

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: 08/25/15 (work session) CUT OFF DATE: 08/19/15
09/08/15 (regular mtg/1st Reading); 09/22/15(regular mtg/Public Hearing & Appointment of Viewers); 10/13/15(regular mtg/2nd Reading)

RESOLUTION \_\_\_ ORDINANCE \_\_\_ PUBLIC HEARING X

ITEM TITLE:

SV-15-406 AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE OWNER(S) OF 400 HIGHLAND AVENUE.

STAFF RECOMMENDATION:

Approval with utility easement.

PUBLIC NOTICE AND HEARING:

Public hearing for 09/22/2015 Council meeting.

ADVISORY BOARD RECOMMENDATION:

Planning Commission unanimously recommended approval.

FUNDING DATA: N/A

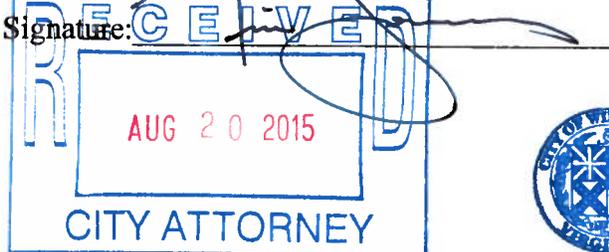
INSURANCE: N/A

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

Table with 4 columns: DEPARTMENT, INITIALS FOR APPROVAL, INITIALS FOR DISAPPROVAL, DATE. Rows include Public Services, Police, Fire & Rescue, City Attorney, City Manager, Clerk of Council with handwritten initials and dates.

Initiating Department Director's(Planning)

Date: 8/19/15



APPROVED AS TO FORM: [Signature] CITY ATTORNEY

# CITY COUNCIL ACTION MEMO

**To:** Honorable Mayor and Members of City Council

**From:** Tim Youmans, Planning Director

**Date:** August 19, 2015

**Re:** **SV-15-406** AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE OWNER(S) OF 400 HIGHLAND AVENUE.

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**THE ISSUE:**

The request from Habitat For Humanity (HFH) is to vacate a public alley extending off of the east side of Highland Avenue between homes at 328 and 400 Highland Avenue and convey it to HFH.

**RELATIONSHIP TO STRATEGIC PLAN:**

Goal #2- Promote and accelerate revitalization of catalyst and other areas throughout the city

**BACKGROUND:**

See attached staff report

**BUDGET IMPACT:**

Nominal revenue from sale of vacated right of way.

**OPTIONS:**

1. Approve as recommended by Planning Commission
2. Approve with modifications
3. Deny

**RECOMMENDATIONS:**

Recommend Option 1

**SV-15-406 AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE OWNER(S) OF 400 HIGHLAND AVENUE.**

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**REQUEST DESCRIPTION**

The request from Habitat For Humanity (HFH) is to vacate a public alley extending off of the east side of Highland Avenue between homes at 328 and 400 Highland Avenue. The short east-west alley connects to Athey Alley- a north-south public alley running along the back of homes along the west side of Gray Avenue and homes along the east side of Highland Avenue. If vacated, the land would be assembled with the property containing a single-family dwelling at 400 Highland Avenue owned by HFH.

**AREA DESCRIPTION**

The subject alley and all private property adjoining it is zoned Limited High Density (HR-1) District. The predominant land use is single-family residential on relatively small narrow lots.



**STAFF COMMENTS**

Mr. Michael Butler, President of Habitat For Humanity, has provided a memorandum dated 6-18-15 addressed to Council President Willingham, City Manager Freeman, and Planning Director Youmans outlining the request. In the memo, he notes having conferred with relevant public safety and public services officials as well as the immediately adjoining property owner to the south. Since that owner is agreeable to the vacation and does not wish to acquire any of the vacated alley, then it would be acceptable for City Council to consider vacating the alley and conveying all of it to the applicant to assemble with 400 Highland Avenue.

City Council would need to appoint viewers to determine what, if any, inconvenience would result to affected property owners. The Comprehensive Plan does not call for any changes in the area that would necessitate eliminating or retaining the alley. The only downside of vacating the alley is that it creates a much longer alley without this midblock connection to adjoining public streets.

Council would need to determine what compensation should be received from the grantee of this City property. In the past, alley conveyances in residential district have typically been up to fifty (50) cents per square foot of land conveyed. A Minor Subdivision would also be required to assemble the vacated area into the adjoining property at 400 Highland Avenue. A utility easement would need to be established since there is an existing sanitary sewer line located within the existing alley.

**RECOMMENDATION**

Based upon the input from relevant City officials, the Planning Commission forwarded **SV-15-406** to City Council recommending approval of vacation and conveyance of the subject alley to the owner of 400 Highland Avenue to be assembled into that property because the request does not conflict with the Comprehensive Plan.

AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE OWNER(S) OF 400 HIGHLAND AVENUE

**SV-15-406**

WHEREAS, the Common Council has received a request of Mr. Michael Butler on behalf of Habitat for Humanity of Winchester-Frederick County (HFHWFC), owner of certain parcels of real estate known as 400 Highland Avenue, to vacate and convey to HFHWFC all of an unnamed public alley extending from Highland Avenue eastward to Athey Alley, a public alley running in a north-south direction in between Highland Avenue and Gray Avenue, said right of way depicted on an undated exhibit entitled "Location Map~ Unnamed East-West Alley Between Highland Ave & Athey Alley"; and,

WHEREAS, the City is empowered to vacate rights of way in the City and convey them to certain individuals as a condition of vacation pursuant to and in conformance with the provisions of Virginia Code Section §15.2-2006 and §15.2-2008 *et. seq.*, respectively, as amended; and,

WHEREAS, the Planning Commission of the City of Winchester has reviewed the aforesaid request and, at its meeting of August 18, 2015, recommended approval of this action; 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, and viewers were appointed to report on the inconvenience, if any, of said vacation, all as required by and provided for under the Code of Virginia, 1950, as amended; and,

WHEREAS, the viewers have prepared a report in writing, said report concluding that an inconvenience would not result from discontinuing the right of way so long as the necessary easements are established; and,

WHEREAS, the applicant is the property owner of 400 Highland Avenue immediately adjacent to the north side of the public right of way proposed to be vacated and conveyed; and,

WHEREAS, the owner of the property at 328 Highland Avenue immediately adjacent to the south side of the public right of way proposed to be vacated and conveyed has no objection to the vacation and conveyance to the owner at 400 Highland Avenue; and,

WHEREAS, the Common Council has agreed to convey the vacated alley right of way to the applicant for **Fifty Cents (\$0.50)** per square foot subject to the applicant establishing all necessary easements to the City of Winchester to be depicted upon a survey plat.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Winchester, Virginia, that the public alley right of way depicted on an undated exhibit entitled "Location Map~ Unnamed East-West Alley Between Highland Ave & Athey Alley" be vacated and conveyed to HFHWFC subject to the applicant establishing necessary easements to the City of Winchester.

**BE IT FURTHER ORDAINED** that this ordinance shall not take effect until such time as the purchaser has secured City approval of an approved Minor Subdivision plat depicting the easements and the required assemblage of the vacated area in with that certain adjoining parcel of real estate owned by the applicant at 400 Highland Avenue, with the sale price for the vacated area being **Fifty Cents (\$0.50)** per square foot. The City Attorney is directed to prepare a deed for this conveyance and the City Manager is directed and authorized to execute all documents and take all actions necessary to carry out this Ordinance.



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## MEMORANDUM

To: John Willingham, President, Common Council City of Winchester, Virginia  
Eden Freeman, City Manager, City of Winchester, Virginia  
Tim Youmans, Director, Planning Director, City of Winchester, Virginia

From: Michael Butler, Executive Director, Habitat for Humanity of Winchester-Frederick County, Virginia (HFHWFC)

Subject: Vacation of Alley between 400 and 328 Highland Ave.

Date: 6.18.15

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We are requesting the right of way vacation of the alley located between 400 and 328 Highland Ave., and Highland Ave. to Athey Alley.

I have had discussions with the Major Kelly Rice of Winchester Police Department, Chief Alex Baldwin of Winchester Fire and Rescue and Perry Eisenach, Director, Winchester Public Utilities and Works and they find no reasons to oppose the vacation. They understand the reasons for the vacation request and concur that it would be a positive effort.

There are 5 reasons that we are requesting this vacation and they all focus on safety:

1. There is a moderate level of traffic through the alley. Drivers use the alley as a means to get to Athey Alley, as cut through from Elk St. to get to other streets, since they cannot go north on Highland Ave. There are children that live in the 2 houses that border the alley and play in and around the alley. 328 Highland Ave. has been hit on several occasions by cars driving through the alley.
2. People use the alley on foot to cut through to Athey Alley and in addition use the alley as point to cut through yards for multiple reasons. One of those reasons is to avoid being seen on the streets and another is to carry on nefarious activities.
3. Groups of people have been gathering in the alley at all hours of the night and day, which both bothers and concerns the residents.
4. On May 3, 2015 the victim of a shooting in the vicinity of the intersection of Elk and Highland was chased down the Valley and ended up on the back porch of 400 Highland Ave. This incident deeply concerned the residents. This incident showed how the alley leaves them more vulnerable to violence because of its presence.
5. The alley road bed is not being regularly maintained. There are potholes and the road has other irregularities that make it difficult and unsafe to navigate

After the minor subdivision of the property and transfer of the property to HFHWFC, we will within 60 days, transfer the property to the owners of 400 Highland Ave., Brandie and Brandon Brown, a HFHWFC partner family. Soon thereafter the Brown's will construct a fence to surround the property.

Christopher Maben the owner of the property at 328 Highland Ave., just south of the alley in question, approve of the complete vacation of the alley to HFHWFC.

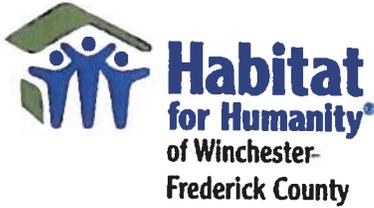
PO Box 1653  
Winchester, VA 22604  
(540) 662-7066  
info@habitatwfc.org  
www.habitatwfc.org

Vacation Request, June 18, 2015, Page 2

Habitat would like to request that the alley be vacated by the City of Winchester to HFHWFC, so that we may transfer the property to the home owners at 400 Highland Avenue. We feel this action would be a positive action for the neighborhood. Additionally, since this property will not be used for a commercial or profit making venture, but rather for safety and security purposes, both for the bordering homeowners and the neighborhood in general, we would request that this property be transferred at no cost to Habitat. We hope that you look favorably upon our request and realize the benefit to the community this endeavor will have.

We would like to request that we be provided address labels with the name and mailing address as it appears in Land Records for owners of all properties within 300 feet of any portion of the subject site. We have included the \$25.00 for the labels in the check with the application fee.

Thank you for your support of the Habitat mission.



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## MEMORANDUM

To: John Willingham, President, Common Council City of Winchester, Virginia  
Eden Freeman, City Manager, City of Winchester, Virginia  
Tim Youmans, Director, Planning Director, City of Winchester, Virginia

From: Michael Butler, Executive Director, Habitat for Humanity of Winchester-Frederick County, Virginia (HFHWFC)

Subject: Adjacent Land Owners (328 & 400 Highland Ave.) to Alley between 400 and 328 Highland Ave.

Date: 6.18.15

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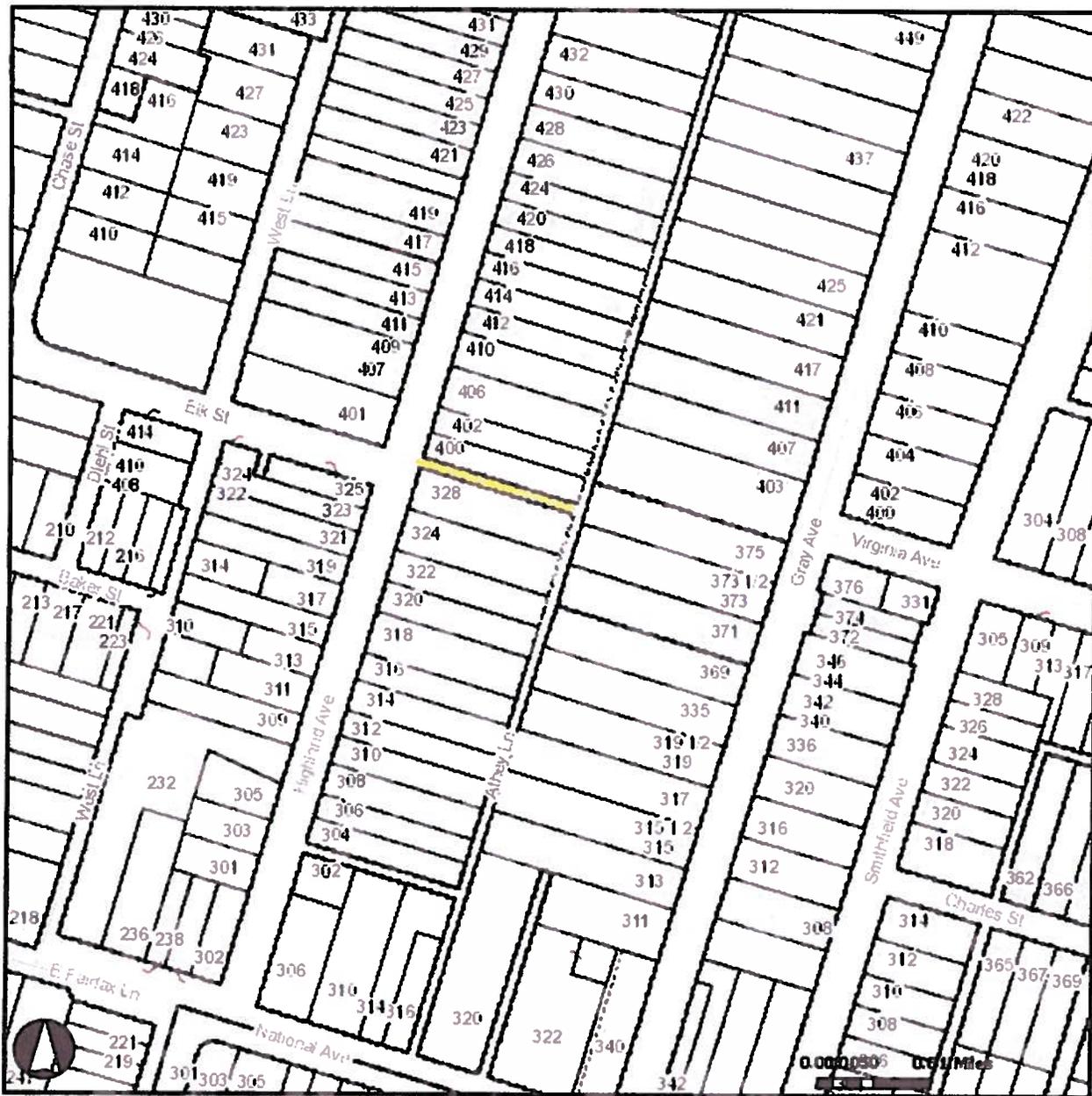
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The landowners that are adjacent to the above referenced alley are:

- Brandie and Brandon Brown, 400 Highland Ave., Winchester, VA 22601 (Owner and occupant of 400 Highland Ave.)
- Chris Maben, CNC Properties, 113 Winns Cir., Winchester, VA 22602 (Owner of 328 Highland Ave.)

After discussion with the land owners they agree with the vacation and closure of the alley as a thoroughfare. The owners of 328 Highland Ave. do not want any ownership of the alley and are willing to cede any ownership to Habitat. The owners of 400 Highland Ave. are willing to take ultimate ownership, from Habitat, of the land that the alley now encompasses. Please see letter addressing request for full explanation of vacation plan.

# Map



Parcels



Double Circle



Buildings

Corporate Limits

