

WINCHESTER COMMON COUNCIL
AUGUST 12, 2014
AGENDA
7:00 P.M.

CALL TO ORDER AND ROLL CALL

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – July 8, 2014 Regular Meeting, July 22, 2014 Special Meeting, and July 22, 2014 Work Session

REPORT OF THE MAYOR

REPORT OF THE CITY MANAGER

REPORT OF THE CITY ATTORNEY

PUBLIC HEARINGS

- 1.1 O-2014-25:** Second Reading – AN ORDINANCE TO ADOPT SECTIONS 14-169 OF THE WINCHESTER CITY CODE PERTAINING TO ABANDONED VEHICLES **(REQUIRES ROLL-CALL VOTE)**(pages 4-10)

- 1.2 O-2014-26:** Second Reading – AN ORDINANCE TO AMEND AND REENACT SECTION 14.2-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO WYCK STREET AND NORTH CAMERON STREET CORRIDOR ENHANCEMENT DISTRICTS **(REQUIRES ROLL-CALL VOTE)**(pages 11-15)

2.0 PUBLIC COMMENTS

3.0 CONSENT AGENDA

- 3.1 O-2014-30:** First Reading – ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR THE PROVISION OF CABLE SERVICES IN THE CITY OF WINCHESTER (pages 16-24)

- 3.2 O-2014-32:** First Reading – AN ORDINANCE TO ADOPT ARTICLE IV SECTION 20-32 OF THE WINCHESTER CITY CODE PERTAINING TO COLLECTION OF COURT FEES (pages 25-28)

- 3.3 O-2014-31:** First Reading – AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE PUBLIC RIGHT-OF-WAY ADJACENT TO 118 ½ - 124 EAST CORK STREET (*To allow steps down from a porch in the right of way*) (pages 29-38)

- 3.4 O-2014-33:** First Reading – AN ORDINANCE TO REVISE THE PROFFERS AND DEVELOPMENT PLAN ASSOCIATED WITH 1.295 ACRES OF LAND AT 1720 VALLEY AVENUE (*Map Number 231-04-K-8A*) CONDITIONALLY ZONED HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY **RZ-14-350** (*Amendment to proffers and development plan of former Coca-Cola building to add an additional option for providing more one bedroom units*) (pages 39-48)
- 3.5 O-2014-34:** First Reading – AN ORDINANCE TO CONDITIONALLY REZONE 33.40 ACRES OF LAND AT 200 MERRIMANS LANE FROM CONDITIONAL RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY, CONDITIONAL MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LOW DENSITY RESIDENTIAL (LR) DISTRICT TO EDUCATION, INSTITUTION AND PUBLIC USE (EIP) DISTRICT, HIGHWAY COMMERCIAL (B-2) DISTRICT, RESIDENTIAL BUSINESS (RB-1) DISTRICT, MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LR DISTRICT; AND TO CONDITIONALLY REZONE 3.37 ACRES OF LAND AT 418 MERRIMANS LANE FROM LR DISTRICT TO EIP DISTRICT AND B-2 DISTRICT **RZ-14-351** (*Replaces the 2005 conditional zoning on the Ridgewood Orchard property and establishes zoning for school and commercial use on that site and the DBL Holdings property*) (pages 49-67)
- 3.6 O-2014-35:** First Reading – AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-10.1 OF THE WINCHESTER CITY CODE TO CHANGE REASSESSMENT DEADLINES AND TO CLARIFY REASSESSMENT RESPONSIBILITIES (pages 68-80)

4.0 AGENDA

- 4.1 O-2014-24:** Second Reading: AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (*Map Number 252-01-2*) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY **RZ-14-35** (*Allows 26 townhouse units on primarily vacant industrial property*)(Public Hearing Closed / Item Tabled at July 8, 2014 meeting) (pages 81-83)
- 4.2 R-2014-31:** Resolution – Authorize the City Manager to enter into an MOU with Winchester Public Schools in reference to the monitoring of school bus cameras by the Winchester Police Department (pages 84-90)
- 4.3 Announce** the resignation of Melinda Kramer as a member of the Old Town Development Board effective July 10, 2014 and direct the Clerk of Council to advertise the vacancy
- 4.4 Announce** the resignation of Jennifer Beatley as a member of the Planning Commission effective August 4, 2014 and direct the Clerk of Council to advertise the vacancy

- 4.5 Announce** the term expiration of Lauri Bridgeforth and Corwyn Garman as members of the Old Town Development Board effective October 31, 2014 and direct the Clerk of Council to advertise the vacancies. Mr. Garman is eligible for re-appointment. Ms. Bridgeforth is not eligible.

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 AND PURSUANT TO §2.2-3711(A)(3) AND (6) FOR THE PURPOSE OF DISCUSSION OR CONSIDERATION OF THE SUBJECT OF THE ACQUISITION OF AN INTEREST IN REAL PROPERTY FOR A PUBLIC PURPOSE WHERE IF MADE PUBLIC, THE BARGAINING POSITION OR FINANCIAL INTEREST OF THE CITY WOULD BE ADVERSELY AFFECTED AND PURSUANT TO §2.2-3711(A) (1) 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

0-2014-25

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: June 17, 2014 CUT OFF DATE: June 12, 2014

RESOLUTION ORDINANCE XX PUBLIC HEARING

ITEM TITLE: Change in Ordinance 14-169 Abandoned Vehicles

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning Administrator	AMG		6/9/14
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	[Signature]		6/11/2014
6. City Manager	[Signature]	[Signature]	6/12/14
7. Clerk of Council			
Initiating Department Director's Signature:	[Signature]		6/5/14 Date

editorial change needed



APPROVED AS TO FORM:

[Signature] 6/11/2014 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Chief Kevin L. Sanzenbacher
Date: Work Session 6/17/14
Council Session 7/8/14
Re: Revisions to City Ordinance 14-169 Abandoned Vehicles

THE ISSUE: Currently Chapter 14 Section 169 of the City Code regulating Abandoned Vehicles does not reflect current State law. The proposed ordinance would bring the City into compliance with Virginia law.

RELATIONSHIP TO STRATEGIC PLAN: Develop a High-Performing City Organization

BACKGROUND: Commonwealth law dealing with abandoned vehicles has changed over the years but the City Ordinance dealing with these vehicles has not kept up with statewide changes. The proposed ordinance will bring Winchester into compliance with current State law and also make it easier for members of the police department and the public to have abandoned vehicles removed from city streets and the private property.

BUDGET IMPACT: There should be no budget impact.

DISSCUSSION: The proposed changes bring the City into compliance with State law.

RECOMMENDATION: Staff recommends the Council adopted the ordinance as drafted.

AN ORDINANCE TO ADOPT SECTIONS 14-169 OF THE WINCHESTER CITY CODE PERTAINING TO ABANDONED VEHICLES

WHEREAS, Winchester Police Department recognizes that current ordinance 14-169 is not in compliance with Virginia law; and

WHEREAS, it is the belief of WPD that abandoned vehicles should be removed as quickly as possible to keep the City of Winchester safe and clear of unwanted debris; and

WHEREAS, implementation of the proposed changes will bring the City into compliance with State law and make removal and disposal of abandoned vehicles easier for the police and the citizenry; and

WHEREAS, Common Council for the City of Winchester believes that the implementation of such changes will be of benefit to the citizens of the City of Winchester.

NOW therefore be it ORDAINED that Section 14-169 of the Winchester City Code is hereby adopted as follows:

ARTICLE VIII. ABANDONED VEHICLES

SECTION 14-139. DEFINITIONS.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them by this section:

Abandoned motor vehicle means a motor vehicle, trailer, or semitrailer or part thereof that:

1. Is inoperable and is left unattended on public property for more than (48) hours; or in violation of a state law or local ordinance, or
2. Has remained illegally on public property for a period of more than forty-eight (48) hours; or
2. Has remained for more than 48 hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property, or
3. Has remained without consent on private property, including but not limited to any commercial parking place, motor vehicle storage facility or establishment for the service, repair, maintenance or sale of motor vehicles, whether or not such vehicle was brought onto or left at such property with or without the consent of the owner or person in control of the property, for more than forty-eight (48) hours.
3. Is left unattended on the shoulder of a primary highway.

Demolisher means any person whose business is to convert a motor vehicle, trailer or semitrailer into processed scrap or scrap metal or otherwise to wreck or dismantle such vehicles. (Ord. of 2-14-78)

“Scrap metal processor” means any person who is engaged in the business of processing motor vehicles into scrap for remelting purposes who, from a fixed location, utilizes machinery and equipment for processing and manufacturing ferrous and nonferrous metallic scrap into prepared grades, and whose principal product is metallic scrap.

“Vehicle removal certificate” means a transferable document issued by the Department for any abandoned motor vehicle that authorizes the removal and destruction of the vehicle.

Cross reference--Open storage of inoperative vehicles in certain zoning districts, §16-25.
State Law References--Authority of city to adopt ordinance similar to this article, Code of Virginia, §46.2-1201. See also, §46.2-1213, 46.2-1217; Similar provisions, Code of Virginia, §46.2-1200.

14 – 43

SECTION 14-140. ABANDONED MOTOR VEHICLES PROHIBITED, AUTHORITY TO IMPOUND; PENALTY

The City may take into custody any abandoned motor vehicle. In such connection, the City may employ its own personnel, equipment and facilities or hire persons, equipment and facilities or firms or corporations ~~who~~ *that* may be independent contractors for the purpose of removing, preserving, ~~and~~ storing, *and selling at public auction* abandoned motor vehicles. (Ord. of 2-14-78) 46.2-1200.1.

No person shall cause any motor vehicle to become an abandoned motor vehicle as defined in § 46.2-1200. In any prosecution for a violation of this section, proof that the defendant was, at the time that the vehicle was found abandoned, the owner of the vehicle shall constitute in evidence a rebuttable presumption that the owner was the person who committed the violation. Such presumption, however, shall not arise if the owner of the vehicle provided notice to the Department, as provided in § 46.2-604, that he had sold or otherwise transferred the ownership of the vehicle.

A summons for a violation of this section shall be executed by mailing a copy of the summons by first-class mail to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the person fails to appear on the date of return set out in the summons, a new summons shall be issued and delivered to the sheriff of the county, city, or town for service on the accused personally. If the person so served then fails to appear on the date of return set out in the summons, proceedings for contempt shall be instituted.

Any person convicted of a violation of this section shall be subject to a civil penalty of no more than \$500. If any person fails to pay any such penalty, his privilege to drive a motor vehicle on the highways of the Commonwealth shall be suspended as provided in § 46.2-395. All penalties collected under this section shall be paid into the state treasury to be credited to the Literary Fund as provided in § 46.2-114. Similar provision, Code of Virginia 46.2-1200.1

State Law Reference--Similar provisions, Code of Virginia, §46.2-1201.

SECTION 14-141. NOTICE OF IMPOUNDMENT.

~~(a) When an abandoned motor vehicle is taken into custody pursuant to this article, the Chief of Police shall notify, within fifteen (15) days thereof, by registered or certified mail, return receipt requested, the owner of record of the vehicle and all persons having security interests therein of record, that the vehicle has been taken into custody. The notice shall describe the year, make, model and serial number of the vehicle, set forth the location of the facility where the vehicle is~~

being held, inform the owner and any persons having security interests of their right to reclaim the vehicle within three (3) weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or persons having security interests to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all persons having any security interests of all right, title and interest in the vehicle and consent to the sale of the vehicle at public auction.

(b) ~~If records of the state division of motor vehicles contain no address for the owner or no address of any person shown by such records to have a security interest, or if the identity and address of the owner and all persons having security interests cannot be determined with reasonable certainty, notice by publication once in a newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this section as to any person who cannot be notified pursuant to the provisions of this section. Any such notice shall be within the requirements prescribed for notice by mail, and shall have the same contents required for a notice by mail.~~

(e) ~~The consequences and the fact of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice given in accordance with and pursuant to this section. (Ord. of 2-14-78)~~

(a) When an abandoned motor vehicle is taken into custody, the city or city's agent shall initiate with the DMV, in a manner prescribed by the Commissioner, a search for the owner and/or lienholder of record of the vehicle, requesting the name and address of the owner of record of the motor vehicle and all persons having security interests in the motor vehicle on record in the office of the DMV, describing, if ascertainable, the motor vehicle by year, make, model, and vehicle identification number. A local government agency with a written agreement with the DMV shall be exempt from paying a \$25 fee to the DMV.

The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime database, and (iii) records of a nationally recognized motor vehicle title database for owner and lienholder information. If a vehicle has been reported as stolen, the Department shall notify the appropriate law-enforcement agency of that fact. If a vehicle has been found to have been titled in another jurisdiction, the Department shall notify the applicant of that jurisdiction. In cases of motor vehicles titled in other jurisdictions, the Commissioner shall issue certificates of title on proof satisfactory to the Commissioner that the persons required to be notified by registered or certified mail have received actual notice fully containing the information required by this section.

(b) If the DMV confirms owner or lienholder information, the DMV shall notify the owner, at the last known address of record, and lienholder, at the last known address of record, of the notice of interest in their vehicle, by certified mail, return receipt requested, and advise them to reclaim and remove the vehicle within 15 days, or, if the vehicle is a manufactured home or a mobile home, 120 days, from the date of notice. Such notice, when sent in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received. Following the notice required in the subsection, if the motor vehicle remains unclaimed, the owner and all persons having security interests in the motor vehicle shall have waived all right, title, and interest in the motor vehicle.

Whenever a vehicle is shown by the Department's records to be owned by a person who has indicated that he is on active military duty or service, the Department shall notify the requestor of such information. Any

person having an interest in such vehicle under the provisions of this article shall comply with the provisions of the federal Service members Civil Relief Act (50 U.S.C. app. 501 et seq.).

- (c) If records of the Department contain no address for the owner or no address of any person shown by the Department's records to have a security interest, or if the identity and addresses of the owner and all persons having security interests cannot be determined with reasonable certainty, the person in possession of the abandoned motor vehicle shall obtain from the Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate. The vehicle may be sold or transferred to a licensee or a scrap metal processor, as defined in § 46.2-1600. State Law Reference--Similar provisions, Code of Virginia, §46.2-1202 and 46.2-1202.1.

SECTION 14-142. SALE.

- (a) If an abandoned motor vehicle has not been reclaimed as provided for in §14-141 (state code 46.2-1202), the City or its authorized agent shall, notwithstanding the provisions of §46.2-617 of the Code of Virginia, sell the vehicle at public auction. For purposes of this article, the term "public auction," when conducted by any county, city, or town, shall include an Internet sale by auction. The purchaser of the motor vehicle shall take title thereto free and clear of all liens and claims of ownership of others, shall receive a sales receipt at the auction from the sale, and shall be entitled to apply to and receive from the DMV, upon application therefor pursuant to ~~§46.2-603 of the Code of Virginia~~, a certificate of title and registration card therefor. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and in such case, no further titling of the vehicle is necessary; however, such demolisher shall provide the DMV acceptable documentation indicating that the vehicle has been demolished.
- (b) From the proceeds of the sale of an abandoned motor vehicle, the City or its authorized agent shall reimburse itself for the expenses of the auction, the cost of towing, preserving and storing the vehicle which resulted from placing it in custody, and all notice and publication costs incurred pursuant to §14-141. Any remainder from the proceeds of such sale shall be held for the owner of the *abandoned motor vehicle* or any persons having security interests therein, as their interests may appear, for ~~ninety (90)~~ (60) days, and then shall be deposited into the city treasury. (Ord. of 2-14-78)

State Law Reference--Similar provisions, Code of Virginia, §46.2-1203.

~~SECTION 14-143. VEHICLES ABANDONED IN GARAGES.~~

- ~~(a) Any motor vehicle, trailer, semitrailer or part thereof left for more than ten (10) days in a garage operated for commercial purposes, after notice by registered or certified mail, return receipt requested, to the owner to pick up the vehicle, or for more than ten (10) days after the period when, pursuant to contract, the vehicle was to remain on the premises, shall be deemed an abandoned motor vehicle, and may be reported by the garage keeper to the Chief of Police. All abandoned motor vehicles left in the garages may be taken into custody by the City in accordance with §14-140, and shall be subject to the notice and sale provisions contained in §§14-141 and 14-142; provided that, if such vehicle is reclaimed in accordance with §14-141, the person reclaiming such vehicle shall, in addition to the other charges required to be paid, pay the charges of the garage keeper, if any; and provided further that, if such vehicle is sold pursuant to §14-142, the garage keeper's shall be entitled to none of the excess of the proceeds of sale.~~
- ~~(b) Except as otherwise provided in this article, nothing herein shall be construed to limit or restrict any rights conferred upon any person under §§43-32 through 43-36 of the Code of Virginia.~~

Underlined – new text

~~Strikeout~~- removed

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 6/24/14 (work session), **CUT OFF DATE:** 6/18/14
7/8/14 (1st Reading) 8/12/14 (2nd Reading/Public Hearing)

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

ITEM TITLE:

TA-14-275 AN ORDINANCE TO AMEND AND REENACT SECTION 14.2-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO WYCK STREET AND NORTH CAMERON STREET CORRIDOR ENHANCEMENT DISTRICTS

STAFF RECOMMENDATION:

Approval.

PUBLIC NOTICE AND HEARING:

Public hearing for 8/12/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning and Inspections	AMG	_____	6/18/14
2. City Attorney		_____	6/18/2014
3. City Manager		_____	6-18-14
4. Clerk of Council	_____	_____	_____
	_____	_____	_____

Initiating Department Director's Signature:  _____ 6/18/14
 (Planning)



APPROVED AS TO FORM:

 _____ 6/18/2014
 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Will Moore, Planner
Date: June 18, 2014
Re: TA-14-275 AN ORDINANCE TO AMEND AND REENACT SECTION 14.2-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO WYCK STREET AND NORTH CAMERON STREET CORRIDOR ENHANCEMENT DISTRICTS

THE ISSUE:

Since the initial adoption of Corridor Enhancement (CE) District overlay zoning in 2005, the routing of traffic entering the City from the north end has been revised such that Wyck and North Cameron Streets are now part of the major tourist access corridor leading into the Historic District. This is a city-initiated text amendment to include these streets as corridors along which CE overlay zoning could be applied.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: Create a More Livable City for All;
2013-14 Policy Action (High Priority) - City Gateway Beautification

BACKGROUND:

See attached staff report

BUDGET IMPACT:

N/A

OPTIONS:

- Approve as recommended by Planning Commission
- Modify amendment
- Deny; do not identify Wyck or N Cameron Streets as designated entry corridors

RECOMMENDATIONS:

Planning Commission recommended approval.

Council Work Session
June 24, 2014

TA-14-275 AN ORDINANCE TO AMEND AND REENACT SECTION 14.2-8 OF THE WINCHESTER ZONING ORDINANCE PERTAINING TO WYCK STREET AND NORTH CAMERON STREET CORRIDOR ENHANCEMENT DISTRICTS

REQUEST DESCRIPTION

This text amendment would include Wyck and North Cameron Streets as corridors along which Corridor Enhancement (CE) District overlay zoning could be applied.

STAFF COMMENTS

When the CE District standards and guidelines were initially adopted in 2005, certain major tourist access corridors leading into the designated local and national Historic Winchester District were identified in the Ordinance. These included two corridors in the northern part of the City - Fairmont Avenue and North Loudoun Street. These two, along with Millwood Avenue, share the same applicable standards and guidelines.

At its retreat in April 2014, the Planning Commission identified corridors in the northern part of the City as priorities for implementation. Since the initial adoption in 2005, the routing of traffic entering the City from the north end has been revised such that Wyck and North Cameron Streets are now part of the major tourist access corridor leading into the Historic District. Prior to proceeding with rezoning of land to establish the geography for the CE Districts in the north part of the City, this amendment is proposed to include these two streets and to apply the same set of standards and guidelines that would be applicable to Fairmont Avenue and North Loudoun Street.

RECOMMENDATION

At its June 17, 2014 meeting, the Planning Commission forwarded TA-14-275 as identified in "Draft 1 - April 30, 2014" to City Council recommending approval because Wyck Street and North Cameron Street are now part of a major tourist access corridor leading into the Historic District.

AN ORDINANCE TO AMEND AND REENACT SECTION 14.2-8 OF THE WINCHESTER ZONING
ORDINANCE PERTAINING TO WYCK STREET AND NORTH CAMERON STREET CORRIDOR
ENHANCEMENT DISTRICTS

TA-14-275

WHEREAS, Article 14.2 of the Zoning Ordinance provides for a Corridor Enhancement (CE) overlay district that is intended to protect and promote the aesthetic character and functionality of major tourist access corridors leading into the designated local and national Historic Winchester (HW) District; and,

WHEREAS, Section 14.2-8 of the Ordinance includes standards and guidelines pertaining to two corridors in the northern part of the City - Fairmont Avenue and North Loudoun Street; and,

WHEREAS, the routing of traffic entering the City from the north end has been revised since the CE District was first enacted in 2005 such that Wyck and North Cameron Streets are now part of the major tourist access corridor; and,

WHEREAS, it is the interest of the City to proceed with the rezoning of land in the northern part of the City to be included in the CE District; and,

WHEREAS, the Planning Commission has considered an amendment to include Wyck Street and North Cameron Street as designated corridors and, at its meeting of June 17, 2014, forwarded said amendment to City Council recommending approval as identified in "Draft 1 - April 30, 2014" because Wyck Street and North Cameron Street are now part of a major tourist access corridor leading into the Historic District; 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 14.2-8 OF THE WINCHESTER ZONING
ORDINANCE PERTAINING TO WYCK STREET AND NORTH CAMERON STREET CORRIDOR
ENHANCEMENT DISTRICTS

TA-14-275

Draft 1 - April 30, 2014

*Ed. Note: The following text represents an excerpt of Article 14.2 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 14.2

CORRIDOR ENHANCEMENT DISTRICT – CE

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

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 07/15/2014 **CUT OFF DATE:** _____

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

ITEM TITLE: ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR THE PROVISION OF CABLE SERVICES IN THE CITY OF WINCHESTER.

STAFF RECOMMENDATION: APPROVAL

PUBLIC NOTICE AND HEARING: Required

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE: Surety Bond Required of Successful Bidder.

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. <u>Public Services</u>	P.E.	_____	6/20/14
2. <u>Purchasing/Procurement</u>	TB	_____	6/20/14
3. <u>Finance</u>	CB	_____	6/20/14
4. _____	_____	_____	_____
5. <u>City Attorney</u>	[Signature]	_____	6/20/2014
6. <u>City Manager</u>	[Signature]	_____	6/20/14
7. <u>Clerk of Council</u>	_____	_____	_____

Initiating Department Director's Signature: [Signature] 6/20/2014
Date



APPROVED AS TO FORM:

[Signature] 6/20/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Members of Common Council

From: Anthony C. Williams, City Attorney

Date: June 20, 2014

RE: ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR THE PROVISION OF CABLE SERVICES IN THE CITY OF WINCHESTER.

THE ISSUE: The City's contract with Adelphia Cable (the majority of whose assets were absorbed by COMCAST) has expired. A new cable franchise is required by the service provider in order to continue providing cable services.

RELATIONSHIP TO STRATEGIC PLAN: (Goal 1): Create a more livable City for all and (Goal 2) Grow the Economy.

BACKGROUND: While there is no current cable franchise agreement with COMCAST, when Adelphia Cable Communications filed bankruptcy in 2002, its revenue-generating assets were officially acquired by Warner Cable and Comcast on July 31, 2006. Accordingly, COMCAST has been honoring the terms of the existing Agreement with Adelphia since July 31, 2006. The Adelphia Agreement has expired and a new franchise agreement is necessary for the continued provision of services to the citizens of the City of Winchester.

BUDGET IMPACT: None anticipated.

OPTIONS: Adopt, reject, or modify Ordinance.

RECOMMENDATIONS: Approve upon receipt of acceptable bid.

NOTICE OF INVITATION TO BID FOR FRANCHISE TO USE PUBLIC PROPERTY OF THE CITY OF WINCHESTER, VIRGINIA FOR DISTRIBUTION AND TRANSMISSION OF CABLE SERVICES PURSUANT TO §15.2-2101 OF THE CODE OF VIRGINIA:

TAKE NOTICE that the City of Winchester hereby invites bids for the franchise, privilege, lease or right to use the public streets, highways, parks, and other public places of the City of Winchester, within the limits thereof as they now exist or may hereafter be extended by annexation or otherwise, and to erect, operate and maintain, and if not constructed to construct, maintain and use, lines for the distribution and transmission of cable services, including the necessary poles, wires, fixtures, electrical conductors, and underground conduits, over, along and under the public places of the City of Winchester, Virginia for the purpose of distributing and transmitting cable services with the substance of the specific terms and conditions of the draft Franchise Ordinance. A full copy of the text of the draft Franchise Ordinance and Bid Documents are on file with the City Clerk and available for public inspection during normal business hours of the City of Winchester. **Bids shall be submitted in writing to the City Clerk at 15 N. Cameron Street, Winchester, Virginia 22601 on or before 10:00 am on September 2, 2014. The bids shall be opened by the presiding officer in public session of Council held in Council Chambers on September 9, 2014 at the Meeting of Common Council at 7:00 p.m. or as soon thereafter as reasonably possible, and marked for identification by the Clerk of Council.** The cost of this advertisement shall be reimbursed by the successful bidder as required by law. The City of Winchester reserves the right to reject any and all bids in accordance with §15.2-2101(B) of the Code of Virginia.

BID FOR CABLE SERVICE FRANCHISE

To: The Honorable Members of Common Council for the City of Winchester

From: ____ [NAME OF COMPANY] _____

Subj: Bid Submission for Cable Service Franchise – City of Winchester, VA
Ordinance No.: _____

Date: _____

____ [NAME OF COMPANY] _____ hereby bids ____ [\$ AMOUNT] _____ for the franchise rights and privileges under Ordinance No.: _____ herein attached.

Respectfully Submitted,
____ [NAME OF COMPANY] _____

[Name and title of Company's executing official]

I hereby acknowledge that on this ____ day of _____, 2014, I received the Bid by ____ [Name of Company] ____ for the Franchise for Cable Service described above to be considered at the _____, 2014 meeting of Common Council for the City of Winchester.

Clerk of Council,
City of Winchester, VA

ACCEPTANCE OF FRANCHISE FOR CABLE SERVICE

To: The Honorable Members of Common Council for the City of Winchester

From: ____ [NAME OF COMPANY] _____

Subj: Bid Submission for Cable Service Franchise – City of Winchester, VA
Ordinance No.: _____

Date: _____

____ [NAME OF COMPANY] _____ respectfully accepts the franchise rights granted to it by action of the City Council of the City of Winchester, Virginia, on _____ (Ordinance No.: _____), and hereby posts a surety bond in the amount of \$50,000.00 as security for proper performance of its franchise obligations under Section 8 of the Ordinance.

____ [NAME OF COMPANY] _____

[Name and title of Company's executing official]

I hereby acknowledge on this ____ day of _____, 2014, the above Acceptance was delivered to me and I further acknowledge receipt of proof of surety as described above.

Clerk of Council,
City of Winchester, VA

THE COMMON COUNCIL

AN ORDINANCE TO GRANT TO _____, ITS SUCCESSORS OR ASSIGNS, UNDER THE CODE OF VIRGINIA AND THE CABLE ACT A NONEXCLUSIVE FRANCHISE AUTHORIZING THE GRANTEE TO CONSTRUCT AND OPERATE A CABLE SYSTEM IN THE PUBLIC WAYS WITHIN THE FRANCHISE AREA, AND FOR THAT PURPOSE TO ERECT, INSTALL, CONSTRUCT, REPAIR, REPLACE, RECONSTRUCT, MAINTAIN, OR RETAIN IN ANY PUBLIC WAY SUCH POLES, WIRES, CABLES, CONDUCTORS, DUCTS, CONDUITS, VAULTS, MANHOLES, PEDESTALS, AMPLIFIERS, APPLIANCES, ATTACHMENTS, AND OTHER RELATED PROPERTY OR EQUIPMENT AS MAY BE NECESSARY OR APPURTENANT TO THE CABLE SYSTEM AND TO PROVIDE SUCH SERVICES OVER THE CABLE SYSTEM AS MAY BE LAWFULLY ALLOWED BEGINNING _____, 2014, AND ENDING _____.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF WINCHESTER, VIRGINIA:

SECTION 1. Be it Ordained by the Common Council of Winchester that permission be and the same is hereby granted to _____, its successors and assigns, for a period beginning _____, 2014, and terminating _____, 201____, under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Grantee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such services over the Cable System as may be lawfully allowed in accordance with the express terms of the Franchise Agreement which is adopted and incorporated by reference as if set forth fully herein.

SECTION 2. (a) That the work of locating and installing any wires, cables, and appurtenances or other equipment by virtue of this ordinance shall be done under the supervision of the Public Utilities Director, by and with the advice of such other persons as the Common Council may appoint to represent the City. Where a property owner objects to the location and erection of franchisee's wires, cables and appurtenances the Public Utilities Director shall make reasonable effort to assist Franchisee in finding an alternative location for installation of said wires, cables and appurtenances.

(b) _____ shall replace and properly repair any street, sidewalk or other property of the City of Winchester that may be displaced or damaged by _____ or its agents in the exercise of its privileges under this ordinance, and upon the failure of _____ so to do after twenty days notice in writing shall have been given it by the City Manager of Winchester, the City may repair such property or replace said street, sidewalk or other property, and collect the necessary cost thereof from _____.

SECTION 3. _____ shall at all times be subject to the ordinances of the City of Winchester now in existence or which may hereafter be enacted into law relative to the use of the public streets, highways, parks and other public places by companies granted a franchise to use City property.

SECTION 4. The Franchisee agrees and binds itself to indemnify, keep and hold the City free and harmless from liability on account of injury or damage to persons, firms, or corporations or property growing out of or directly or indirectly resulting from such use of the streets, alleys, highways and other public places of the City, the construction, maintenance, and operation of such posts, poles, conduits, manholes, ducts, cables, wires and all other necessary overhead and underground apparatus or the exercise of any right granted by or under this franchise or the failure, refusal or neglect of the Company to perform any duty imposed upon or assumed by the Company by or under this franchise, and in the event that any suit or proceeding shall be brought against the City, at law or in equity, either independently or jointly with the Company on account thereof, the Company will defend the City in any such suit or proceeding at the cost of the Company, and in the event of a final judgment or decree being obtained against the City for any of the above reasons, either independently or jointly with the Company, then the Company will pay such judgment or comply with such decree with all costs and expenses of whatsoever nature and hold the City harmless therefrom; but nothing herein contained shall be construed to render the Company liable for the negligence of the City or of its agents or employees, or for that of any other person, firm or corporation.

SECTION 5. The franchisee shall be bound to the all of the terms of the Franchise Agreement adopted and incorporated by reference as if set forth fully herein. This Ordinance contemplates that the franchisee shall install and maintain a "cable system" and provide "cable service" as defined in said Agreement which terms are defined in the Agreement as follows:

"Cable service" means the one-way transmission to subscribers of (i) video programming or (ii) other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service does not include any video programming provided by a commercial mobile service provider defined in 47 U.S.C. § 332(d).

"Cable system" or "cable television system" means any facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use

is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) any portion of a system that serves fewer than 50 subscribers in any locality, where such portion is a part of a larger system franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

SECTION 6. (a) That the right of the City to impose any legal licenses or other tax upon _____, or its property, is hereby expressly reserved, and is not to be deemed in any manner waived or abridged by this ordinance.

(b) If more than one company uses the same pole, right of way, or other City property each company shall pay any legal or constitutional annual pole rental that may be imposed upon a single company.

SECTION 7. _____ shall file with the Clerk of the Common Council of Winchester (1) its written acceptance of this ordinance; (2) a fully executed copy of a Franchise Agreement consistent with this Ordinance; and sufficient evidence of surety as described in Section 8 within ten (10) days from date when this Ordinance has been adopted by Common Council.

SECTION 8. _____, to which the franchise, rights and privileges herein granted are awarded, shall execute a bond with good and sufficient surety in favor of the City of Winchester in the sum of \$50,000, conditioned upon the construction, installation, maintenance, and operation of the franchisee's wires, cables and appurtenances thereto for providing cable service including the maintenance thereof in good order throughout the term of this grant.

SECTION 9. The City of Winchester shall have the right to forfeit the grant of the privileges, rights and franchises herein granted in the event _____ shall fail to maintain its property in good order and condition throughout the term of this grant and secure to the public efficient service at reasonable rates at the discretion of Common Council and in accordance with the Franchise Agreement.

SECTION 10. _____ shall, whenever required to do so by the City of Winchester, in the reasonable exercise of its police power, remove from the public streets, highways, parks and other public places of the said City, or any part thereof, franchisee's wires, cables and appurtenances thereto for providing cable service, and place the wires, cables and appurtenances underground in safe and suitable conduits. Any work done under this section shall be at the Franchisee's sole expense and subject to such supervision and review by the City as provided by this ordinance or any other ordinances, resolutions of the City, or general law.

SECTION 11. That _____ shall provide all consideration recited in the Franchise Agreement in return for the City's grant of this Franchise and non-exclusive right to utilize City property in furtherance of the Franchisee's stated enterprise of providing cable service. In addition to the consideration contained in the Franchise Agreement,

the Franchisee is responsible for reimbursing the City for the costs associated with advertising the Franchise as required pursuant to §15.2-2101 of the Code of Virginia. The City may revoke or rescind this Franchise at anytime in accordance with the terms of the Franchise Agreement, or for failure of the Franchisee to comply with any of the provisions contained in this Ordinance or for other good cause shown.

SECTION 12. All of the rights and privileges hereby granted and all of the obligations of _____ herein contained shall be applicable in the event new territory shall be annexed by the City of Winchester except as may be ordered by a tribunal of competent jurisdiction.

SECTION 13. Whenever necessary to improve or widen streets and the final new property line cannot be given before construction starts, _____ agrees, on reasonable notice, to move existing wires, cables and appurtenances thereto, out of the way of construction to such points along or adjacent to the new property line as may be designed by the Public Utilities Director, City Manager, or other designated City Official as the probable final location; but the City is bound by this ordinance to give to _____ such reasonable and practical location for its wires, cables and appurtenances thereto, as is required in order that _____ may meet and discharge its duties to the public as required under this Ordinance and Franchise Agreement.

SECTION 14. This ordinance shall be in force from and after the date of its passage.

NOW therefore be it ORDAINED that the City Manager is hereby authorized by Common Council to execute a Franchise Agreement on behalf of the City of Winchester, Virginia with _____ for the purpose of providing cable service consistent with the terms of the attached Franchise Agreement and the provisions of this Ordinance.

Adopted by the Common Council of the City of Winchester, Virginia, and approved by Common Council, on the ____ day of _____, 2014.

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 7/22/14 CUT OFF DATE: 7/15/14

RESOLUTION ORDINANCE XX PUBLIC HEARING ___

ITEM TITLE: Addition to City Ordinance Chapter 20 Article IV Section 20-32

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Director of Finance	<i>D</i>		<i>7/7/14</i>
2. Information Technology Director	<i>ITD</i>		<i>7/7/14</i>
3. _____			
4. _____			
5. City Attorney	<i>CA</i>		<i>7/9/2014</i>
6. City Manager	<i>C</i>		<i>7/9/14</i>
7. Clerk of Council			
Initiating Department Director's Signature: <i>Chip Kelly</i>			<i>6/27/14</i> Date



APPROVED AS TO FORM:

[Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Chief Kevin L. Sanzenbacher
Date: Work Session 7/22/14
Council Session 8/12/14
Re: Addition to City Ordinance Chapter 20 Article IV 20-32

THE ISSUE: The State Legislature has just enacted legislation that allows a \$5 fee to be collected by local jurisdictions for criminal and traffic cases tried at the district court level. This money is designated to develop an electronic summons system. The Winchester Police Department is asking the City Council to adopt Article IV Section 20-32 to Chapter 20 of the City Ordinance to enable the clerk of court to collect this fee so the WPD can fund an electronic summons system.

RELATIONSHIP TO STRATEGIC PLAN: Develop a High-Performing City Organization

BACKGROUND: The Clerk's Office of the Frederick/Winchester General District Court has advised the WPD that the State Legislature has given the local clerk of court the ability to collect fees on behalf of law enforcement on each criminal and traffic case proceeding through District Ct where a guilty finding is made. This money has been designated for use in acquiring software, hardware and system support for an electronic summons system.

It is planned that this system will include an electronic driver license reader, software to process a citation, a in-car printer to print the summons and back-end software to transfer the data into existing databases at the WPD and the court.

Funding and eventually procuring this system will have the following benefits:

- Officers will be able to transact traffic stops much more quickly as they will be able to scan a driver's information from their license and automatically populate the various fields of a summons. This is all done by hand now. Officers will also be able to insert charges onto the citation electronically, thus reducing mistakes. This may also enhance officer safety if this information can automatically be checked against wanted persons data bases.
- The information will then automatically populate the police department data base. This is something a clerk currently does by hand for each summons.
- The data base at the District Court clerk's office will also self-populate. This will again reduce inefficient redundancies that are presently occurring as the clerk's office must also enter data by hand.
- Finally, police intrusion into the lives of citizens will be reduced as the time we have to detain someone for a summons will be reduced through a more efficient processing.

BUDGET IMPACT: There should be no negative budget impact as procurement will not start until sufficient funds are available for all costs. This was an item the WPD planned to pursue in the future using general fund money, so this funding source will alleviate future budget strains. It is estimated these fees will generate approximately \$20,000 per year.

DISCUSSION: There is no anticipated opposition to this request. The funds will be coming from people who have been convicted of breaking the law not general tax revenue. The system to be purchased with these funds merely replicates a process currently being done by hand. No addition personal information will be captured or retained as a result of automating this process, nor will this change the way officers determine whether or not observed violations will be cited.

RECOMMENDATION: Staff recommends the Council adopt the following ordinance as drafted.

AN ORDINANCE TO ADOPT ARTICLE IV SECTION 20-32 OF THE WINCHESTER CITY CODE PERTAINING TO COLLECTION OF COURT FEES

WHEREAS, Winchester Police Department wishes to improve their service to the community through efficiencies; and

WHEREAS, the Commonwealth has enabled local jurisdictions, through the clerk of the court, to collect a \$5 fee as the part of each criminal and traffic case; and

WHEREAS, this fee **shall** ~~can~~ be applied to fund software, hardware and costs associated with developing an electronic summons system; and

WHEREAS, the Winchester Police Department believes implementing an electronic summons system will improve efficiency for officers and satisfaction for citizens; and

WHEREAS, the Common Council for the City of Winchester believes that the implementation of such changes will be of benefit to the citizens of the City of Winchester.

NOW therefore be it ORDAINED that Article IV Section 20-32 of the Winchester City Code is hereby added as follows:

ARTICLE IV Electronic Summons System

Sec. 20-32. Assessment of costs in criminal and traffic cases for the costs of an electronic summons system.

There is hereby imposed and assessed a fee of \$5.00 as part of the costs in each criminal and traffic case in the district and circuit courts within the city. The clerk of the court in which the action is filed shall collect these assessments and remit them to the city treasurer. The treasurer shall hold the funds subject to disbursements by the city council to local law-enforcement agencies solely to fund software, hardware, and associated equipment costs for the implementation and maintenance of an electronic summons system.

State Law References- Va. Code 17.1-275.5 and 17.1-279.1

AN ORDINANCE TO ADOPT ARTICLE IV SECTION 20-32 OF THE WINCHESTER CITY CODE PERTAINING TO COLLECTION OF COURT FEES

WHEREAS, Winchester Police Department wishes to improve their service to the community through efficiencies; and

WHEREAS, the Commonwealth has enabled local jurisdictions, through the clerk of the court, to collect a \$5 fee as the part of each criminal and traffic case; and

WHEREAS, this fee ~~can~~**shall** be applied to fund software, hardware and costs associated with developing an electronic summons system; and

WHEREAS, the Winchester Police Department believes implementing an electronic summons system will improve efficiency for officers and satisfaction for citizens; and

WHEREAS, the Common Council for the City of Winchester believes that the implementation of such changes will be of benefit to the citizens of the City of Winchester.

NOW therefore be it ORDAINED that Article IV Section 20-32 of the Winchester City Code is hereby added as follows:

ARTICLE IV Electronic Summons System

Sec. 20-32. Assessment of costs in criminal and traffic cases for the costs of an electronic summons system.

There is hereby imposed and assessed a fee of \$5.00 as part of the costs in each criminal and traffic case in the district and circuit courts within the city. The clerk of the court in which the action is filed shall collect these assessments and remit them to the city treasurer. The treasurer shall hold the funds subject to disbursements by the city council to local law-enforcement agencies solely to fund software, hardware, and associated equipment costs for the implementation and maintenance of an electronic summons system.

State Law References- Va. Code 17.1-275.5 and 17.1-279.1

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 7/22/14 (work session), CUT OFF DATE: 7/16/14
8/12/14 (1st Reading) 9/9/14 (2nd reading)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE PUBLIC RIGHT-OF-WAY ADJACENT TO 118 1/2-124 EAST CORK STREET

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 9/9/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

N/A

FUNDING DATA: N/A

INSURANCE: The Encroachment Agreement requires the City to be named as an additional insured on the owner's general liability 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.

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Zoning & Inspections, Public Services, City Attorney, City Manager, and Clerk of Council.

Initiating Department Director's Signature: [Handwritten Signature] (Planning)

6/19/14



APPROVED AS TO FORM: [Handwritten Signature] 6/20/2014 CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Will Moore, Planner
Date: June 18, 2014
Re: AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE PUBLIC RIGHT-OF-WAY ADJACENT TO 118½-124 EAST CORK STREET

THE ISSUE:

Request from a property owner for approval to construct stairs in an 18½ square foot area of public right of way along the E. Cork St sidewalk. The stairs would attach to, and be in line with, an existing encroaching porch.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: Continue Revitalization of Historic Old Town.
2013-14 Management Action, Item #3: *Market Rate Housing Units (25)*

BACKGROUND:

In November 2013, Council approved a conditional use permit for conversion of the ground floor of the properties from nonresidential to multi-family residential use. The sketch plan submitted with the CUP identified a proposed stair encroachment, and Council's approval included a condition that approval of the proposed encroachment would need to be obtained. The applicant has since formally submitted the detailed site plan for redevelopment of the property.

Encroaching stairs were previously attached to this porch prior to conversion of the ground floor to office use in the early 2000s. The porch and exterior door were not used during the period where the space was used as offices. All connections were internal to connecting buildings; the stairs were removed and the porch was completely railed. The redevelopment requires re-introduction of use of the porch and door. Virginia DHR has approved of the stairs as part of the submitted Rehabilitation Plan for purposes of obtaining historic tax credits.

An adjacent tree and tree well may need to be relocated in conjunction with the construction of the stairs in order to maintain necessary clearance on the sidewalk. If necessary, the owner has committed to this relocation at his expense and this is included in the related Encroachment Agreement.

BUDGET IMPACT:

N/A

OPTIONS:

- Approve as proposed
- Approve with modifications to the Ordinance/Encroachment Agreement
- Deny

RECOMMENDATIONS:

Staff recommends approval.

**AN ORDINANCE AUTHORIZING AN ENCROACHMENT WITHIN THE
PUBLIC RIGHT-OF-WAY ADJACENT TO 118½-124 EAST CORK STREET**

WHEREAS, the Common Council of the City of Winchester (“Council”) is authorized to permit encroachments upon certain public rights-of-way pursuant to §15.2-2009 Code of Virginia; and,

WHEREAS, Council has received a request from Bowman-Turner, L.C. (“requestor”) to permit an encroachment of approximately eighteen and one-half square feet of certain improvements into the City’s public right-of-way adjacent to the requestor’s properties at 118½-124 East Cork Street; and,

WHEREAS, the requestor proposes to construct stairs and a handrail within the encroachment in line with an existing, encroaching porch in facilitation of a planned redevelopment of the adjacent properties for which Council approved a conditional use permit on November 12, 2013 subject to approval of the proposed stair encroachment; and,

WHEREAS, the requestor further proposes to relocate an existing tree and tree well, and repair the sidewalk in the previous tree well location, in order to preserve necessary clearance on the sidewalk per the Americans with Disabilities Act.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester:

1. that it hereby authorizes a revocable encroachment in the area shown on the attached Exhibit A dated June 13, 2014; and
2. that the encroachment is authorized for the sole purpose of permitting encroachment of stairs and a handrail in line with an existing encroaching porch and that no other improvements shall be placed in the area of encroachment; and
3. that it hereby authorizes and directs the City Manager to execute the Encroachment Agreement between Bowman Turner, L.C. and the City of Winchester; and
4. that a copy of this Ordinance, the Encroachment Agreement, and Exhibit A shall be recorded in the Office of the Clerk of the Court of the City of Winchester, Virginia and that such recordation shall be at the sole expense of the requestor .

Prepared by:
Office of the City Attorney
Roush City Hall
15 N. Cameron St.
Winchester, VA 22601

Exemption Claimed Under
Section 58.1-811.A.3 for
Taxes Imposed by Section
58.1-801 on a Conveyance to
a Virginia Political Subdivision
Consideration: \$10.00

ENCROACHMENT AGREEMENT

THIS AGREEMENT (the "Agreement") made this ____ day of _____, 2014, by and between the **CITY OF WINCHESTER**, a Virginia Municipal Corporation, Grantor ("the City") and **BOWMAN-TURNER, L.C.**, Grantee ("the Grantee").

WHEREAS, the Grantee owns real property (the "Property") known as 118½-124 East Cork Street in the City of Winchester, more specifically identified as Map Numbers 193-01-P-31 and 32; and,

WHEREAS, the Grantee wishes to encroach in the public right-of-way adjacent to the Property by constructing stairs and a handrail to connect to an existing, encroaching porch attached to the Property; and,

WHEREAS, the City has determined that there is no objection to the encroachment described in this Agreement; and

WHEREAS, the Grantee, after obtaining any and all necessary permits, will construct the stairs and handrail in substantially the position shown on Exhibit A; and

WHEREAS, the Common Council of the City by Ordinance passed at its meeting of the ____ day of _____, 2014, approved a revocable encroachment upon the aforesaid right-of-way.

NOW, THEREFORE, the Parties agree as follows:

1. Grantor, insofar as its rights and interests are concerned, hereby grants permission to the Grantee for the above-mentioned revocable encroachment, subject to the following conditions.
2. The Grantor reserves all rights of access to the area of encroachment for construction, operation and maintenance of its facilities without incurring any liability for damage to or loss of use of the encroachment described herein or for inverse condemnation thereof arising out of any act of the City, its officials or its agents.
3. Grantee agrees that he will not construct or cause to be constructed or erected any other structure or improvement upon the area of encroachment other than the stairs and handrail ("improvements"), and that, upon thirty (30) day notice by the City, the Grantee will remove the improvements to allow access for City work within the area of encroachment, with the understanding that upon completion of the work by the City, the improvements may be re-erected.

4. The Grantee shall be fully responsible for relocating an existing tree and tree well adjacent to the area of encroachment and repairing the sidewalk in the previous tree well location if, as determined by the City's Public Services Director, such relocation and repair is necessary in order to preserve and maintain necessary clearance on the sidewalk per the Americans with Disabilities Act.

5. If the encroachment is determined by any official or agent of the City to be in such a defective condition as to cause damage to, or unsafe condition within, the City's right-of-way, the unsafe condition shall be corrected, remedied or removed at the Grantee's expense within thirty (30) days after notification by the City.

6. In the event that the City gives Notice to the Grantee that the encroachment is revoked, the Grantee shall remove the improvements within thirty (30) days of the date of said Notice and the Grantee shall restore the area of encroachment to the grade and condition that existed prior to Grantee's construction of said improvements.

7. The Grantee hereby agrees to defend, indemnify and save harmless the City and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use and maintenance of the improvements by the Grantee or under the consent hereby granted, and to name the City of Winchester as an additional insured under its general liability insurance policy.

8. This Encroachment Agreement shall in no way be construed as the granting of a perpetual easement to the Grantee or otherwise vesting in the Grantee any type of property right.

9. The City expressly reserves all rights, privileges, and immunities granted it under the laws and statutes of the United States and the Commonwealth of Virginia and under the City Code of the City of Winchester as to any claim made against it.

10. The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the Parties, and shall run with the land.

SIGNATURES AND SEALS APPEAR ON THE FOLLOWING PAGE

WITNESS the following signatures and seals:

By:

BOWMAN-TURNER, L.C.

Date

Commonwealth of Virginia,

City/County of _____ To Wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014

By _____.

Notary Public

My Commission Expires _____

By: CITY OF WINCHESTER

City Manager

Date

Commonwealth of Virginia,

City/County of _____ To Wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014

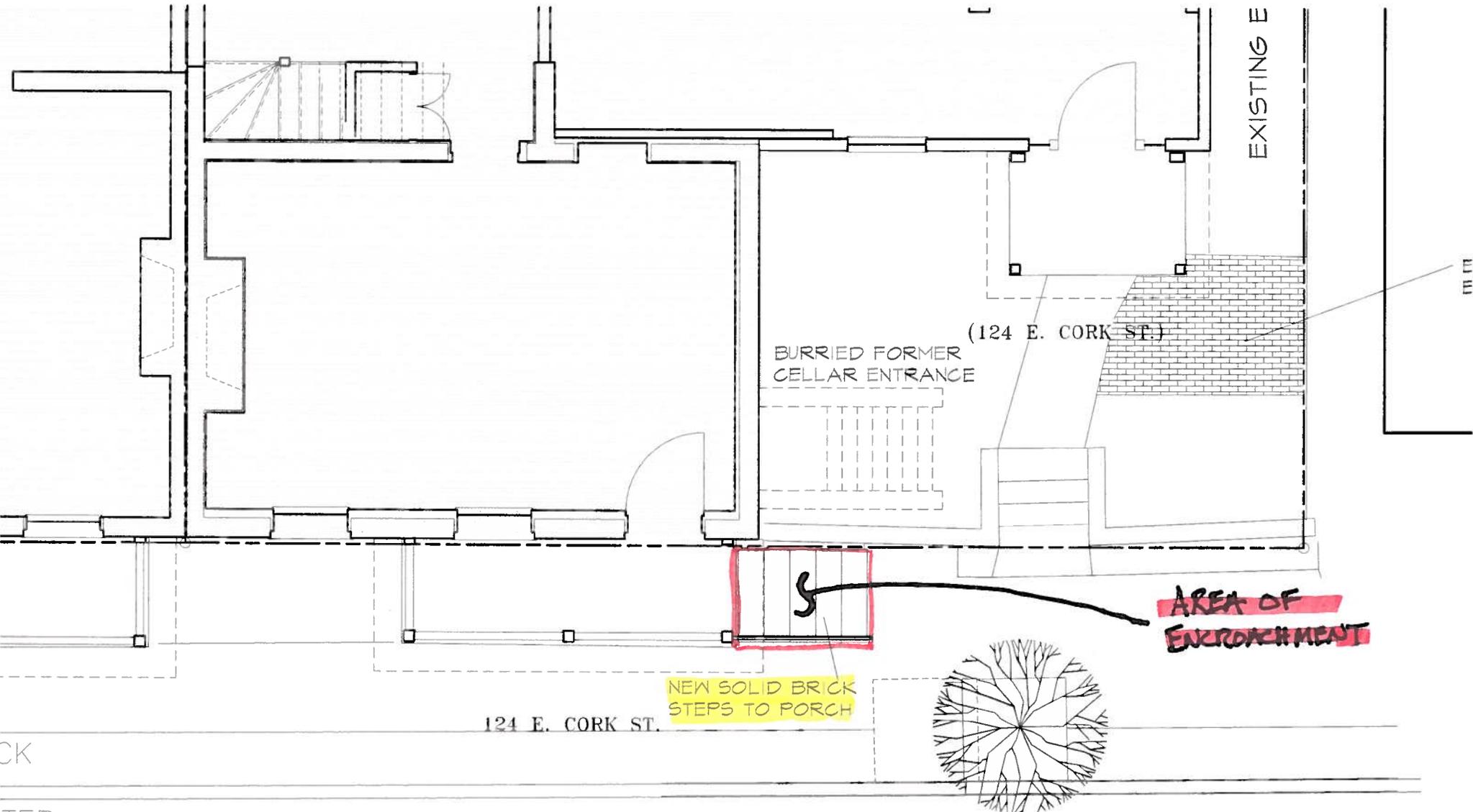
By _____.

Notary Public

My Commission Expires _____

APPROVED AS TO FORM:

Anthony C. Williams, City Attorney



CK
TER

EAST CORK STREET
(PUBLIC RIGHT-OF-WAY)

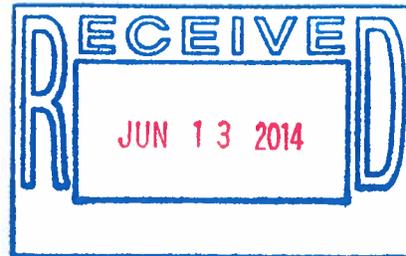


EXISTING TREE BOX AND SMALL EXISTING TREE TO BE RELOCATED BY CONTRACTOR APPROX. 3'-6" EASTWARD TO PERMIT FREE (ADA 36") PASSAGE ON SIDEWALK AFTER CONSTRUCTION OF NEW STEPS TO 124 E. CORK.

WORK INCLUDES THE COMPLETE REPAIR OF THE EXISTING BRICK AND CONCRETE SIDEWALK AS NEEDED TO MATCH THE ORIGINAL.

Bowman-Turner, LC

3863 Centerview Dr.
Suite #300
Chantilly, VA 20151



June 9, 2014

To: Tim Youmans, Planning Director
City of Winchester, Virginia

Re: Request For an Easement to Allow a Private Encroachment Upon City Property

Dear Mr. Youmans:

Bowman-Turner has requested and has been granted a CUP to convert the ground floor of three properties on East Cork Street from Business use to Residential Use. These three properties, at 118-1/2, 120, and 124 E. Cork St., were originally built as private dwelling units. This CUP was granted by City Council on November 12, 2013, with a condition that an encroachment easement be requested and granted by the City for the proposed restored staircase to the front porch of building 124.

Because of the specific history of use of the property at 124 E. Cork St., there exists today a front porch and a front door to which there is no direct access—the porch has railings on all sides and no stairs from the street. We propose to remove a section of the existing porch railing on the east side and to build a short brick stairway down to the sidewalk. The porch is itself a building addition from approximately 1920, constructed on City property. The proposed steps we will construct will also be on City property and will constitute an additional encroachment on the Public Right-of-Way. (See attached detail). The dimensions of this additional encroachment are 5'-0" X 3'-8", or approximately 18-1/2 square feet in area.

We included this new construction in our CUP application, and have further obligated ourselves to relocate a tree well and a small existing street tree eastward along the sidewalk for a distance of approximately 3'-6", if needed, to preserve the necessary clearances on the sidewalk to conform to ADA clearances.

This proposal was also included in a Rehabilitation Plan (Part Two) submitted to the Virginia Department of Historic Resources (DHR) for the purpose of tax credit benefits, and the DHR has approved this feature.

Please consider this letter to be a formal request to grant us this easement. Thank you.

Sincerely,

Gary P. Bowman, General Manager,
Bowman-Turner, LC



Rouss City Hall
15 North Cameron Street
Winchester, VA 22601

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

November 13, 2013

Bowman-Turner, LC
3863 Centerview Drive
Suite #300
Chantilly, VA 20151



Dear Mr. Bowman:

On Tuesday, November 12, 2013, the Winchester City Council acted on the following:

CU-13-495 Request of Bowman-Turner, LC, for a conditional use permit for conversion of ground floor nonresidential use to residential use at 118½, 120 and 124 East Cork Street (*Map Numbers 193-01-P-31 and 32*) zoned Central Business (B-1) District with Historic Winchester (HW) District overlay.

City Council approved the request because the proposal, as submitted, will not adversely affect the health, safety or welfare of persons residing or working in the neighborhood nor be detrimental to public welfare or injurious to property or improvements in the neighborhood. The recommendation is based upon finding that the proposed ground-floor residential units are as suitable or preferable to other permitted uses on the ground floor and is subject to the following:

1. Conformity with the submitted floor plans;
2. Acquisition of the necessary easement for the proposed stair encroachment; and,
3. Staff review and approval of the related site plan, to include a recommendation from the BAR on the proposed open space.

Please call if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy A. Youmans".

Timothy A. Youmans
Planning Director

cc: Larry Belkin



LOCATION OF NEW STAIRWAY

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 7/22/14 (work session), **CUT OFF DATE:** 7/16/14
8/12/14 (1st Reading) 9/9/14 (2nd reading)

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

ITEM TITLE:

RZ-14-350 AN ORDINANCE TO REVISE THE PROFFERS AND DEVELOPMENT PLAN ASSOCIATED WITH 1.295 ACRES OF LAND AT 1720 VALLEY AVENUE (*Map Number 231-04-K-8A*) CONDITIONALLY ZONED HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 9/9/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. City Attorney	<u>[Signature]</u>	<u> </u>	<u>7/17/2014</u>
2. City Manager	<u>[Signature]</u>	<u> </u>	<u>7/17/14</u>
3. Clerk of Council	<u> </u>	<u> </u>	<u> </u>



Initiating Department Director's Signature:
(Planning)

[Signature]

7/16/14



APPROVED AS TO FORM:

[Signature] 7/17/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Will Moore, Planner
Date: July 15, 2014
Re: **RZ-14-350** AN ORDINANCE TO REVISE THE PROFFERS AND DEVELOPMENT PLAN ASSOCIATED WITH 1.295 ACRES OF LAND AT 1720 VALLEY AVENUE (*Map Number 231-04-K-8A*) CONDITIONALLY ZONED HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY

THE ISSUE:

The request is to amend the proffers and development plan that were approved by Council in October 2013 when PUD overlay was established on the former Coca-Cola property. The original approval included two options: Option A with 5,678sf of commercial space and 18 apartments; or, Option B with 8,049sf of commercial space and 16 apartments. The request is to add a third option for 5,678sf of commercial space and 23 apartments (consisting of fewer two-bedroom units and additional one-bedroom/studio units).

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1: Grow the Economy

Goal 4: Create a more livable city for all

Vision 2028- Great neighborhoods with a range of housing choices

BACKGROUND:

See attached staff report

BUDGET IMPACT:

This mixed use project, including new high-quality multifamily development geared to empty nesters and young professionals, will generate direct and indirect revenue and create more demand for commercial development.

OPTIONS:

- Approve as proposed to add Option C to development plan and associated proffers
- Deny; leave existing development plan (with Options A and B only) in place

RECOMMENDATIONS:

Planning Commission recommended approval of the revision as proffered.

Council Work Session
July 22, 2014

RZ-14-350 AN ORDINANCE TO REVISE THE PROFFERS AND DEVELOPMENT PLAN ASSOCIATED WITH 1.295 ACRES OF LAND AT 1720 VALLEY AVENUE (Map Number 231-04-K-8A) CONDITIONALLY ZONED HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY

REQUEST DESCRIPTION

The request is to amend the proffers and development plan that were approved by Council in October 2013 when Planned Unit Development (PUD) overlay was established on the former Coca-Cola property. The original approval included two options: Option A with 5,678sf of commercial space and 18 apartments; or, Option B with 8,049sf of commercial space and 16 apartments. The request is to add a third option for 5,678sf of commercial space with 23 apartments. The site layout plan with associated landscaping, buffering, parking, etc. remains unchanged with the additional proposed option, as do most of the previously approved proffers, including a maximum of two bedrooms in any apartment.

AREA DESCRIPTION

The site has its main frontage of about 220 feet along Valley Ave, but it actually fronts on three public streets. It adjoins Burton Avenue for 193 feet to the north, a poorly defined public street within a 40-foot right of way between the Coca-Cola property and the adjoining paint store/apartment building to the north. The site also extends 237 feet along Roberts Street to the east.

The adjoining vacant property to the south at 1726 Valley Ave is zoned B-2 with Corridor Enhancement (CE) District overlay. A used car lot is situated further to the south at the corner of Valley Ave and Bellview Ave.



All of the other land bordering the tract to the south is zoned Medium Density Residential (MR). Use of the 5 MR lots is single-family detached. Land across Roberts St to the east is zoned High Density Residential (HR) and contains apartment use and single-family use. Land to the north across Burton Ave is zoned B-2 (CE) and contains mixed use consistent with what is proposed for the subject property. Land across Valley Ave to the west is zoned MR and contains single-family homes and a couple of apartments.

STAFF COMMENTS

Mr. J.A. Scallan, managing member of the applicant (1720 Valley Avenue LLC) outlines the request in a letter dated May 30, 2014. The additional Option C would provide for fewer two bedroom units than Options A or B while providing for additional one bedroom and studio units. The primary area of difference in the floor plans for Option C is within the 1974 addition (the northern part of the building). Both Options A and B include eight two-bedroom units in this area, all of which are two-story units.

Option C would provide for thirteen units in this area: two would remain as two-bedroom, two-story units. The remaining eleven would consist of one two-bedroom unit and ten one-bedroom units, all of which would be single floor units.

Numerous criteria were evaluated in the previous rezoning to apply PUD overlay to the property, including consistency with the Comprehensive Plan, site development and buffering, open space, utility infrastructure, and design quality. These remain largely unchanged with the additional proposed development option. The related objectives in the Comprehensive Plan are still applicable: Citywide Design Objective #1- Employ New Urbanism Principles in new development and redevelopment; Citywide Design Objective #2- Protect significant public and private architectural and historic resources in the City; and, Citywide Housing Objective #6- Promote decent affordable housing, particularly to serve targeted populations such as young professionals and retirees.

As previously noted, the site development plan, buffering, and open space remain unchanged. Sanitary sewer issues in a nearby area that were raised by neighbors during the previous rezoning request were investigated and found to be related to a separate sewer main than the one serving the subject property. Design quality is ensured through proffered elevations and floor plans and situation within the Corridor Enhancement overlay District. Additionally, the owner is seeking tax credits for Historic Preservation and continues to proffer conformance to the Secretary of Interior's Standards for Rehabilitation.

Council also approved a waiver of the 5-acre minimum per Section 13-1-4.1 of the Zoning Ordinance to allow a 1.295 acre PUD because the applicant demonstrated that strict adherence would produce unnecessary hardship that would preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

The key consideration for the Commission and Council is the request to allow for the increased density under Option C. PUD overlay allows for consideration of up to 18 dwelling units per acre. At 1.295 acres, the previous approval for a maximum of 18 units under Option A translated to 13.9 units per acre. Option C for 23 units would maximize the density allowable for consideration (at 17.75 units per acre). As previously noted, this Option would provide for fewer two-bedroom units and additional one-bedroom/studio units.

RECOMMENDATION

At its July 15, 2014 meeting, the Planning Commission forwarded **RZ-14-350** to City Council recommending approval subject to the proffers in the revised Proffer Statement dated May 30, 2014 because the proposed revision continues to support mixed use and the expansion of housing serving targeted populations as called out in the Comprehensive Plan. The recommendation is based upon adherence with the Development Plan titled Conceptual Site Layout Plan, Rezoning Exhibit 'A' dated May 30, 2014.

AN ORDINANCE TO REVISE THE PROFFERS AND DEVELOPMENT PLAN ASSOCIATED WITH 1.295 ACRES OF LAND AT 1720 VALLEY AVENUE (*Map Number 231-04-K-8A*) CONDITIONALLY ZONED HIGHWAY COMMERCIAL (B-2) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) AND CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY

RZ-14-350

WHEREAS, the Common Council on October 22, 2013 approved Ordinance 2013-30 to conditionally rezone the property at 1720 Valley Avenue to Highway Commercial (B-2) District with Planned Unit Development (PUD) and Corridor Enhancement (CE) District Overlay; and,

WHEREAS, the Common Council has received an application from J. A. Scallan on behalf of 1720 Valley Avenue LLC to revise the proffers and development plan associated with the previously approved rezoning; and,

WHEREAS, the Planning Commission has reviewed the request and at its July 15, 2014 forwarded the request to Council recommending approval subject to the proffers in the revised Proffer Statement dated May 30, 2014 because the proposed revision continues to support mixed use and the expansion of housing serving targeted populations as called out in the Comprehensive Plan; and,

WHEREAS, the aforesaid recommendation is based upon adherence with the Development Plan titled Conceptual Site Layout Plan, Rezoning Exhibit 'A' dated May 30, 2014; 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 revisions to the proffers and development plan continue to support mixed use and the expansion of housing serving targeted populations as called out in the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the proffers and development plan associated with Ordinance 2013-30 are hereby revised subject to the proffers in the revised Proffer Statement dated May 30, 2014.

BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the revision is subject to adherence with the Development Plan titled Conceptual Site Layout Plan, Rezoning Exhibit 'A' dated May 30, 2014.

1720 Valley Avenue LLC
2200 Wisconsin Avenue NW, Suite 100
Washington DC 20007

May 30, 2014

Mr. Timothy Youmans
Planning Director
Rouss City Hall
15 North Cameron Street
Winchester VA 22601



Dear Mr. Youmans,

Please allow this letter to serve as a request to the City Council to allow Revisions to a previously approved Rezoning (Winchester Case # RZ-13-292, B-2 with Planned Unit Development overlay and Corridor Enhancement overlay) for 1720 Valley Avenue in the City of Winchester. 1720 Valley Avenue LLC is the owner of the land and buildings that housed the former Coca Cola Bottling Works at that location.

The previously approved rezoning for the site provided for a residential/retail mix with two different optional plans of development;

Option A

5,678 sf commercial space
18 du residential (13 two bedroom, 2 one bedroom with den, and 3 one bedroom)

Option B

8,049 sf commercial space
16 du residential (12 two bedroom, 2 one bedroom with den, and 2 one bedroom)

Our PUD Revision request is to add an Option C development plan as follows:

Option C

5,678 sf commercial space
23 du residential (10 two bedroom and 13 one bedroom/studio)

Option C does not require any change to the existing footprint of the building and the total amount of area in the development is not increased. Option C merely provides for different dwelling unit mix with more one bedroom/studio units in lieu of two bedroom units.

The previously approved plan included significant site improvement providing 45 on-site parking spaces and 14 street parking spaces (for a total parking count of 59 spaces) and extensive landscaping as part of the improved site plan. There are no changes to the previously approved site improvements with this Revision.

To accomplish this mix of units we respectfully request approval of our Revision to the previously approved Planned Unit Development overlay for the site to add the Option C development option with a maximum of 23 dwelling units which is in conformance with the allowable PUD density of 18 dwelling units per acre.

In line with the comprehensive plan for the City of Winchester this development will "respect the significant historic identity" of the building by maintaining the historically significant façade as a commercial space. Additionally this project will contribute to the comprehensive plan goal of making Winchester a "Community of Choice" by providing a unique residential experience that could appeal to a wide variety of potential renters.

Please feel free to contact our team should you have any further questions.

Yours faithfully,



Mr. J. A. Scallan

info@scallanproperties.com

(202) 544-6500 (ext. 701)

The Bottling Works
RZ-13-292
PLANNED DEVELOPMENT REVISION
(Conditions for this rezoning revision request)

Tax Map Number: 231-04-K-8A

Owner: 1720 Valley Avenue LLC



Dated: May 30, 2014

Property Information:

The undersigned applicant hereby proffers that in the event the Council of the City of Winchester approves the Planned Development Revision for the previously approved Planned Development Zoning (Case RZ-13-292) of 1.295 acres of land including existing buildings at 1720 valley Avenue from B-2 (Highway Commercial) to B-2 with a Planned Unit Development (PUD) overlay then the development and adaptive reuse of the existing buildings will be completed in conformity with the terms and conditions as set forth below, except to the extent that such terms and conditions may be subsequently revised by the applicant due to constraints and requirements of the Virginia Department of Historic Resources or the United States Department of the Interior. In the event that the Planned Development Revision is not granted these proffers shall be deemed withdrawn. These proffers shall be binding on the applicant and their legal successor and assigns.

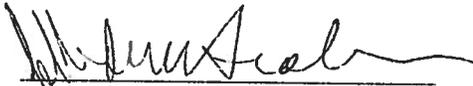
Improvements

1. The property will be developed and landscaped substantially in conformance with the Development Plan dated May 30, 2014, Option A and Option B Building Plans dated August 2, 2013 and Option C Building Plans and Elevations dated May 30, 2014. The site will be improved to include parking, storm water management and green space landscaping maintained by a landscape contractor. The drawings depict the style and character of the interior spaces.
2. The facades of the existing buildings will be developed substantially in conformance with the submitted Elevations, dated May 30, 2014, that depict the style and character of the design. The development will preserve the historic facades of the original 1940s Coke building while adding fenestration and other surface treatments to the more recent facades to improve their character. These improvements will make the newer facades more compatible with the historic Coke building and the new interior uses. The improvements on the facades include but may not be limited to stucco, glass entry systems, metallic panels, entry canopies and appropriate lighting.
3. The materials and methods used in the adaptive reuse of the existing building will conform to the rigorous standards and practices as described in the United States Secretary of the Interior's Rehabilitation Standards for Historic Buildings.

4. The maximum number of residential units shall be limited to 23. The units will be a mix of studio, 1 bedroom and 2 bedroom units. There will be no 3 bedroom units.
5. The maximum amount of rentable commercial/retail space will be 8,049 Sq. Ft.
6. The residential apartments will be constructed to a high standard of finish and designed to express the industrial style of the building. The units will be loft like spaces with high open ceiling spaces, exposed steel framing, exposed concrete floors and industrial stairs.
7. The interior of the commercial/retail space will meet the standards of the Virginia Department of Historic Resources and the US Department of the Interior to qualify for their Historic Preservation Certification program and will reflect the industrial character of the building.
8. The residential and commercial/retail space will be operated under a set of rules and regulations developed by the Owner to ensure a safe, high quality environment for all tenants. These rules and regulations may be amended by the Owner from time to time at its sole discretion.
9. The construction phase of the project will commence within 24 months of the Planned Development Revision approval. The construction of the project is estimated to require 12 months.

These proffers are offered in conjunction with the Development Plan, dated May 30, 2014, Option A and Option B Building Plans dated August 2, 2013 and Option C Building Plans and Elevations dated May 30, 2014. If the Planned Development Revision is approved by the City Council a full set of construction plans will be developed from these design documents and submitted for review and approval by the appropriate departments of the City of Winchester. If the plans are approved by the reviewing City departments these proffered conditions will apply to the rezoned land and existing buildings and be binding upon the applicant, their successors and assigns.

Applicant:



1720 Valley Avenue LLC

By Mr. J. A. Scallan
Managing Member

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 7/22/14 (work session), CUT OFF DATE: 7/16/14
8/12/14 (1st Reading) 9/9/14 (2nd reading)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-351 AN ORDINANCE TO CONDITIONALLY REZONE 33.40 ACRES OF LAND AT 200 MERRIMANS LANE FROM CONDITIONAL RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY, CONDITIONAL MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LOW DENSITY RESIDENTIAL (LR) DISTRICT TO EDUCATION, INSTITUTION AND PUBLIC USE (EIP) DISTRICT, HIGHWAY COMMERCIAL (B-2) DISTRICT, RESIDENTIAL BUSINESS (RB-1) DISTRICT, MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LR DISTRICT; AND TO CONDITIONALLY REZONE 3.37 ACRES OF LAND AT 418 MERRIMANS LANE FROM LR DISTRICT TO EIP DISTRICT AND B-2 DISTRICT

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 9/9/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

Planning Commission recommended approval.

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. City Attorney			
2. City Manager			7-17-14
3. Clerk of Council			



Initiating Department Director's Signature:  (Planning)

7/16/14



APPROVED AS TO FORM:

 7/17/14
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council

From: Tim Youmans, Planning Director

Date: July 15, 2014

Re: **RZ-14-351** AN ORDINANCE TO CONDITIONALLY REZONE 33.40 ACRES OF LAND AT 200 MERRIMANS LANE FROM CONDITIONAL RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY, CONDITIONAL MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LOW DENSITY RESIDENTIAL (LR) DISTRICT TO EDUCATION, INSTITUTION AND PUBLIC USE (EIP) DISTRICT, HIGHWAY COMMERCIAL (B-2) DISTRICT, RESIDENTIAL BUSINESS (RB-1) DISTRICT, MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LR DISTRICT; AND TO CONDITIONALLY REZONE 3.37 ACRES OF LAND AT 418 MERRIMANS LANE FROM LR DISTRICT TO EIP DISTRICT AND B-2 DISTRICT

THE ISSUE:

The request is to rezone the Ridgewood Orchard and DBL Holdings properties to support construction of Meadow Branch Avenue and the new John Kerr Elementary School along the west side of the 4-lane roadway. A Generalized Development Plan (GDP) and a Proffer Statement are included with the conditional rezoning request to guide development of the 3 major land bays shown on the GDP.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 1: Grow the Economy

Goal 4: Create a more livable city for all

BACKGROUND:

See attached staff report

BUDGET IMPACT:

The rezoning implements recommendations in the recently adopted Comprehensive Plan including the decision to construct a replacement public elementary school on about 9.3 acres of the subject tract. The proposed B-2 zoning would support greater tax-generating uses to help offset the loss of revenue from taxable development on the proposed school site.

OPTIONS:

- Approve the proposed rezoning including the GDP and associated proffers
- Deny part or all of the proposed rezoning

RECOMMENDATIONS:

Planning Commission recommended approval of the rezoning.

RZ-14-351 AN ORDINANCE TO CONDITIONALLY REZONE 33.40 ACRES OF LAND AT 200 MERRIMANS LANE FROM CONDITIONAL RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY, CONDITIONAL MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LOW DENSITY RESIDENTIAL (LR) DISTRICT TO EDUCATION, INSTITUTION AND PUBLIC USE (EIP) DISTRICT, HIGHWAY COMMERCIAL (B-2) DISTRICT, RESIDENTIAL BUSINESS (RB-1) DISTRICT, MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LR DISTRICT; AND TO CONDITIONALLY REZONE 3.37 ACRES OF LAND AT 418 MERRIMANS LANE FROM LR DISTRICT TO EIP DISTRICT AND B-2 DISTRICT

REQUEST DESCRIPTION

On May 10, 2005, City Council approved a proffered rezoning for parcels owned by the Smith Estate near the intersection of Merrimans Lane and Amherst Street (prior to the realignment of Merrimans Lane into the short segment of Meadow Branch Ave built in conjunction with the CVS Pharmacy). Ridgewood Orchard (the current owners of the undeveloped Smith Estate land) and DBL Holdings (owners of a landlocked parcel adjoining the Ridgewood Orchard land) seek rezoning of their lots. The request entails amending the approved Smith Estate proffers to relocate the Meadow Branch Avenue right-of-way and revise the underlying zoning to support school use, highway commercial uses, and a different form of residential use than anticipated with the 2005 rezoning. The DBL Holdings property would be rezoned from conventional LR zoning to EIP for school use in addition to a small strip along the northern boundary being rezoned to B-2 with proffers. A small portion of the Ridgewood Orchard property fronting along the east side of Merrimans Lane would be left LR as a single-family residential buffer to any new commercial use.

The original version of this rezoning request submitted on June 2, 2014 would rezone the Ridgewood Orchard land to B-2, HR and EIP, with conditions. The B-2 area would extend between a proposed EIP District in the center area of the tract and the existing B-2 District boundary aligning with the rear of the CVS and the intersection of Merrimans at Meadow Branch Avenue. Uses on the B-2 land would be generally restricted to those allowed under the current zoning for the same area (i.e. the CVS site). The applicant's originally submitted proffers would have excluded uses believed to be inappropriate for this area. Uses on the proposed High Density (HR) area east of Meadow Branch Avenue would be anything as allowed in the HR District as spelled out in Section 5 of the Zoning Ordinance. This includes multifamily and townhouse use by right as well as nursing homes with approval of a CUP. The originally proposed HR zoning would permit up to 13.2 dwelling units per acre by right. The EIP District, proposed along the west side of Meadow Branch Avenue, would be established for public school use.

The latest revised version of the rezoning request dated July 11, 2014 and received by the City on July 14, 2014 no longer requests HR zoning on the area identified as Land Bay 'C' on the Generalized Development Plan, and instead simply removes the previously established proffers for the MR and RB-1 zoned portions of this area lying to the east of Meadow Branch Avenue. For now, the zoning district map will still show a small area of RB-1 zoning adjoining the Sacred Heart property.

The rezoning also removes all of the subject acreage from the existing Amherst Street Corridor Overlay (CE) District. In the applicant's cover memo dated June 2, 2014 (Revised June 4, 2014), it is stated, that "it is the opinion of the owners that while the design standards provided in the CE Overlay section of the ordinance are effective when dealing with the smaller B-2/RO-1 properties bordering Amherst Street,

the building size requirements and administration of the reviews and approvals would make development of the proposed larger commercially zoned parcels more cumbersome. Therefore, we would propose that Corridor Enhancement Overlay be removed from the subject parcels, but the corridor overlay design standards have been imposed on the areas zoned B-2.”

AREA DESCRIPTION

The subject Ridgewood Orchard site is vacant, except for an unused driveway extending from Merrimans Lane to the Sacred Heart Church. Land adjacent to the site to the west and east is zoned LR, including a wedge-shaped portion of the Ridgewood Orchard site that is not proposed for rezoning from LR. Land across Merrimans Lane further to the west includes the First Christian Church with frontage on Merrimans Lane and Amherst Street. Land further south along the west side of Merrimans Lane includes single-family residences, primarily on oversized lots. The mostly vacant DBL Holdings lot is a vacant landlocked tract that formerly housed a storage facility for a heating and cooling contractor. There is one storage building on the site that is proposed for demolition in conjunction with the school project.



Land to the south is part of the Moffett Estate and is primarily undeveloped. The easternmost portion of the Moffett land was conditionally rezoned from LR to MR in 2008 to support medium density residential use along the east side of Meadow Branch Avenue extended. Land to the southeast and east includes undeveloped portions of the Glass-Glen Burnie Foundation. The Sacred Heart property immediately to the east contains a church and private school in addition to a residential unit. Land to the north is zoned conditional B-2 and includes the CVS store as well as two vacant tracts of land, one to the east of the CVS and one on the opposite side of Meadow Branch Avenue to the west. Land further to the north across Amherst Street is zoned Residential Office (RO-1) and Medical Center (MC) and contains bank, medical office, and regional medical center uses.

STAFF COMMENTS

The adopted 2011 Comprehensive Plan called for the extension of Meadow Branch Avenue between Amherst Street and Buckner Drive and envisioned mixed use, New Urbanism-type development with a variety of housing types. A 2014 revision to the Plan was adopted by City Council on July 8, 2014. It calls for facilitating the establishment of a new elementary school along the west side of Meadow Branch Avenue extended and envisions a variety of housing types in the central and southern portions of the Ridgewood Orchard site and planned commercial uses in the northern portions. It specifically suggests that MR zoning would be appropriate for the area known as Land Bay ‘C’ unless a PUD calling for age-restricted housing is included as part of the rezoning request, in which case, high density zoning may be appropriate.

The 2005 rezoning request for the Smith Estate established a mix of zoning designations on the 36-acre parcel to the west of the Sacred Heart property. All but two acres adjacent to Merrimans Lane was rezoned from LR to more intensive zoning. The southernmost (rear) 16 acres were rezoned from LR to MR. The middle 15 acres were rezoned from LR to RB-1. The front 3 acres were rezoned to B-2. The

proffer statement included use restrictions, design standards, and provisions controlling the timing of construction of Meadow Branch Avenue and the Green Circle Trail along one side of the 4-lane divided roadway.

The current rezoning request is outlined in the attached cover memo dated June 2, 2014 and revised on June 4th from Ron Mislowsky of Pennoni Associates, applicant for the two property owners. The conditional rezoning request includes a proffered Generalized Development Plan (GDP) originally dated June 4, 2014 and most recently revised on July 11, 2014. It depicts the proposed alignment of Meadow Branch Avenue and the configuration of the three proposed zoning districts. While the GDP does not depict the Green Circle Trail along Meadow Branch Avenue itself, a spur connecting to the Glen Burnie property is depicted across the 10.59-acre portion of the site over which MR zoning without the 2005 proffers is now requested. That spur trail alignment is consistent with the amendment to the Comp Plan.

The GDP depicts two land bays for conditional B-2 commercial use, mostly within the bounds of the area currently zoned RB-1. On the east side of Meadow Branch Ave is a smaller 2-acre site and on the west side is a larger 9.62-acre land bay. This includes a small portion of the DBL Holdings property. The proposed boundary for the EIP district on a majority (about 3 acres) of the DBL Holdings property and a little over 6 acres of the Ridgewood property is consistent with the proposed amended Comprehensive Plan and the Comprehensive Agreement approved by the City School Board as part of the JKES PPEA project. Most of the proposed EIP district within the Ridgewood property is area that is currently zoned MR where up to 40 single-family homes were proffered in 2005.

The area depicted on the GDP as Land Bay 'C' is a 10.59-acre portion of the site situated along the east side of Meadow Branch Avenue extending from the Sacred Heart property on the north to the Moffett Estate property to the south. This predominantly MR district includes a conspicuous "tail" of RB-1 zoned land situated between the Sacred Heart property and the proposed Meadow Branch Ave right of way boundary. Most of this area was part of the 16-acre conditional MR land from the 2005 rezoning with the exception of the tail and a little corner near the tail that was within the area zoned RB-1. The proposed zoning boundaries do correspond well with the existing zoning boundaries due to the proposed realignment of Meadow Branch Avenue to swing eastward of the school site.

The Proffer Statement dated June 2, 2014 and revised June 4, 2014 included proffers organized under 6 headings (A through F) that related to the following:

- A. Design Standards for B-2 Development
- B. Allowed Uses in the B-2 District (Land Bay A)
- C. Use Allowed in the EIP District(Land Bay B)
- D. Use Allowed in the HR District(Land Bay C)
- E. Phasing of Development
- F. Construction of the Public Roads

The latest revised Proffer Statement dated July 11, 2014 includes proffers organized under 5 headings (A through E) that related to the following:

- A. Design Standards for B-2 Development
- B. Allowed Uses in the B-2 District (Land Bay A)
- C. Removal of Previous Proffers in Land Bay C
- D. Phasing of Development
- E. Construction of the Public Roads

The proposed Design Standards mimic many of the provisions in the current Amherst Street CE overlay District that is proposed for removal from the site. The applicant wishes to have greater flexibility than presently allowed under CE zoning to construct a large footprint commercial building. The proffers related to B-2 District Use restrictions outline uses in the B-2 district regulations that would not be allowed. The revised Proffer C now calls removal of the previously adopted 2005 rezoning proffers associated with the MR and RB-1 zoning that is, for now, being retained in Land Bay 'C'.

The proffer pertaining to Phasing of Development makes reference to the publicly administered Meadow Branch Avenue construction project and really ties occupancy permits in any of the Land Bays to a determination of the roadway being 'substantially complete' by the City Engineer. General zoning and occupancy provisions would otherwise preclude any occupancies before the public street is complete.

The final proffer pertaining to Construction of the Public Roadway references the dedication of the public right of way to the City as shown on the GDP. It makes specific reference to providing the spur trail across Land Bay 'C' as a 10-foot wide hiker/biker trail prior to occupancy permits in Land Bay 'C' and notes that the trail would be City maintenance responsibility. The exact alignment of the trail would be subject to adjustment as part of the final layout of uses in the proposed HR district. The last proffer also makes reference to the location of access points along Meadow Branch Avenue as being compliant with the proposed GDP. The access proposal also calls for an access easement over Land Bay 'C' to serve Sacred Heart.

RECOMMENDATION

The elimination of the proposed HR zoning for Land Bay C makes the latest revised version of the request generally consistent with the recent amendment to the Comprehensive Plan that was unanimously adopted by City Council on July 8, 2014. While staff does not particularly favor retaining the tail of RB-1 zoning down between the proposed roadway and the adjoining Sacred Heart property, it is understood that a further rezoning of this area and the remaining MR land in Land Bay 'C' will be forthcoming once a known Planned Unit Development (PUD) proposal for age-restricted housing with a proffered site layout for a specific use is proposed. The proposed B-2 and EIP zoning requests seem consistent with the vision expressed in the 2014 amendment to the Comprehensive Plan. The Green Circle Trail, while not depicted on the GDP, is part of the Comprehensive Agreement between the City and the School developer, and thus is consistent with the approved recommendation in the 2014 Comprehensive Plan exhibit for the subject area.

At its July 15, 2014 meeting, the Planning Commission forwarded RZ-14-351 to City Council recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-351, Prepared by Winchester Planning Department, July 14, 2014*" because the proposed B-2, EIP, RB-1 and MR zoning supports public school construction, supports economic development, and is generally consistent with the amended Comprehensive Plan. The recommendation is subject to adherence with the latest Generalized Development Plan titled 'Ridgewood Orchard and DBL Holdings' dated July 11, 2014 and the submitted proffers dated June 2, 2014 and last revised July 11, 2014.

AN ORDINANCE TO CONDITIONALLY REZONE 33.40 ACRES OF LAND AT 200 MERRIMANS LANE FROM CONDITIONAL RESIDENTIAL BUSINESS (RB-1) DISTRICT WITH CORRIDOR ENHANCEMENT (CE) DISTRICT OVERLAY, CONDITIONAL MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LOW DENSITY RESIDENTIAL (LR) DISTRICT TO EDUCATION, INSTITUTION AND PUBLIC USE (EIP) DISTRICT, HIGHWAY COMMERCIAL (B-2) DISTRICT, RESIDENTIAL BUSINESS (RB-1) DISTRICT, MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT AND LR DISTRICT; AND TO CONDITIONALLY REZONE 3.37 ACRES OF LAND AT 418 MERRIMANS LANE FROM LR DISTRICT TO EIP DISTRICT AND B-2 DISTRICT

RZ-14-351

WHEREAS, the Common Council has received an application from Pennoni Associates Inc. on behalf of Ridgewood Orchard LTD Partnership and DBL Holdings LLC to rezone property at 200 and 418 Merrimans Lane from conditional Residential Business (RB-1) with Corridor Enhancement (CE) District overlay, conditional Medium Density Residential (MR), and Low Density Residential (LR) to Highway Commercial (B-2) District without Corridor Enhancement (CE) District overlay, Educational, Institution And Public Use (EIP) District, Residential Business (RB-1) District, and Medium Density Residential (MR) District with revised proffers; and,

WHEREAS, the Planning Commission forwarded the request to Council on July 15, 2014 recommending approval of the rezoning as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-351, Prepared by Winchester Planning Department, July 14, 2014*" because the proposed rezoning supports a public school, supports economic development and is generally consistent with the Comprehensive Plan. The recommendation is subject to adherence with the Generalized Development Plan titled 'Ridgewood Orchard and DBL Holdings' dated July 11, 2014 and the submitted proffers dated June 2, 2014 and last revised July 11, 2014; 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 a public school, supports economic development and is generally consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Winchester, Virginia that the following land is hereby rezoned from the existing zoning designation of conditional Residential Business (RB-1) with Corridor Enhancement (CE) District overlay, conditional Medium Density Residential (MR), and Low Density Residential (LR) to Highway Commercial (B-2) District without Corridor Enhancement (CE) District overlay, Educational, Institution And Public Use (EIP) District, Residential Business (RB-1) District, and Medium Density Residential (MR) District with revised proffers:

Approximately 36.77 acres of land at 200 and 418 Merrimans Lane as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-351, Prepared by Winchester Planning Department, July 14, 2014*".

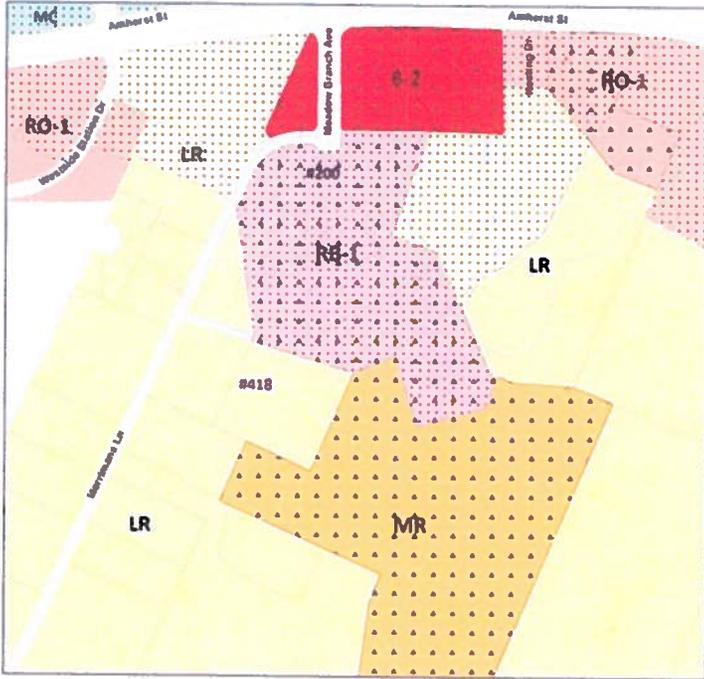
BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to adherence with the Generalized Development Plan titled 'Ridgewood Orchard and DBL Holdings' dated July 11, 2014 and the submitted proffers dated June 2, 2014 and last revised July 11, 2014.

REZONING EXHIBIT

RZ-14-351

PREPARED BY WINCHESTER PLANNING DEPARTMENT

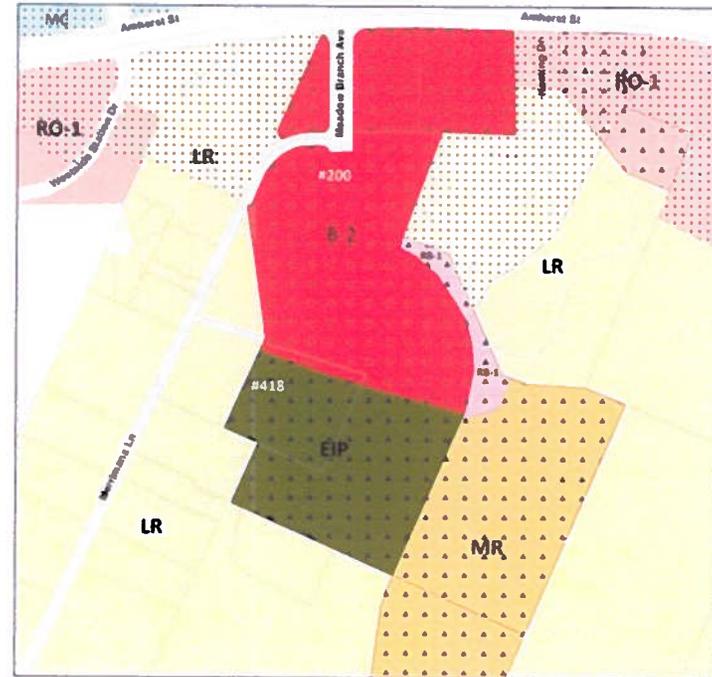
JULY 14, 2014



EXISTING:

200 MERRIMANS LN
Conditional RB-1 (CE)
Conditional MR
LR

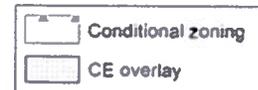
418 MERRIMANS LN
LR



PROPOSED:

200 MERRIMANS LN
Conditional EIP
Conditional B-2
Conditional RB-1
Conditional MR
LR

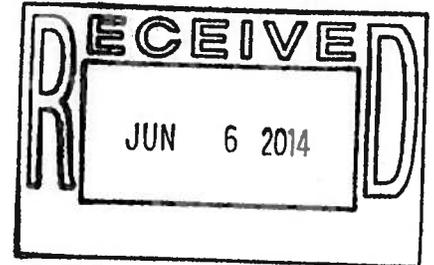
418 MERRIMANS LN
Conditional EIP
Conditional B-2





PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

MEMORANDUM



TO: Tim Youmans, Planning Director, City of Winchester

FROM: Ron Mislowsky, PE

DATE: June 2, 2014 Revised June 4, 2014

SUBJECT: Ridgewood Orchard and DBL Holdings Rezoning Application

CC: Kevin McKew, Winchester Public Schools
Tucker Conaboy, Caldwell and Santmyer Inc.
Ty Lawson

In 2005, the Winchester Common Council approved a proffered rezoning for parcels owned by the G.F. Smith Estate at the intersection of Merrimans Lane, Meadow Branch Avenue and Amherst Street. The current owners of the Ridgewood Orchard and DBL Holdings properties on Merrimans Lane desire to rezone their lots, amending the approved proffers dated 10 May 2005 to relocate the Meadow Branch Avenue right-of-way and revise the underlying zoning and allowed uses in the RB-1 and MR areas. In summary, we would propose that the affected land areas be rezoned to B-2, HR and EIP, with conditions.

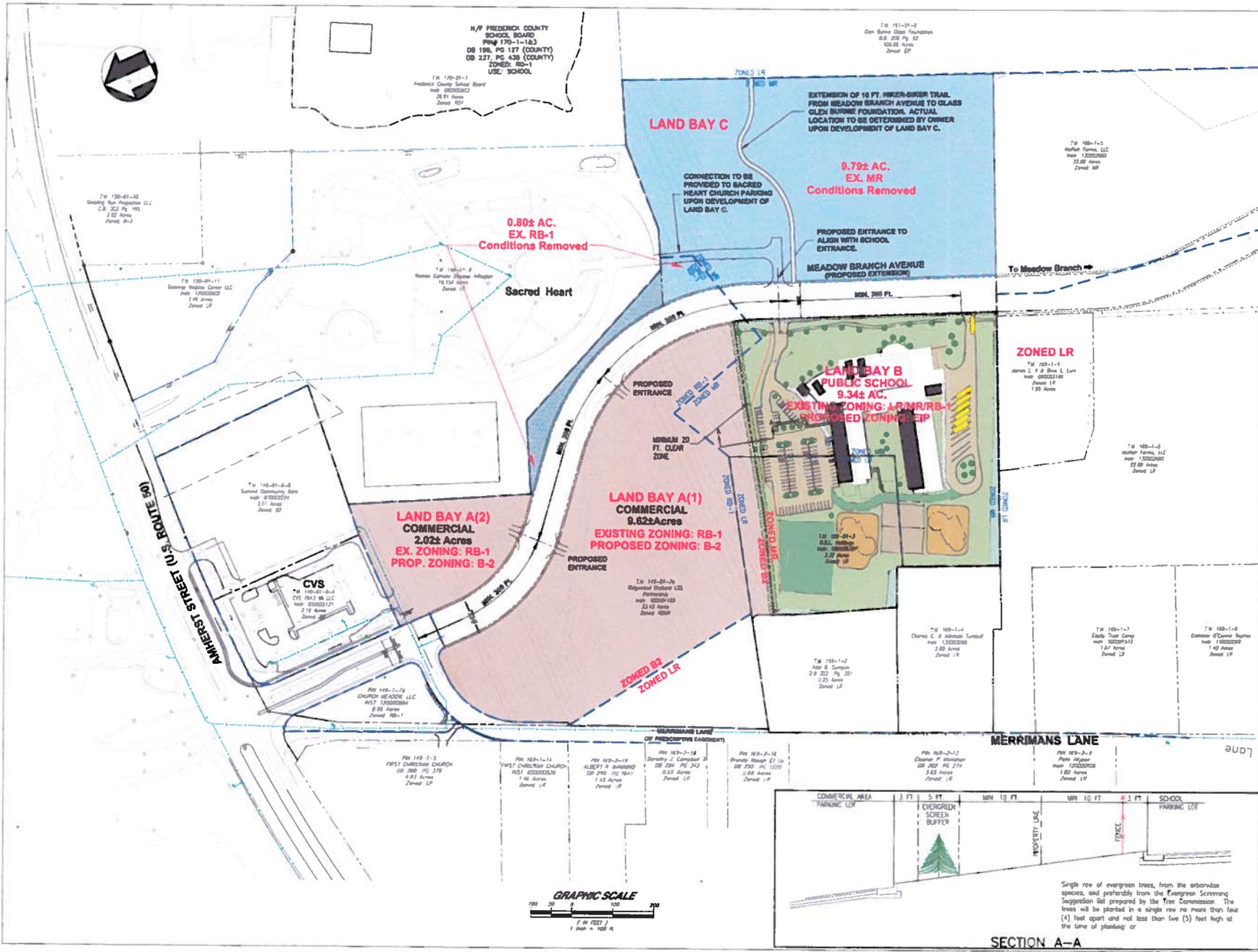
Uses on the B-2 area between a proposed EIP District and Merrimans/Amherst, would be generally restricted to those allowed under the current zoning for the same area. We have excluded uses that we believe may be out of character for this area.

Uses on the HR area east of Meadow Branch Avenue Extended would be limited to uses as allowed by Winchester Zoning Ordinance Section 5.

The EIP District, west of Meadow Branch Avenue Extended would be used for a public school.

It is the opinion of the owners that while the design standards provided in the CE Overlay section of the ordinance are effective when dealing with the smaller B-2/RO-1 properties bordering Amherst Street, the building size requirements and administration of the reviews and approvals would make development of the proposed larger commercially zoned parcels more cumbersome. Therefore, we would propose that Corridor Enhancement Overlay be removed from the subject parcels, but the corridor overlay design standards have been imposed on the areas zoned B-2.

We have attached the signed application, the required fee and the proposed proffer statement including a generalized development plan. We would welcome the opportunity to meet with you to review any comments you might have on the application or answer questions.



Pennoni Associates Inc. Engineers • Surveyors • Planners • Landscape Architects



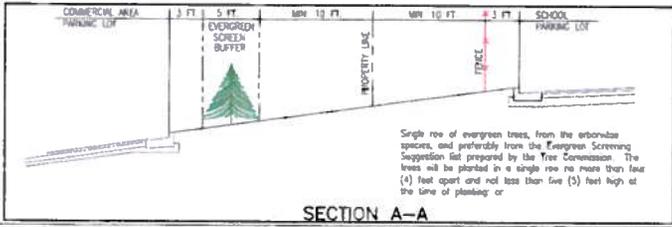
DATE	NO.	REVISIONS	BY

ALL DIMENSIONS ARE TO BE INTERPRETED BY CONTRACTOR AND OWNER. OWNER SHALL BE RESPONSIBLE FOR ANY DISCREPANCIES BETWEEN THIS PLAN AND THE RECORD PLANS.

**RIDGEWOOD ORCHARD
and
D.B.L. HOLDINGS
GENERALIZED DEVELOPMENT PLAN
WINCHESTER, VIRGINIA**

117 East Prosperity Street, Suite 200
 #1000
 Winchester, VA 22601
 Ph: 540-687-2128 Fax: 540-663-0181

ASH 1"=100'
 JDS
 7-11-14





PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

MEMORANDUM

TO: Tim Youmans, Planning Director, City of Winchester
FROM: Ron Mislowsky, PE
DATE: July 14, 2014
SUBJECT: Ridgewood Orchard

Please find attached a revised Proffer and Generalized Development Plan for the Ridgewood Orchard rezoning request. We have adjusted Land Bay C so that the zoning of that parcel, east of Meadow Branch Avenue, will not change. In order to facilitate the revised routing of Meadow Branch Avenue, we have proposed that the conditions which now apply to the RB-1 and MR zones be removed.

We continue to review the exceptions to permitted uses within the B-2 zoned area. This version of the proffer clarifies the service station use. We expect to exempt other uses but will need to make that change separately.

We have provided two copies of each document. If you need additional hard copies or have questions, please let me know.



PROFFER STATEMENT

A PROPOSED REZONING

for

A PORTION OF

TAX MAP PARCEL ID: 169-01-3 AND TAX MAP PARCEL ID: 149-1-7

Prepared For: Ridgewood Orchard LTD Partnership
549 Merrimans Lane
Winchester, Virginia 22601

and

DBL Holdings LLC
4150 Martinsburg Pike
Clear Brook, Virginia 22624

Prepared By: Pennoni Associates Inc.
117 E. Piccadilly Street
Suite 200
Winchester, Virginia 22601
Tel: 540-667-2139



Original Date: June 2, 2014
Revision 1: June 4, 2014
Revision 2: June 26, 2014
Revision 3: July 11, 2014

PROFFER STATEMENT
PARCEL TAX MAP ID 169-01-3 AND
PARCEL TAX MAP ID 149-1-7

INTRODUCTION

This proposed rezoning involves two parcels of land within the City of Winchester. According to the tax records of the City of Winchester, Tax Map Parcel ID 169-01-3 contains approximately 3.4 acres and is currently zoned LR. Tax Map Parcel ID 149-1-7 contains approximately 33.4 acres and is currently zoned LR, MR and RB-1 with conditions. These parcels are illustrated on the Proffered Generalized Development Plan (GDP).

Adjacent property to the west, south and east is generally zoned LR and MR. Properties to the north, between the parcels and Amherst Street, are zoned LR and B-2. The owners desire to rezone the subject land, less the 1.58 acre LR parcel, to provide a mixture of EIP Education Institution Public District and B-2 Highway Commercial District with conditions and to remove conditions from the existing RB-1 Residential Business and MR Medium Residential District as depicted on the attached and incorporated GDP.

The owners recognize that since the parcels are located within the western entrance corridor to the City and abut residential properties, church properties, and the Glen Burnie Foundation property, unique design standards must be implemented during the development of the parcels.

Acknowledging the importance of maintaining and enhancing certain characters desirable in this area, as well as the City in general, the owners are willing to proffer adherence to (A) design standards for all B-2 structures, (B) restrictions on the types of activities allowed in the B-2 zoning districts, (C) dedication of the right-of-way for public road improvements to facilitate the extension of Meadow Branch Avenue as a VDOT locally administered project which qualifies for revenue sharing.

Pursuant to the applicable provisions of the City of Winchester Zoning Ordinance, the undersigned owners proffer that in the event that the City Council of the City of Winchester shall approve Rezoning Application # RZ-14-351 for the rezoning of approximately 36.8 acres on Parcels 149-1-7 and 169-1-3 from LR, RB-1 and MR to LR, B-2 (with conditions) and EIP and removal of conditions as provided herein, development of these parcels will be in conformity with the terms and conditions set forth in this document. These terms and conditions may be subsequently amended or revised by the owners of the property with permission from the City Council of the City of Winchester in accordance with City codes. These proffers shall be binding on the owners and their legal successors or assigns.

The conditions proffered herein supersede all prior proffers submitted by the owners on the affected Land Bays. All prior proffers affecting these areas are hereby revoked by the owners.

(A) PROFFERS RELATING TO DESIGN STANDARDS FOR B-2 DEVELOPMENT

The land zoned B-2, within Land Bay A, shall be subject to the standards provided in the City of Winchester Zoning Ordinance Sections 14-2-2 and 14-2-6, except that the subsection 14-2-6.1c, regulating building size, will not apply.

Deviation from the design standards in Winchester Zoning Ordinance Sections 14-2-6.1a, 14-2-6.4a and 14-2-6.4e may be approved by the City of Winchester Planning Commission if it is

PROFFER STATEMENT
PARCEL TAX MAP ID 169-01-3 AND
PARCEL TAX MAP ID 149-1-7

determined the proposed design represents good planning practice and does not detract from the corridor appearance.

(B) PROFFERS RELATING TO ALLOWED USES IN THE PROPOSED B-2 DISTRICT (LAND BAY A)

Structures to be erected and land to be used in the proposed B-2 district, Land Bay A, shall be as allowed by the Winchester Zoning Ordinance Section 8 except the following:

- 8-1-11 Building supplies and service with storage under cover.
- 8-1-24 Machinery sales and service.
- 8-1-32 Processing or manufacturing establishments that are not objectionable because of smoke, odor, dust, or noise, but only when such processing or manufacturing is incidental to a retail business conducted on the premises and where not more than ten (10) persons are employed on the premises in the processing or manufacturing activities.
- 8-1-41 Outdoor storage of materials and supplies and display of merchandise for sale or rent incidental to the conduct of any permitted uses on the lot as provided for in Section 18-20 of this Ordinance. (10/17/95, Case TA-95-04, Ord. No 053-95).
- 8-1-44 Wholesale businesses where loading areas are completely screened from public street view.
- 8-1-50 Assembling establishments not involved in any on site manufacturing that are not objectionable because of smoke, odor, dust, or noise with not more than ten (10) persons employed. (1/14/03, Case TA-02-10, Ord. No. 003-2003).
- 8-2-1 Mini-warehouses/mini-storage, as defined, subject to the following provisions (5-16-78) (Revised section adopted 9-10-91, Case TA-91-02, Ord. No. 037-91).
- 8-2-2 Adult bookstores, adult motion picture theaters, and adult mini-motion picture theaters.
- 8-2-4 Entertainment Establishments, located less than 200 feet from a residentially zoned property.
- 8-2-7 Private clubs and lodges.
- 8-2-8 Roller Rinks.
- 8-2-9 Tourist homes.
- 8-2-10 Kennels.
- 8-2-10.1 Pet Daycare Center.
- 8-2-11 Single family detached dwellings. (9/12/89, Case TA-89-01, Ord. No. 022-89).
- 8-2-18 Group Home and assisted living facility in which no more than eight (8) persons reside as residential occupancy by a single family.
- 8-2-22 Short-term loan establishment.
- 8-2-23 Crematories.
- 8-2-24 Hookah establishment, as defined.
- 8-2-25 Accessory structure, used and occupied as a subordinate dwelling unit by a domestic employee, as defined.
- 8-2-26 Arenas, Amphitheaters, and Stadiums.
- 8-2-27 Home occupations.

The owners proffer that service stations are allowed in the proposed B-2 District (Land Bay A) pursuant to **Section 8-1-39** of the Winchester Zoning Ordinance but only if they fully comply with the unique design standards proffered above and only if all repairs of vehicles take place in a fully enclosed building. No amplified music will be permitted.

PROFFER STATEMENT
PARCEL TAX MAP ID 169-01-3 AND
PARCEL TAX MAP ID 149-1-7

(C) PROFFERS RELATING TO USE IN LAND BAY C

Land Bay C is being revised to remove previous proffered conditions so to facilitate the relocation of the Meadow Branch Avenue right-of-way, the installation of the new John Kerr Elementary School and as further provided herein.

(D) PROFFERS RELATING TO THE PHASING OF DEVELOPMENT

The City of Winchester will construct Meadow Branch Avenue from Merrimans Lane south to Heth Place as a VDOT Locally Administered Project qualifying for State revenue sharing. No occupancy permits can be issued on the subject properties until road construction is substantially complete as determined by the City Engineer.

(E) PROFFERS RELATING TO THE CONSTRUCTION OF PUBLIC ROADS

The owners agree to dedicate through the parcels, the rights-of-way for the roads commonly known as Meadow Branch Avenue Extension and Merrimans Lane realigned, as generally shown on the Proffered GDP. Such dedication of rights-of-way and necessary easements, shall additionally allow for extension of the Green Circle Walking Trail.

At time of the development of Land Bay C, a 10 ft. hiker biker trail shall be constructed from the pedestrian access on the east side of Meadow Branch Avenue Extension to the Glass Glen Burnie Foundation property line. The walking trail shall be in place and necessary maintenance easements dedicated to the City of Winchester prior to occupancy permits being issued within Land Bay C. The route of the trail may be adjusted to best conform to the final layout for Land Bay C.

The entrances to Land Bays will be as generally shown on the GDP. The number of entrances to each Land Bay will be limited to that shown.

The conditions proffered above shall be binding on the heirs, executors, administrators, assigns, and successors in the interest of the owners. In the event that the City Council of Winchester grants this rezoning and accepts these proffers, then these proffers shall apply to the land rezoned in addition to the other requirements of the City of Winchester Codes.

SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)

PROFFER STATEMENT
PARCEL TAX MAP ID 169-01-3 AND
PARCEL TAX MAP ID 149-1-7

Submitted By:

Ridgewood Orchard LTD Partnership

By: _____

Date: _____

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014,
by _____.

My commission expires on _____

Notary Public _____

PROFFER STATEMENT
PARCEL TAX MAP ID 169-01-3 AND
PARCEL TAX MAP ID 149-1-7

Submitted By:

D B L Holdings LLC

By: _____

Date: _____

STATE OF VIRGINIA, AT LARGE
FREDERICK COUNTY, To-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2014,
by _____.

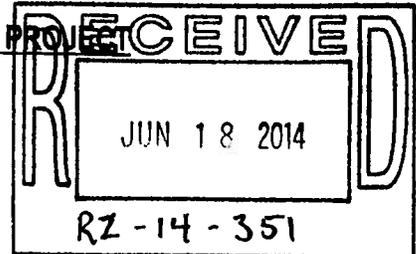
My commission expires on _____

Notary Public _____

FILE COPY

PURSUANT TO THE FUTURE REZONING OF RIDGEFIELD ORCHARD
INCLUDING THE PROPERTY ADJOINING AND IN THE VICINITY OF

THE NEW JOHN KERR ELEMENTARY SCHOOL PROJECT



BE IT RESOLVED AS FOLLOWS:

(1) The Winchester Public School Board, as party to the PPEA Comprehensive Agreement with C&S Design & Development Company, LLC for the development of a new elementary school in Ridgefield Orchard has a vested interest in the future development surrounding the site such that the environment is safe and compatible with the essential teaching and learning activities of the school, and therefore requests that the Planning Commission and City Council consider the unique requirements of the elementary school in decision-making regarding the rezoning and associated development conditions.

(2) The Winchester Public School Board supports the anticipated rezoning request by C&S Design & Development Company, LLC, specifically: (i) rezoning of the school Site to MR, Medium Density Residential, (ii) rezoning of land bays adjoining the Site to uses that are compatible with use of the Site for an elementary school in the following manner contemplated during the development of the Comprehensive Agreement: with respect to the land bay to the east of the Site, MR, Medium Density Residential, with proffered conditions for residential use, and with respect to the land bay to the north of the Site, B-2, Highway Commercial, with proffered conditions restricting uses to those appropriate given the uses of the neighboring properties and implementing design standards that will be consistent with the uses of the neighboring properties.

(3) The Winchester Public School Board recommends and requests that the Planning Commission and City Council favorably consider proffered conditions leading to construction of the portion of the Green Circle Trail through the Ridgefield Orchard property, and placement of walkways and trails on

adjoining land bays to facilitate student walkers and bike-riders, and allow the most direct route for the school's access to the future trail network on the MSV property.

Erica W. Truban

Chairman, Winchester School Board

Bonnie M. Stuckley

Clerk of the Board

April 28, 2014

Date

April 28, 2014

Date

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: July 22
~~June 24~~, 2014 CUT OFF DATE: _____

RESOLUTION ___ ORDINANCE X PUBLIC HEARING ___

ITEM TITLE: Amend and re-adopt Section 27-10.1 of the Winchester City Code

STAFF RECOMMENDATION: Approve as recommended; send to public hearing

PUBLIC NOTICE AND HEARING: August 12, 2014

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA:
N/A

OPTIONS: Adopt ordinance as presented or amend the ordinance.

RECOMMENDATIONS: Staff recommends the adoption of this ordinance as presented.

INSURANCE:
N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. <u>Commissioner of Revenue</u>	_____	<u>ATB</u>	<u>06/09/14</u>
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<u>aw</u>	_____	<u>7/7/2014</u>
6. City Manager	<u>G</u>	_____	<u>7/9/14</u>
7. Clerk of Council	_____	_____	_____

Initiating Department Director's Signature: *M. Stone* _____ Date: 6-9-14

Finance Director

Revised: October 23, 2009


APPROVED AS TO FORM:

CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Mary Blowe, Finance Director
Celeste Broadstreet, Real Estate Administrator
Date: June 24, 2014
Re: AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-10.1 OF THE WINCHESTER CITY CODE TO CHANGE REASSESSMENT DEADLINES AND TO CLARIFY REASSESSMENT RESPONSIBILITIES

THE ISSUE: Virginia code section 58.1-3331 requires a written notice be sent to all taxpayers who appeal to the Board of Equalization or Circuit Court 45 days prior to the hearing of the taxpayer's appeal. Current City code deadlines make the 45 day notice difficult to meet. In addition, language changes are included to clarify the roles and responsibilities of the Contractor, Real Estate Administrator, and Commissioner of Revenue in the Real Property reassessment process.

RELATIONSHIP TO STRATEGIC PLAN: Goal 2 – Develop High Performing Organization.

BACKGROUND: Virginia State code section 58.1-3331 - Public Disclosure of Certain Reassessment Records, was amended applicable to tax years beginning on or after January 1, 2012. The amendment requires a written notice be sent to taxpayers who appeal their real property reassessment to the Board of Equalization (BOE) or Circuit Court 45 days prior to the appeal hearing. The current City Code deadlines make the 45 day notice difficult to meet. The proposed deadlines will allow ample time for the taxpayer notice and the BOE to hold hearings, review, and finalize all appeals received in a timely manner.

	Current Deadlines	Proposed Deadlines
Change notice postmarked by:	February 1	January 1
BOE appeal deadline:	March 15	February 15
BOE complete appeals	May 1	May 1 (no change)

Language has been added to City Code section 27-10.1 to clarify where the State Code of Virginia refers to "commissioner of revenue or other official performing the duties imposed on commissioners of revenue" or "other assessing official for the purposes of real estate reassessment" that the City of Winchester designates the Contractor to perform those duties. Also, to designate the Real Estate Administrator as the City official responsible for the reassessment contract administration and the point of contact for the City for any appeals of real estate assessments or corrections of errors.

BUDGET IMPACT: No additional fiscal impact.

OPTIONS: Adopt ordinance as presented or amend the ordinance.

RECOMMENDATIONS: Staff recommends the adoption of this ordinance as presented.

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-10.1 OF THE WINCHESTER CITY CODE TO CHANGE REASSESSMENT DEADLINES AND TO CLARIFY REASSESSMENT RESPONSIBILITIES

WHEREAS, Virginia Code Section 58.1-3331 requires a written notice be given taxpayers who appeal to the Board of Equalization or Circuit Court 45 day prior to the hearing, and

WHEREAS, Section 27-10.1 of the Winchester City Code provides deadlines for the reassessment process and those deadlines can be amended to allow sufficient time for the required state notice and the Board of Equalization to complete its work, and

WHEREAS, it is the intent of the City to streamline the reassessment process by clarifying responsibilities outlined in Section 27-10.1 of the Winchester City Code.

NOW THEREFORE BE IT ORDAINED, by the Common Council of the City of Winchester that the following provisions are hereby amended and re-adopted as follows:

SECTION 27-10.1. AUTHORIZED.

(a) BIENNIAL REASSESSMENT AND EQUALIZATION OF REAL ESTATE REQUIRED

There shall be a biennial reassessment and equalization of real estate for local taxation in the City, which shall be effective as of January 1 of each corresponding year, to be made as provided in this article. Pursuant to §58.1-3275 of the Code of Virginia, such biennial reassessments shall be conducted by an independent contractor holding valid certification issued by the Virginia Department of Taxation hereinafter “contractor”.

Said contractor shall be retained under contract in accordance with Chapter 21 of the Winchester City Code and the applicable provisions of the Virginia Public Procurement Act. Such assessments shall be conducted in accordance with all contractual obligations, the requirements of the Code of Virginia and any other requirements set forth in the City’s Code of Ordinances.

Unless otherwise specifically provided by the Constitution of Virginia, the Code of Virginia, the City Charter, or other general or special law, where the Code of Virginia refers to commissioner of revenue or other official performing the duties imposed on commissioners of the revenue or other assessing official for the purposes of real estate reassessments the contractor shall be the other official or other assessing official and shall be designated to perform the duties for the City of Winchester.

1. A “Real Estate Administrator” (hereinafter “administrator”) shall be appointed by the City Manager and come under the direct supervision of the Finance Director. The Administrator, shall be responsible for ensuring that the contractor satisfies all contractual requirements and complies with all applicable provisions of the Code of Virginia and general law with regard to the performance of the reassessments. Council may from time to time authorize the City to employ such assistants as deemed necessary to aid the Administrator in the performance of his duties.

(b) DUTIES OF THE CONTRACTOR

The “other official” or “other assessing official” (hereinafter “contractor”) shall have all authority authorized for independent contractors appointed pursuant to §58.1-3275 of the Code of Virginia, conducting assessments on behalf of a municipality as authorized under the applicable provisions of the Code of Virginia and general law.

1. The contractor, as of January 1 of each assessment year, shall:
 - i. Make assessments of real estate and the equalization thereof on the same basis as real estate is required to be assessed under the provisions of general law and this Code;
 - ~~ii. Have all authority authorized for independent contractors appointed pursuant to §58.1-3275 of the Code of Virginia, conducting assessments on behalf of a municipality as authorized under the applicable provisions of the Code of Virginia and general law; and~~
 - ~~iii.~~ ii. Be charged with duties similar to those thereby imposed upon such independent contractors; except that such assessments and the equalization thereof shall be made biennially and the assessments and the equalization so made shall have the same effect as if they had been made by assessors appointed under the provisions of general law.
2. A notice of any change in any such biennial assessment shall be given by regular mail forwarded directly to each property owner shown on the assessment records as of January 1 at the last-known mailing address as the address is shown on the most current mailing records of the city Treasurer. Such notice shall be postmarked on or before January 1 ~~February 1~~ following the effective date of such biennial assessment and at least 15 days prior to the date of any hearing to protest such change. Assessment made in accordance with Code of Virginia, §58.1-3292, §58.1-3222 and §58.1-3601.
- ~~3. A “Real Estate Administrator” (hereinafter “administrator”) shall be appointed by the City Manager and come under the direct supervision of the Finance Director. The Administrator, in consultation with the Commissioner of the Revenue, shall be responsible for ensuring that the contractor satisfies all~~

~~contractual requirements and complies with all applicable provisions of the Code of Virginia and general law with regard to the performance of the reassessments. Council may from time to time authorize the City to employ such assistants as deemed necessary to aid the Administrator in the performance of his duties.~~

4.3. Nothing in this Section shall be construed to impede any duty imposed by statute or other law upon the Commissioner of the Revenue in the performance of his or her duties.

(c) **BOARD OF EQUALIZATION**

1. The Circuit Court of the City of Winchester shall appoint a permanent board of equalization of real estate assessments to be composed of from three to five members, of whom all shall be residents, and a majority of whom shall be freeholders, of the city. The initial appointments shall be consistent with the term requirements of §58.1-3373 of the Code of Virginia. Thereafter each member shall serve a three year term. At least 30 percent of the members shall be commercial or residential appraisers, real estate professionals, builders, developers, or legal or financial professionals, and at least one such member shall sit in all cases involving commercial, industrial or multifamily property, unless waived by the taxpayer. All members shall attend courses of instruction as required by §58.1-3374 of the Code of Virginia, 1950, as amended. No person shall serve on the board more than nine consecutive years. Upon serving nine consecutive years, a board member shall not be eligible for reappointment for a period of three years.

2. Such board of equalization shall hear complaints of inequalities wherein the property owners allege a lack of uniformity in assessment or errors in acreage in such real estate assessment. The board also shall hear complaints that real property is assessed at more than its fair market value. The board of equalization shall have and may exercise all powers conferred to it by general law to revise, correct and amend a real estate assessment as necessary to equalize the burden of taxation among all citizens of the city. To this end, the board shall have authority to increase and decrease assessments, whether specific complaint is made or not. No assessment shall be increased until the owner has been notified and given an opportunity to show cause as to why the assessment should not be increased.

3. The board shall determine the fair market value of property as of January 1 for the tax year.

4. In all cases, the board shall operate under presumption that the valuation determined by the contractor ~~assessor~~ is correct. The board shall be advised that the taxpayer need not show that the assessment is the result of manifest error or disregard of controlling evidence. Instead, the board shall be advised that the taxpayer is required to produce substantial evidence that the

~~contractor's~~ ~~assessor's~~ valuation is erroneous and was not arrived at in accordance with generally accepted appraisal practice. Mistakes of fact, including computation, that affect the assessment shall be deemed not in accordance with generally accepted appraisal practice.

5. The landowner or an appointed representative of the city may apply to the board to adjust an assessment to its fair market value or take such other action necessary to equalize an assessment. Complete applications for review of assessments by the board must be received by the ~~administrator~~ ~~assessor~~ on or before ~~February 15~~ ~~March 15~~ immediately preceding the June 5 date for which taxes on such contested assessed value will be levied. The application must be filed on forms provided by the ~~administrator~~ ~~assessor~~ and contain all requested information and attachments to be deemed complete. Late or incomplete applications will not be accepted and shall be deemed invalid.
6. The board shall finally dispose of all complete applications filed in a timely manner by the May 1 immediately preceding the June 5 date for which taxes or such contested assessed value will be levied. The ~~contractor~~ ~~assessor~~ shall notify all owners of real estate of such deadlines on the annual notice of assessment.
7. All meetings of the board shall be open to the public, with notice given at least ten days beforehand by publication in a newspaper having general circulation in the city. Minutes shall be kept of all meetings and written orders of the board sent to all applicants.
8. The equalization board shall receive such per diem compensation for the time they are actually engaged in the duties of their office as may be fixed by the city council. The per diem compensation may be limited to such number of days as in the judgment of the Council is sufficient for the work of the board in any calendar year.

State Law References-- Similar provisions, Code of Virginia, §58.1-3370 *et seq.*

(d) **APPEAL TO CIRCUIT COURT**

Any person aggrieved by a determination of the board of equalization may then appeal to the Circuit Court of the City of Winchester. Any person aggrieved by an assessment and who has missed the deadline to file with the board of equalization has the right to appeal directly to the Circuit Court of the City of Winchester.

State Law References-- Similar provisions, Code of Virginia, §58.1-3382 and §58.1-3407.

(e) **CORRECTIONS OF ERRORS**

The administrator ~~or Commissioner~~, at any time upon notice of discovering an inaccuracy or error in a property record, shall coordinate with the contractor to review the property record and ensure that the appropriate correction is made and notify the property owner in writing, should that correction affect the property assessment.

State Law References-- Similar provisions, Code of Virginia, §58.1-3980 and §58.1-3981.

(Ord. No. 2010-47, 10-12-10; Ord. No. 2011-24, 7-12-11)



Ann T. Burkholder, Commissioner of the Revenue
15 North Cameron Street
Winchester, VA 22601
Email: commrevenue@winchesterva.gov

Telephone: (540) 667-1815
FAX: (540) 667-8937
TDD: (540) 722-0782
Website: www.winchesterva.gov

To: Craig Gerhart, Interim City Manager
Anthony Williams, City Attorney

From: Ann T. Burkholder 

Date: June 09, 2014

SUBJECT: Concerns with Proposed Amendments for §27-10.1 of City Code

This memo is to express serious concern with the proposed code changes which completely eliminate the Commissioner from the reassessment process. Reasons for concern:

- Reverses the intent and cooperative spirit of Code as enacted in 2011
- Removes the checks and balances which are a hallmark of Virginia law and key to a high performing organization
- Reduces accountability: Contractor solely answerable to mid-level staff person
- Removes any cooperative oversight over the City's single largest source of revenue
- Eliminates Commissioner's ability to correct errors as found and as required by code
- Eliminates the only party with hands-on experience and knowledge of local real estate trends and values. Contractor is from North Carolina and real estate administrator has neither background nor local knowledge.
- Eliminates the party with the best knowledge of state-wide code changes and legal developments
- Furthers a relationship which has not produced a fair, equitable and accurate reassessment of real estate, the requirements for which include:
 1. Adherence to contract, specifically the first two deliverables:
 - a. Conduct a sales study to update the Location Rate File to reflect Fair Market Values: NO ACTION, NO ENFORCEMENT. Contractor made changes almost solely through depreciation "factors"
 - b. Conduct a land to improvement ratio study: NO ACTION, NO ENFORCEMENT. Contractor feels values will become accurate over "next 20 years."
 2. Readily understandable methodology: NOT PRESENT. The Board of Equalization has repeatedly described the results as "equitably inaccurate."
 3. Defensible values: NOT IN PLACE. Contractor readily capitulated on two mid-cycle appeals for refunds totaling \$200,000.

The Commissioner's Office has just as much desire for a good reassessment as does Council. The contract is expensive, yet existing problems have grown only worse. At the very least, I recommend Council approve only the date change portions of this code. To better protect the City's interests I recommend that Council validate and augment the elected Commissioner's role in the reassessment process.

This office has ample documentation to back up each of the above statements.

AN ORDINANCE TO AMEND AND RE-ADOPT SECTION 27-10.1 OF THE WINCHESTER CITY CODE TO CHANGE REASSESSMENT DEADLINES AND TO CLARIFY REASSESSMENT RESPONSIBILITIES

WHEREAS, Virginia Code Section 58.1-3331 requires a written notice be given taxpayers who appeal to the Board of Equalization or Circuit Court 45 day prior to the hearing, and

WHEREAS, Section 27-10.1 of the Winchester City Code provides deadlines for the reassessment process and those deadlines can be amended to allow sufficient time for the required state notice and the Board of Equalization to complete its work, and

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;

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- i. Make assessments of real estate and the equalization thereof on the same basis as real estate is required to be assessed under the provisions of general law and this Code;
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sit in all cases involving commercial, industrial or multifamily property, unless waived by the taxpayer. All members shall attend courses of instruction as required by §58.1-3374 of the Code of Virginia, 1950, as amended. No person shall serve on the board more than nine consecutive years. Upon serving nine consecutive years, a board member shall not be eligible for reappointment for a period of three years.

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(Ord. No. 2010-47, 10-12-10; Ord. No. 2011-24, 7-12-11)

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 6/10/14 (1st Reading) CUT OFF DATE: 7/16/14
7/8/14 (2nd Reading, Public Hearing), 8/12/14 (vote on tabled request)

RESOLUTION ___ ORDINANCE X PUBLIC HEARING X

ITEM TITLE:

RZ-14-35 AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (Map Number 252-01-2) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

STAFF RECOMMENDATION:

Staff supports many aspects of the revised Proffers, Development Plan, and Design/Development Standards but still has concerns in terms of unmitigated potential impacts arising from the rezoning.

PUBLIC NOTICE AND HEARING:

Public hearing was held at the 7/8/14 Council mtg and action was tabled until 8/12/14.

ADVISORY BOARD RECOMMENDATION:

On a 4-2 vote, Planning Commission recommended approval subject to the Proffers, Development Plan, and Design/Development Standards. The Proffers and Design Standards have been changed since then and floor plans have been submitted.

FUNDING DATA: N/A

INSURANCE: N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	NAR		7/8/14
2. City Attorney	RV		7/17/2014
3. City Manager	G		7/12/14
4. Clerk of Council			

Initiating Department Director's Signature:
(Planning Dept)

[Handwritten Signature] 7/16/14



APPROVED AS TO FORM:

[Handwritten Signature]
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: August 6, 2014
Re: **RZ-14-35 AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET (Map Number 252-01-2) FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY**

THE ISSUE:

Conditionally change the underlying zoning from CM-1 to MR and establish PUD overlay zoning on 2.57 acres of property fronting along the south side of Commerce Street to support the proffered construction of a townhouse development of up to 26 units.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: Create a more livable city for all
Vision 2028- Great neighborhoods with a range of housing choices

BACKGROUND:

The applicant submitted a revised proffer statement, along with other materials (including floor plans) on July 1, 2014 which did not allow time for updated work session review of the request in advance of the public hearing at the July 8th Council meeting. Council tabled the item at the applicant's request, asking that it come back to the July 22 work session. At that work session, the item was tabled again based upon a verbal request by the applicant. On July 23rd, the applicant submitted a request to table for up to 5 months in order to address Council's concerns.

BUDGET IMPACT:

The applicant has submitted a Market and Fiscal Impact Analysis that purports a Net On-Site Fiscal Benefit of \$15,021 to the City. This derived by subtracting the \$86,555 of net City costs from the \$101,676 of net direct City revenues.

OPTIONS:

- Table the matter at the applicant's request
- Deny the rezoning ordinance
- Approve the rezoning ordinance

RECOMMENDATIONS:

Staff recommends tabling the matter for up to 5 months as outlined in the applicant's letter dated July 23, 2014.



July 23, 2014

Mr. Tim Youmans
Planning Director
City of Winchester
15 N. Cameron Street
Winchester, VA 22601

**RE: COMMERCE STREET REZONING
RZ-14-35**

Dear Mr. Youmans,

On behalf of the owner, we request that the Council table action on the Commerce Street Rezoning Request RZ-14-35 for a maximum of 5 months in order to allow us time to more adequately address issues raised by Council during the public hearing and discussion thereafter. The owner, Evergreen Real Properties, understands that this delay is at his request and does not obligate Council action. We would request that we be able to place the item back on Council's agenda when we believe the bedroom issue has been resolved.

Thank you for your consideration.

Sincerely,

PENNONI ASSOCIATES INC.

A handwritten signature in black ink, appearing to read "R. Mislowsky".

Ronald A. Mislowsky, PE
Associate Vice President

cc: Mike Ranberger

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL/COMMITTEE MEETING OF: 7/22/14 CUT OFF DATE: 7/15/14

RESOLUTION XX ORDINANCE PUBLIC HEARING ___

ITEM TITLE: A resolution authorizing the City Manager to enter into an MOU with Winchester Public Schools in reference to the monitoring of school bus cameras by the Winchester Police Department.

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Director of Finance	<u>JB</u>	_____	<u>7-7-14</u>
2. Information Technology Director	<u>BT</u>	_____	<u>7/7/14</u>
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<u>aw</u>	_____	<u>7/7/2014</u>
6. City Manager	<u>G</u>	_____	<u>7-8-14</u>
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature: <u>Chif K L J</u>			<u>7/3/14</u> Date



APPROVED AS TO FORM:

[Signature] 7/7/2014
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Chief Kevin L. Sanzenbacher
Date: July 3, 2014
Re: Bus Violation Monitoring System

THE ISSUE: On February 11, 2014, the Council approved adoption of City Ordinance Section 14-15 allowing the use of cameras attached to school buses to monitor and capture violations of vehicles passing school busses illegally. Winchester Public Schools (WPS) have been in negotiation with the vendor for these cameras and is now ready to implement the system. In order to fully implement the program WPS needs a Memorandum of Understanding (MOU) with the Police Department to reflect the mutual understanding of the arrangements needed for the monitoring and enforcement of school bus cameras.

RELATIONSHIP TO STRATEGIC PLAN: Develop a High-Performing City Organization

BACKGROUND: On February 11, 2014, the Council approved adoption of City Ordinance Section 14-15 allowing the use of cameras attached to school buses to monitor and capture violations of vehicles passing school busses illegally. In order to fully implement the program WPS needs a MOU with the Police Department to reflect the mutual understanding of the arrangements needed for the monitoring and enforcement of school bus cameras. This MOU will define the responsibilities of the vendor, the responsibilities of WPS and the responsibilities of the WPD.

The MOU also establishes the initial rate at which WPS will pass revenue onto the City to reimburse WPD for costs of overtime and training and also indemnifies the various parties from the actions of the other parties.

In order to execute this agreement we are requesting the Common Council authorize the City Manager to execute this MOU.

BUDGET IMPACT: The fiscal impact of this MOU should be neutral since it outlines how the City will be reimbursed for expenses incurred in monitoring and prosecuting violations. The MOU allows for this rate to be reviewed annually to insure that costs are being covered.

DISCUSSION: Staff from the WPD and WPS will be available to answer any questions presented by Council.

RECOMMENDATIONS: Staff recommends that the Common Council adopt the ordinance as proposed.

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE WINCHESTER PUBLIC SCHOOLS TO ESTABLISH PROCEDURES RELATIVE TO PHOTO-MONITORING SYSTEMS TO ENFORCE LAWS AGAINST PASSING STOPPED SCHOOL BUSES

WHEREAS, Winchester Public Schools ("WPS") is concerned regarding the safety of students boarding and exiting school buses; and

WHEREAS, it is the belief of WPS that cars unlawfully passing school buses while loading and unloading its passengers poses a significant danger; and

WHEREAS, the use of a photo-monitoring enforcement system on school buses is authorized under the Code of Virginia and Winchester City Ordinance; and

WHEREAS, the implementation of such a system requires a cooperative memorandum of understanding between the WPS and the Winchester Police Department; and

WHEREAS, Common Council for the City of Winchester believes that the implementation of such a system will be of benefit to the citizens of the City of Winchester.

NOW therefore be it ORDAINED that the Common Council authorizes the City Manager to execute an MOU with WPS to reflect the mutual understanding of the arrangement needed for the monitoring and enforcement of school bus cameras.

1
2 **Draft 6.13.14**

3
4 **MEMORANDUM OF UNDERSTANDING**

5
6 **BETWEEN**

7
8 **THE CITY OF WINCHESTER**

9
10 **AND**

11
12 **THE WINCHESTER CITY SCHOOL BOARD**

13
14 This MEMORANDUM OF UNDERSTANDING ("MOU"), dated TBD, 2014 for identification,
15 is made and entered into by and between the WINCHESTER CITY SCHOOL BOARD, a
16 Virginia public body corporate (the "School Board") and the CITY OF WINCHESTER, a
17 Virginia public body corporate (the "City").
18

19
20 1. **Recitals.**

21
22 1.1. Pursuant to Virginia Code § 46.2-844(B) and Section 14-15 of the Winchester
23 City Code, the School Board may contract with a private vendor to install a video-monitoring
24 system for the purpose of recording drivers who unlawfully pass a stopped school bus in
25 violation of Virginia Code § 46.2-859.
26

27 1.2. The School Board has entered into an agreement with American Traffic Solutions,
28 Inc., a Kansas corporation ("ATS") dated TBD, 2014 (the "Agreement") to install a video-
29 monitoring system for the purpose of recording violations of Virginia Code § 46.2-859.

30 1.3. Section 14-15(j) of the Winchester City Code requires the School Board to
31 promptly submit the recorded video to a law enforcement officer employed by the City of
32 Winchester and authorized to impose penalties pursuant to the Code of the City of Winchester.

33 1.4. The Winchester Police Department is an agency of the City ("Police
34 Department").

35
36 1.5. The supervision of the Winchester City Public School Division ("WPS" or the
37 "School Division") is vested in the School Board, which is a body corporate that has the power to
38 enter into contracts to further its duties, obligations and responsibilities in leading the School
39 Division.

40 1.6. The School Board and the City desire to enter into a collaborative relationship
41 that implements an automated enforcement program for school bus stop arm violations and will
42 involve the efforts of the School Division and the Police Department (the "Program").

43 1.7. The School Board and the City enter into this MOU to reflect their mutual
44 understanding of this collaboration.

45
46 2. **Term.** This MOU will commence on the Effective Date of the Agreement and will run
47 concurrently with the term, including any renewal terms, set forth in the Agreement ("Term").

48
49 3. **School Board Responsibilities.**

50
51 3.1. **Third Party Contract.** The School Board has contracted with ATS for detection
52 equipment, installation, field technical services, processing notices of violations, and collection
53 activity. The School Board will be responsible for maintaining the violation detection
54 technology equipment and services necessary to administer the Program under the terms of the
55 Agreement with ATS.

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57 3.2. **Collection of Fines.** The School Board will transfer \$2.25 per violation that
58 results in collection of the fine to the City for staff training and staff administration of the
59 Program. The rate is based upon an average of three (3) violations per day during 180 days of
60 operating full bus routes. This amount can be reviewed annually as agreed upon by the Police
61 Department and School Board.

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63 4. **City Responsibilities.** The Police Department will provide the law enforcement
64 resources necessary to administer traffic enforcement and violation assessment for the Program.
65 The Police Department will ensure that qualified police officers review the recorded images no
66 later than three (3) days after the transmission of data indicating a traffic violation captured by
67 detection technology to determine whether an infraction occurred, in accordance with Virginia
68 law. A determination of whether an infraction occurred shall be made no later than five (5) days
69 after transmission of data indicating a traffic violation and shall be communicated to all parties to
70 this Agreement within three (3) days of such determination.

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72 5. **Liabilities.** It is understood that neither party to this MOU, nor those participating or
73 acting pursuant to it, is the agent, joint venturer or representative of the other and neither is liable
74 for the acts or omissions of the other. Each party shall be responsible for the negligent acts or
75 omissions and those of its authorized officers, employees, agents or students (if applicable),
76 howsoever occurring, but only to the extent recognized by applicable law.

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78 6. **Modification.**

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80 6.1. Modifications to this MOU shall be made by mutual consent of the parties, by the
81 issuance of a written modification, signed and dated by authorized officials, prior to any changes
82 being performed.

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84 6.2. No amendment or modification of this MOU shall be valid or binding, unless
85 expressed in writing and signed by the party or parties to be bound thereby.
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7. **Notice.** All notices, requests, consents and other communications given under this MOU must be in writing and delivered personally, by facsimile, by reputable overnight courier service, or by certified mail, postage prepaid, addressed as follows:

To the School Board: Winchester City School Board
Attention:
12 N. Washington Street
Winchester, Virginia 22601

Telephone:
Facsimile:
Email:

To the City: The City of Winchester Police Department
Attention:
Address:
Telephone:
Facsimile:
Email:

8. **Immunity.** Both the School Board and the City expressly retain, to the fullest extent permitted by law, any and all immunity(ies), and nothing in this MOU shall be deemed, applied, or construed as a waiver of such immunity.

9. **No Third-Party Beneficiary.** This MOU is not intended and shall not be construed to create or contemplate any third-party beneficiary. This MOU is solely for the benefit of the School Board and the City.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last written date below.

WINCHESTER CITY SCHOOL BOARD

By: _____

Date

CITY OF WINCHESTER

133
134
135
136

Date _____

By: _____

DRAFT