHEREAS, the City of Winchester has several current and upcoming economic development projects; and

WHEREAS, the City's Economic Redevelopment Department is currently understaffed; and

WHEREAS, the facilitation and execution of these projects requires services from an organization that has substantial experience with the Winchester market.

NOW THEREFORE BE IT RESOLVED, that the adoption of this Resolution shall authorize the City Manager to execute an agreement with Freestone, LLC for economic development consulting services.

Professional Consulting Agreement

Economic Development and Redevelopment Services

Introduction

The undersigned parties hereby agree to be bound by the terms of this Agreement, made and entered into this _____ day of _____, 2014, by and between the City of Winchester, Virginia, and ___[CONSULTING FIRM]_____, (hereinafter "Consultant") for professional consulting services related to Economic Development and Redevelopment issues as follows:

Section 1: Term

This Agreement shall be effective upon the date of ratification reflected in the Introduction paragraph above. After ratification of this agreement, Consultant shall commence work as described in Section 2 and shall continue such work at the discretion of the City Manager.

Section 2: Duties and Authority

City agrees to ~~employ~~ utilize the Consultant to provide professional consulting services generally and specifically related to (1) the development of an events center facility with supporting hotel capacity; (2) the redevelopment of the ZeroPac property; (3) the redevelopment of Ward's Plaza; and (4) additional projects added at the discretion of the City with the agreement of the Consultant.

Consultant shall report to the City Manager, and shall provide regular detailed progress reports to include call and contact logs at intervals established at the discretion of the City Manager.

Section 3: Compensation

The City agrees to pay Consultant \$75 per hour from the date of commencement for all time worked. Hours paid by the City shall not exceed 75 hours per month without prior written authorization from the City Manager. Additional hours may be added at the discretion of the City Manager with the concurrence of the Consultant.

Section 4: Termination of Employment

The Consultant shall serve at the pleasure of the City Manager. The City Manager may terminate this agreement at any time with or without cause or recourse by the Consultant except that Consultant shall receive payment for all work performed by Consultant prior to termination.

Section 5: Performance Evaluation

The City Manager may, at his/her sole discretion anytime during the period of employment, perform a formal evaluation of the performance of Consultant which may include: (1) a written evaluation, (2) a meeting to discuss the evaluation, and (3) a written summary of the evaluation results.

Section 6: Hours of Work

Consultant may be called upon to attend meetings of Common Council and other public and non-public bodies. Consultant's hours may vary based upon the needs of the City and availability of the consultant. Consultant shall make all reasonable efforts to be available at all times requested by the City Manager.

Section 7: Outside Employment Activities/Conflicts of Interest/Confidentiality of Information

The Consultant shall adhere to all confidentiality requirements imposed by the City and the City Manager concerning projects and assignments pursuant to this Agreement including incidental information gained through the performance of this Agreement by Consultant. The City recognizes that the contractor may have or develop existing contractual obligations that may limit his availability to the City. Under no circumstances should those outside duties present a conflict of interest to the City. Contractor shall not use any information or contacts gained through his contractual work relationship with the City to benefit other clients, the Consultant, his company, employees, agents, associates, relatives, or other third parties beyond the payment described in this Agreement.

In the event that Consultant is discovered to have violated this Section, Consultant shall be liable for any and all damages including but not limited to incidental and consequential damages suffered by the City. In addition, Consultant may be subject to criminal prosecution for any violation which constitutes a conflict of interest or other violation under the laws of the Commonwealth of Virginia.

Section 8: Meals and Lodging and Other Expenses

The City shall not be responsible for meals and lodging or other expenses which may be associated with the performance of this Agreement.

Section 9: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the City and the Consultant. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the City and the Consultant as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on its date of execution.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungment or judicial modification of the invalid provision.

Section 10: Insurance Requirements

Consultant shall be required to maintain an Errors and Omissions Insurance Policy with minimum limits of \$1,000,000.00 per occurrence, \$3,000,000.00 aggregate. Additionally, the consultant shall maintain the following coverages as applicable:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. vendors who fail to notify the City of Winchester of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.

2. Employer's Liability - \$100,000.

3. Commercial General Liability - \$1,000,000 per occurrence. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The City of Winchester must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000 per occurrence.

Section 11: Anti-Discrimination

By signing this document, consultant certifies to the City of Winchester that he will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). Consultant shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds.

Section 12: Immigration Reform and Control Act of 1986

Consultant certifies that he does not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

Section 13: Drug-Free Workplace

During the performance of this contract, the consultant shall at all times comply with the City's Substance Abuse Policy described in Section 8.2 of the Comprehensive Employee Management System ("CEMS"). Also, in accordance with §2.2-4312 of the Code of Virginia, Consultant agrees to (i) provide a drug-free workplace for the consultant's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the consultant that the consultant maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

Section 15: Availability of Funds:

In the event that funds are not appropriated for this Contract for any City fiscal year, following the City's current year, the Contract shall terminate automatically as of the last day for which funds were appropriated without the City providing written notice to the Consultant prior to the date of termination. The City shall not consider termination of the Contract pursuant to this section default. Upon such termination, the City shall be released from any obligation to make future payments and shall not be liable for cancellation or termination charges.

Section 16: Hold Harmless

Consultant shall indemnify, defend, and hold harmless the City, its officers, employees, agents and representatives thereof from all suits, actions, claims of any kind, including attorney's fees, brought on account of any personal injuries, damages, or violation of rights sustained by any person or property in consequence of any neglect in safeguarding contract work, or on account of any act or omission

by the consultant or his employees, or from any claims or amounts arising from violation of any law, bylaw, ordinance, regulation or decree. The Consultant agrees that this clause shall include claims involving infringement of patent or copyrights.

Section 17: Venue / Jurisdiction

The parties hereby agree that any and disputes arising from or as a result of this agreement which cannot be otherwise resolved between the parties shall be adjudicated in the Circuit Court for the City of Winchester, Virginia.

Approved as to form:

City Attorney Date

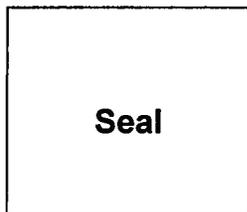
By affixing their respective signatures, the undersigned do hereby agree to be bound by the foregoing Employment Agreement:

City of Winchester, Virginia

By: _____
City Manager Date

COMMONWEALTH OF VIRGINIA:
IN THE CITY OF WINCHESTER

On this _____ day of _____, 2014, I _____, a Notary Public for the Commonwealth of Virginia, did personally witness the foregoing, _____, personally known to me or otherwise verified by valid photo identification, affix their respective signatures to this Professional Consulting Agreement on behalf of the City of Winchester, Virginia.



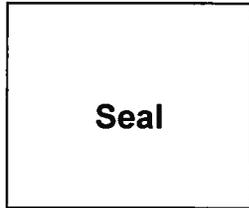
Notary
Notary Id. No.: _____
My Commission Expires: / /

[CONSULTING FIRM]

By: _____
Consultant Date

COMMONWEALTH OF VIRGINIA:
IN THE CITY OF WINCHESTER

On this _____ day of _____, 2014, I _____, a Notary Public for the Commonwealth of Virginia, did personally witness the foregoing, _____ personally known to me or otherwise verified by valid photo identification, affix his signature to this Employment Agreement on behalf of [CONSULTING FIRM].



Notary

Notary Id. No.: _____

My Commission Expires: / /

Commonwealth of Virginia



STATE CORPORATION COMMISSION

Richmond, April 6, 2014

This is to certify that the certificate of organization of

Freestone LLC

was this day issued and admitted to record in this office and that the said limited liability company is authorized to transact its business subject to all Virginia laws applicable to the company and its business. Effective date: April 6, 2014



State Corporation Commission

Attest:

Joel H. Beck
Clerk of the Commission

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

AT RICHMOND, APRIL 6, 2014

**The State Corporation Commission has found the accompanying articles submitted on behalf of
Freestone LLC**

**to comply with the requirements of law, and confirms payment of all required fees. Therefore, it
is ORDERED that this**

CERTIFICATE OF ORGANIZATION

**be issued and admitted to record with the articles of organization in the Office of the Clerk of the
Commission, effective April 6, 2014.**

STATE CORPORATION COMMISSION

By

**Judith Williams Jagdmann
Commissioner**

**DLLCACPT
CISECOM
14-04-06-5286**

**ARTICLES OF ORGANIZATION
OF
FREESTONE LLC**

The undersigned, pursuant to Chapter 12 of Title 13.1 of the Code of Virginia, states as follows:

1. The name of the limited liability company is Freestone LLC.
2. The purpose for which the limited liability company is formed is to engage in any lawful business, purpose or activity for which a limited liability company may be formed under the Virginia Limited Liability Company Act.
3. The name of the limited liability company's initial registered agent is James William Deskins. The initial registered agent is an individual who is a resident of Virginia and a member or manager of the limited liability company.
4. The address of the limited liability company's initial registered office, which is identical to the business office of the initial registered agent, is 436 Dogtown Road, Harrisonburg, VA 22802. The initial registered office is located in Rockingham County, Virginia.
5. The address of the limited liability company's principal office where the records of the limited liability company are to be kept is 436 Dogtown Road, Harrisonburg, VA 22802.

ORGANIZER:

/s/ James William Deskins Date: April 6, 2014
James William Deskins

Organization Type: LLC

LLC Information

Legal name: **FREESTONE LLC**
County: **ROCKINGHAM**
State/Territory: **VA**
Start date: **APRIL 2014**
State/Territory where articles of organization
are (or will be) filed: **VA**

Addresses

Physical Location: **436 DOGTOWN RD
HARRISONBURG VA 22802**
Phone Number: **540-662-9794**

Responsible Party

Name: **JAMES WILLIAM DESKINS SOLE MBR**
SSN/TIN: **XXX-XX-8830**

Principal Business Activity

What your business/organization does: **CONSULTING**
Principal products/services: **ECONOMIC DEVELOPMENT**

Additional LLC Information

Owns a 55,000 pounds or greater
highway motor vehicle: **NO**
Involves gambling/wagering: **NO**
Involves alcohol, tobacco or firearms: **NO**
Files Form 720 (Quarterly
Federal Excise Tax Return): **NO**
Has employees who receive Forms W-2: **NO**
Reason for Applying: **STARTED A NEW BUSINESS**

EIN Assigned: 47-1011661

Legal Name: FREESTONE LLC

**Confirmation letter will be mailed to you. This letter will be
information regarding your EIN. Allow up to 4 weeks**

Strongly recommend you print this page for your

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 06/22/2014 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE ___ PUBLIC HEARING ___ DISCUSSION x ___

ITEM TITLE: Discussion of Unsafe Conditions at 414 S. Braddock Street

STAFF RECOMMENDATION: Seeking Council Direction to Repair/Demolish/Other

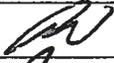
PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Supplemental Appropriation Required

INSURANCE:

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney		_____	7/17/2014
6. City Manager		_____	7/22/14
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature:  7/17/2014
Date
 Aaron Grisdate, Director of
 Zoning & Inspections



APPROVED AS TO FORM:

 7/17/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Members of Common Council

Date: June 17, 2014

RE: Discussion of Unsafe Conditions at 414 S. Braddock Street

THE ISSUE: Input from Council needed regarding disposition and further action concerning 414 S. Braddock Street.

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

BACKGROUND: On January 23, 2014, an Order was entered by the Winchester Circuit Court in Case Number 840 CL13000 385-00 which allows the owner of the property located at 414 S. Braddock Street until June 23, 2014 to abate the unsafe conditions which exist upon the property as described and in accordance with the provisions of the Order. At the conclusion of the six month period, if the owner has not completed the abatement, the City is authorized to proceed with partial demolition or repairs as deemed necessary and appropriate by the City Building Official. The cost to the City for such repairs and/or demolition shall become a lien on the property. The Department of Zoning and Inspections has performed inspections of the property over the course of the past six months to determine the extent to which the owner has made efforts to comply with the Order. The purpose of this presentation is to (1) update Council regarding the status of the repairs made by the owner, and (2) receive input from Council regarding the disposition of the property.

BUDGET IMPACT: Supplemental Appropriation Required. Existing capital funding may be used pending supplementation in order to complete the repairs.

OPTIONS: Repair/Demolish/Other.

RECOMMENDATIONS: Proceed with repairs and/or partial demolition.

Discussion of Unsafe Conditions at 414 South Braddock Street

REQUEST DESCRIPTION

The property at 414 South Braddock Street was declared a public nuisance by City Council on July 3, 2013 as a result of the determination of the building to be an unsafe structure by the Building Official. Since this nuisance ordinance was adopted by Council, City staff has moved forward with numerous actions to bring the nuisance to resolution.



STAFF COMMENTS

On March 4, 2013, Zoning and Inspections staff received a picture from a citizen noting a recent collapse of a portion of the north wall of the residence. The Building Official conducted a site inspection of the property from the public right-of-way and confirmed this condition. On March 5, 2013, an on-site inspection was conducted with the property owner's consent to observe the damage to the structure. As a result of the conditions observed during this inspection, a Notice of Unsafe Structure and Notice of Violation was issued to the property owner, Mr. Gavis, on March 20, 2013. This notice was limited to the northern section of the building in accordance with the findings of the Building Official.

The decision was subsequently appealed to the Local Board of Building Code Appeals and was unanimously upheld. In July 2013, Council considered and approved an ordinance to declare the property a public nuisance. In September 2013, the Circuit Court for the City of Winchester entered an order affirming the unsafe conditions of the structure. As a result of this order, the property owner submitted a temporary stabilization plan for the structure which was ultimately approved by the City in a modified form.

The property owner was afforded a twenty-one (21) day period to complete the temporary stabilization plan and were afforded a twenty-one (21) day extension, but failed to complete the stabilization plan. Following this deadline, the City acknowledged that a portion of work had been completed involving the installation of temporary shoring internal to the structure. As a result, the City was agreeable to a Court order that provided an additional six months for the property owner to complete the temporary stabilization repairs along with additional prescribed remedied to eliminate the unsafe structural conditions. This deadline for completion of the stabilization and elimination of the unsafe conditions was set for July 23, 2014.

City Zoning and Inspections staff conducted several on-site inspections during the temporary stabilization efforts during the end of 2013 and during the six month extension leading up to July 23, 2014. During these inspections the following work was observed to be complete:

- Installation of temporary wood bracing on the first, second, and third floors

- Installation and repointing of brick on the north wall elevation of the structure

However, there are still numerous items within the Court ordered stabilization that have not been completed, including but not limited to:

1st floor

- Replacement of (3) fire damaged floor joist at the east side of 1st floor.
- Installation of new floor sheathing over replaced floor joist.
- Installation of two angle supports at two foundation openings.
- Installation of brick wall bracing consisting thru wall bolts and floor joist strapping, (7) places.

2nd floor

- Replacement of (5) fire damaged floor joist at the east side of 2nd floor.
- Installation of new floor sheathing over replaced floor joist.
- Installation of brick wall bracing consisting thru wall bolts and floor joist strapping, (7) places.

3rd floor

- Replacement or sister all floor joist.
- Installation of 2 -1 ¾ x 9 ½ LVL support beams in floor (3) places.
- Installation of brick wall bracing consisting thru wall bolts and floor joist strapping, (7) places.

Roof

- Installation of 2 -1 ¾ x 9 ½ LVL support beams at ceiling joist level (2) places.
- Installation of 6x6 hip beam support posts (4) places.
- Complete the roofing repairs to the structure using permanent roofing material acceptable under all applicable building code standards for a permanent roof and rendering the interior of the structure dry and protected from the elements.
- Replacement of the central stairwell and landings.

Within the January 23, 2014 Court order, if the property owner has not completed the full scope of work for stabilization and elimination of the unsafe conditions, then the City has the sole discretion to enter the property and complete the repairs outlined within the order or perform such repairs and/or demolition of the property as deemed reasonable and appropriate.

Over the past 18 months the City has made major strides in addressing many of the longstanding issues at the subject property. The City was successful in identification and enforcement and successful upon appeal regarding an illegal nonconforming business permitted to operate at the residence, resulting in the removal of several of the inoperable vehicles. Additionally enforcement continued on numerous property maintenance violations, resulting in an affirmative Court judgment for penalties. Upon the collapse of the north wall, the City has been making gradual but successful progress through Court orders and agreements with the property owner to addressing the ongoing unsafe conditions and public nuisance.

It is important to note that the resolution of the unsafe conditions as expressed in the January 23, 2014 Court order, either by the property owner or the City, will not completely address all of the maintenance code issues at the property. The issues being addressed presently pertain strictly to resolving the unsafe conditions, as well as converting the structure to be a dry secure building. There will still be further resolution needed on exterior property maintenance issues that are outside of the scope of the Court order, including various areas of peeling paint, deteriorated or missing board members, etc. Upon resolution of the unsafe conditions at the property, staff will need to continue enforcement of all remaining property maintenance code violations.

RECOMMENDATION

At the date of this staff report, the repairs outlined within the Court order have not been satisfied and an unsafe structure and public nuisance remains. The City has three options available to address this situation:

Option 1: Provide the property owner with additional time to complete the outlined repairs

This option involves providing the property owner with additional time to complete the necessary repairs as provided within the January 23, 2014 Court order. To date only a portion of the stabilization and repairs have been completed as noted above in the staff report. In order to ensure that the unsafe conditions are addressed in a timely manner, staff does not recommend this option as the most desirable.

Option 2: The City completes the remaining repairs provided within the January 23, 2014 Court order.

This option involves the City hiring a contractor to complete the scope of work as outlined in the January 23, 2014 Court order and the engineered drawings included with the order. It is estimated that the remaining work included within the stabilization and remediation of unsafe conditions will amount to approximately \$250,000-300,000 of work. As noted within the Court order any work that the City may perform in order to address the unsafe conditions may be immediately placed as a lien on the property.

This option would be consistent with the City's efforts to preserve the historic character of the downtown, and would be a moderate expenditure to preserve a unique property within the City. Any funds utilized towards this stabilization would not be a free loan to the property owner, but rather a temporary expenditure addressing significant issues that would allow for the City to collect the funds expended with interest in the future. Should the lien not be paid in a timely manner, then the City Treasurer may work to collect the outstanding amount, which may include an auction of the property.

Option 3: The City completes a partial demolition of the north wing of the structure to abate the unsafe conditions.

This option involves the utilization of a Contractor hired by the City to demolish the northern portion of the structure to resolve the unsafe conditions at the property. It is estimated that the cost to complete this work would be approximately \$30,000. Similar to option 2, any funds expended by the City would be immediately placed as a lien on the property that would be required to be repaid by the property owner. If the lien amount is not paid by the owner, then the City Treasurer would have discretion after two years as to the best method of collection. This option would be the fastest to address the unsafe conditions but is not as consistent with the City's efforts to preserve the historic character of the downtown as Option #2.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

THE CITY OF WINCHESTER, VA

Petitioner,

v.

840CL13000 385-00

MARTIN B. GAVIS

-and-

CLAUDETTE H. GAVIS,

Respondents.

ORDER

This day came the Parties, by counsel, upon Joint Motion of all parties to conclude this matter upon the following findings and conditions. Upon agreement of the parties and for good cause shown this Court finds that:

1. On September 18, 2013, the Court entered an Order regarding the residential dwelling at 414 S. Braddock Street which included a finding that "Based upon the determination made by the Building Official; the Resolution passed by the Local Board of Building Code Appeals; the engineering reports submitted by Ruckman Engineering; Painter-Lewis; and Structural Concepts, Inc., the building that is the subject of this litigation is hereby found to be a "dangerous structure" that is in "imminent danger of collapse" that is "unfit for human occupancy" and a "nuisance" as these terms are defined under the Maintenance Code; the Code of Virginia and other applicable law and as otherwise cited in the City's Complaint previously filed in this matter." These findings regarding the condition of the structure shall remain in effect until such time as all work described has been completed to the satisfaction of the Code Official who shall provide, by letter to the

Court such certification upon completion of all work by Respondents or by the City as described herien.

- 2. In accordance with said Order, Respondents were afforded an opportunity and did timely submit for approval by the City, a temporary stabilization plan prepared by a professional Engineer retained by Respondents intended to reduce the likelihood of catastrophic failure of the building during the pendency of the trial of this matter.**
- 3. The plan was reviewed and approved with modification by the City (some of the items proposed by the Respondents for completion as part of the temporary stabilization plan were removed by the City and recommended for completion as part of the final disposition of this matter due, in part, to the vast number of other critical items that needed to be repaired immediately in order to minimally and temporarily render the structure such that the likelihood of catastrophic failure during the pendency of the trial of this matter would be reduced).**
- 4. Respondents were afforded a twenty-one (21) day period to complete the temporary stabilization plan and were afforded a twenty-one (21) day extension but failed to complete the temporary stabilization plan.**
- 5. Respondents have completed some of the temporary stabilization work on the property and have requested that the City agree to afford the Respondents additional time to complete the full stabilization plan originally submitted to the City plus additional work as identified in this Order that would extricate the property from the findings recited in paragraph (1) of this Order and as reflected in the September 18, 2013 Order that the building constitutes a “dangerous structure” that is in “imminent danger of collapse” that is “unfit for human occupancy” and a “nuisance” as these terms are defined under the**

Maintenance Code; the Code of Virginia and other applicable law and as otherwise cited in the City's Complaint previously filed in this matter."

Upon representation of the parties and for good cause shown, it is hereby ADJUDGED, ORDERED, and DECREED that:

- 6. Respondents shall have a period of six (6) months from the date of entry of this Order to complete the entirety of the temporary stabilization plan originally submitted to the City of Winchester by Respondents (Exhibit A) including all items removed from the temporary stabilization plan via the Building Official's October 29, 2013 letter (Exhibit B).**
- 7. Additionally, perform the following:**
 - a. Complete the roofing repairs to the structure using permanent roofing material acceptable under all applicable building code standards for a permanent roof and rendering the interior of the structure dry and protected from the elements.**
 - b. Temporary shoring materials shall be replaced with permanent structural supports acceptable under all applicable building code standards.**
 - c. Drywall installed on the third floor of the structure may be removed for further inspection to ensure all of the roof framing members are structurally sound so as to comply with abatement. All members found to be unsatisfactory by the Building Official shall be replaced..**
 - d. If the City determines through the inspection described in paragraph (c) that members must be removed and replaced and/or that additional shoring or**

structural support is necessary in these areas, Respondents shall complete this work in accordance with all applicable building code standards.

- 8. Respondents, their employees and agents, shall be responsible for performing all work upon the structure during the six (6) month time period and Respondents shall be solely responsible for all costs associated with said work.**
- 9. During the six (6) month time period, the City, its employees, agents, and assigns, may enter upon the property for the purpose of conducting inspections as deemed necessary and appropriate by the Building Official including but not limited to those inspections described in paragraph (7).**
- 10. Respondents shall be permitted to reside in the portion of the property that has not been placarded as unsafe and unfit for human habitation during the six (6) month period described in this Order. Such habitation shall be at their own risk and any and all claims against the City, its employees, agents, and assigns, for any injuries suffered as a direct and proximate result of said occupancy is hereby waived by the Respondent and his wife. During such occupancy, the Respondent and his wife shall not enter upon the portion of the property that has been placarded as unsafe and unfit for human habitation except to perform work as described in this Order.**
- 11. If Respondents fail to complete all work described in paragraphs (6) and (7) to the satisfaction of the Building Official and in accordance with all applicable building code requirements, the City may immediately, without further action by this Honorable Court, enter upon the property and complete the repairs described in paragraphs (6) and (7) or perform such repairs and/or partial demolition of the property as deemed reasonable and**

appropriate at the sole discretion of the City including but not limited to the repairs and partial demolition described in the November 4, 2014 engineering report from Ruckman Engineering (Exhibit C).

12. If the City proceeds to perform work as described in paragraph (11), the cost of said work shall immediately become a lien upon the subject property without a requirement of further action by the City as provided under §15.2-906 and 1115 of the Code of Virginia; Section 105.4 of the Virginia Maintenance Code; and other applicable law.
13. The City may require the Respondents to cease residing in the building during the performance of work described in paragraph (11) if deemed by the Code Official to be reasonably necessary for the safety of the Respondents and the City shall not be responsible for any claims by Respondents for relocation costs during the period that work is being performed by the City, its employees or agents.
14. The Respondent, his invitees, guests and other third parties shall not interfere with the City's work as described in paragraph (11), and shall not in any way restrict the City its employees or agents from accessing the property for the purposes described in this Order. Such interference shall be deemed by this Court to be subject to penalties as a violation of this Order or subject to penalties for Trespass.
15. At the conclusion of repairs and/or partial demolition as deemed necessary and appropriate and to the satisfaction of the Building Official, the Building Official shall certify to the Court that the unsafe conditions described in this Order have

been removed from the property and this case shall be DISMISSED upon receipt of such certification.

16. Nothing in this Order shall be construed to preclude the City from separately citing and prosecuting any and all Building Code and Zoning Violations which now or may in the future exist upon the property.

Failure to comply with any of the foregoing provisions shall be deemed a violation of this Order and subject to such penalty as the Court may deem just and appropriate under the circumstances of this case including but not limited to proceedings for Contempt of Court.

ENTERED: 1, 23, 2014



JUDGE

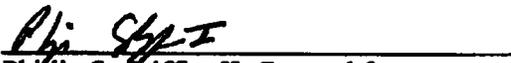
We ask for this:



Anthony C. Williams, City Attorney
CITY OF WINCHESTER, VA



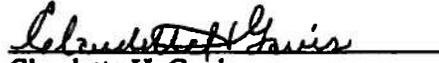
Dale Iman, City Manager



Phillip S. Griffin, II, Counsel for
Martin B. Gavis



Martin B. Gavis



Claudette H. Gavis

A COPY TESTE:


CLERK-DEPUTY CLERK
WINCHESTER CIRCUIT COURT