

City Council Work Session

Tuesday, July 22, 2014

6:00 p.m.

Cafeteria – Quarles Elementary School

AGENDA

1.0 Call to Order

2.0 Public Comments: (Each person will be allowed 3 minutes to address Council with a maximum of 10 minutes allowed for everyone)

3.0 Items for Discussion:

- 3.1** Request for Council's endorsement of the Potomac Appalachian Trail Club's efforts to organize the 2015 Appalachian Trail Conservancy Biennial Conference – John Applin (page 4)
- 3.2 O-2014-35:** 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 – Mary Blowe, Finance Director (pages 5-17)
- 3.3 O-2014-30:** ORDINANCE TO GRANT FRANCHISE TO USE PUBLIC PROPERTY FOR THE PROVISION OF CABLE SERVICES IN THE CITY OF WINCHESTER – Anthony Williams, City Attorney (pages 18-26)
- 3.4 O-2014-29:** AN ORDINANCE TO AMEND SECTION 16-5 OF THE WINCHESTER CITY CODE PERTAINING TO CURFEW VIOLATIONS – Kevin Sanzenbacher, Chief of Police (pages 27-31)
- 3.5 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 – Kevin Sanzenbacher, Chief of Police (pages 32-39)
- 3.6 O-2014-32:** AN ORDINANCE TO ADOPT ARTICLE IV SECTION 20-32 OF THE WINCHESTER CITY CODE PERTAINING TO COLLECTION OF COURT FEES – Kevin Sanzenbacher, Chief of Police (pages 40-42)
- 3.7 Discussion** of Economic Development Authority Consultant Agreement with Freestone, LLC – Eden Freeman, City Manager (pages 43-55)

- 3.8 Discussion** of Unsafe Conditions at 414 S. Braddock Street – Aaron Grisdale, Director of Zoning & Inspections (pages 56-67)
- 3.9 O-2014-31:** 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*) – Tim Youmans, Planning Director (pages 68-76)
- 3.10 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) – Tim Youmans, Planning Director (pages 77-101)
- 3.11 O-2014-33:** 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 change two bedroom units to one bedroom units*) – Tim Youmans, Planning Director (pages 102-111)
- 3.12 O-2014-34:** 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*) – Tim Youmans, Planning Director (pages 112-130)
- 3.13 R-2014-32:** Resolution – Adoption of guidelines pertaining to substitute materials as an addendum to the existing Winchester Historic District Design Guidelines – Tim Youmans, Planning Director (pages 131-137)

4.0 Boards & Commissions Liaison Update

- 4.1** Social Services Advisory Board – Amber Dopkowski, Director of Social Services (pages 138-141)

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.

6.0 Monthly Reports

- 5.1** Police Department (pages 142)
- 5.2** Fire & Rescue Department (pages 143-146)

6.0 Adjournment

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Craig Gerhart, Interim City Manager
Date: July 17, 2014
Re: Presentation to Council – Appalachian Trail Conservancy

THE ISSUE: The Appalachian Trail Conservancy seeks City Council endorsement for its annual conference to be held at Shenandoah University in July, 2015. This endorsement is sought to provide supporting documentation for a grant request the Conservancy plans to place before the Virginia Tourism Corp.

RELATIONSHIP TO STRATEGIC PLAN: The conference will support the goals of revitalizing downtown and growing the economy.

BACKGROUND: Mr. John Applin contacted the Council President and Interim City Manager requesting time on the Council’s agenda to present the plans of the Appalachian Trail Conservancy to hold its annual 2015 conference at Shenandoah University. Mr. Applin requests a letter of support from the Council for the event that he can include in his grant submission package to the Virginia Tourism Corp. Mr. Applin previously obtained similar letter of support from the Old Town Development Board.

The conference expects to attract between 900 and 1,200 visitors to Winchester. Based on estimates developed in conjunction with the Winchester – Frederick County Convention and Visitors Bureau, the Conservancy estimates a local economic impact of approximately \$130,000. The CVB has pledged a letter of support and a minimum financial contribution of \$250. The Conservancy has partnerships with the Winchester/Frederick, Warren, and Nelson County visitors’ centers and is working on sponsor partnerships with three local hotel chains.

Additional information about the Conservancy and the event is available at the following link:
<http://www.appalachiantrail.org/who-we-are/events/2013/08/08/2015-atc-biennial-conference-hiking-through-history>

BUDGET IMPACT: No funding is requested of the City

OPTIONS: The Council may:

1. Direct the City Manager to provide the Conservancy with a letter of support for the conference.
2. Decline to provide the City’s endorsement for the event.

RECOMMENDATIONS: Direct the City Manager to provide the Conservancy with a letter of support.

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:
 7/7/2014
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
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Winchester, VA 22601
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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

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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.

;

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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. 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. 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 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 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 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 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 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 discovering an inaccuracy or error in a property record, shall coordinate with the contractor 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)

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>	<u>P.E.</u>	_____	<u>6/20/14</u>
2. <u>Purchasing/Procurement</u>	<u>TB</u>	_____	<u>6/20/14</u>
3. <u>Finance</u>	<u>CB</u>	_____	<u>6/20/14</u>
4. _____	_____	_____	_____
5. <u>City Attorney</u>	<u>[Signature]</u>	_____	<u>6/20/2014</u>
6. <u>City Manager</u>	<u>[Signature]</u>	_____	<u>6/20/14</u>
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: Change in Ordinance 16-5 Curfew for Minors

STAFF RECOMMENDATION: The Chief of Police requests approval

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: N/A

INSURANCE:N/A

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

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. City Attorney	<i>[Signature]</i>	_____	6/23/2014
6. City Manager	<i>[Signature]</i>	_____	7/6
7. Clerk of Council	_____	_____	_____
Initiating Department Director's Signature: <i>[Signature]</i>	_____	_____	6/20/14 Date



APPROVED AS TO FORM:

[Signature] 6/23/2014
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: Revisions to City Ordinance 16-5 Curfew For Minors

THE ISSUE: Although juveniles account for a small percentage of crime in the city there behavior can be very disruptive to certain neighborhoods, especially late at night. In 2013 juveniles accounted for 25% of liquor law violations, 9% of Part A (more serious) violations and 5% of part B (less serious) violations. In a recent survey 26% of 11th grade males in the city admitted to carrying a weapon in the last 30 days and only 33% of 11th graders of both sexes said they had never used alcohol. These statistics do not capture the number of contacts our officers have with juveniles, on a nightly basis, where no formal action is taken.

It is for these reasons that officers from our midnight shift and neighborhood groups have asked us to explore having the age limitations on the city curfew extended to cover a broader, older, group of children.

RELATIONSHIP TO STRATEGIC PLAN: Create a More Livable City for All.

BACKGROUND: Current City Ordinance 16-5 sets the age for juveniles who are subject to curfew as under the age of 15. Persons under 15 are prohibited from being out on week nights (Sunday through Thursday) from 11:00 PM to 5:00 AM and on weekends from 12:00 PM to 5:00 AM. There are exceptions built into the ordinance to allow for work, school and family events.

Officers on our midnight shift and citizens groups have asked that the curfew be changed to expand the age limit to which the curfew would apply. There is a feeling that young persons are allowed to roam the streets at night without supervision. By expanding the age controlled by the curfew from under 15 to under 17 officers and citizens feel they will have a better tool to control juvenile criminal/disruptive activity.

BUDGET IMPACT: There should be no budget impact.

DISCUSSION: Opposition to this plan may come from parents and teenagers who believe this is restrictive to the segment of the population that is not causing problems. However, staff believes that the exceptions included in the ordinance cover any legitimate reason that a young person would have for being out past the allowed times. We believe it is important to a stable community environment that the police have the ability to control the late night activity of the youthful population. It has been our experience that when it comes to young people nothing good happens after midnight. We believe this proposed ordinance change will help us provide even more protection to the community, especially the youthful population that has not yet developed the ability to make good decisions for themselves.

Staff has also looked at other similar ordinances in jurisdiction, close in either geographic proximity or in demographic make-up to Winchester. Those cities included Fredericksburg, Charlottesville, Danville, Leesburg and Berryville. Of those five jurisdictions only Fredericksburg did not have a curfew ordinance. The others all made 17 and under as the ages falling under the curfew ordinance.

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

**AN ORDINANCE TO AMEND SECTION 16-5 OF THE WINCHESTER CITY CODE
PERTAINING TO CURFEW VIOLATIONS**

WHEREAS, Winchester Police Department recognizes that current ordinance 16-5 may not be adequate to deal with juveniles disrupting communities; and

WHEREAS, it is the belief of the WPD and community groups that modifying 16-5 to expand the segment of the population controlled by this ordinance will be beneficial to policing the community; and

WHEREAS, implementation of the proposed changes will make the City curfew ordinance consistent with other Virginia jurisdictions; 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 16-5 of the Winchester City Code is hereby adopted as follows:

SECTION 16-5. CURFEW FOR MINORS.

Purpose: The goal of this section is to inhibit juvenile crime, to prevent the victimization of children, to promote the health and safety of children, and to increase parental responsibility for their children.

(a) It shall be unlawful for any minor under the age of ~~fifteen (15)~~ seventeen (17) years to be in or upon any street, park or other public place in the City, on Sunday through Thursday between the hours of 11:00 P.M. and 5:00 A.M. of the following day, or Friday or Saturday from the hours of 12:00 P.M. and 5:00 A.M. of the following day unless, in either case, one of the following exceptions apply:

1. the minor is accompanied by his parent, guardian or other adult person having the legal care, custody, or control of such minor,
2. the minor is engaged in, traveling in direct route to, or returning home from legal employment,
3. the minor is attending, traveling in direct route to, or returning directly home from a school, religious or adult supervised activity sponsored by the City or a school, religious or civic group that takes responsibility for the minor,
4. the minor is involved in an emergency,
5. the minor is in a motor vehicle engaged in interstate travel, or
6. the minor is or has been married or the minor has been lawfully emancipated.

(b) It shall be unlawful for the proprietor, manager or other person having charge or control of any public place to permit or encourage any minor under the age of ~~fifteen (15)~~ seventeen (17) to violate this section.

(c) It shall be unlawful for a parent, guardian, or other adult person having the care, custody or control of a minor under the age of ~~fifteen (15)~~ seventeen (17) years to permit or encourage such to violate this section.

(d) A first violation of any provision of this section shall constitute a Class 4 misdemeanor. A second violation of any provision of this section within 90 days of a first violation by any person shall constitute a Class 2 misdemeanor.

(Code 1959, §16.7)(Ord. No. 045-95, 9-12-95; Ord. No. 007-96, 04-09-96; Ord. No. 2011-21, 10-11-11)

State Law References - Authority of city to enact a curfew ordinance, Code of Virginia §15.1-~~33.4~~ 2-926; to regulate presence of minors in places of amusement, §18.2-432

STRIKEOUT - REMOVED
UNDERLINE - ADDED

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	TB		7-7-14
2. Information Technology Director	[Signature]		7/7/14
3. _____			
4. _____			
5. City Attorney	[Signature]		7/7/2014
6. City Manager	G		7-8-14
7. Clerk of Council			

Initiating Department Director's Signature: [Signature] 7/3/14
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.

56
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.

62
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.

71
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.

77
78 6. **Modification.**

79
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

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>Chief 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 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

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

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

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

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

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

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

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

INSURANCE: N/A

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

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

Economic Development Coordinator



APPROVED AS TO FORM:

CITY ATTORNEY

CITY COUNCIL ACTION MEMO

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

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

RELATIONSHIP TO STRATEGIC PLAN: Goal One: Grow the Economy

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

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

OPTIONS: Council may either approve or disapprove this Resolution.

RECOMMENDATIONS: Council is asked to approve of this Resolution.

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

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

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

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

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

Professional Consulting Agreement

Economic Development and Redevelopment Services

Introduction

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

Section 1: Term

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

Section 2: Duties and Authority

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

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

Section 3: Compensation

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

Section 4: Termination of Employment

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

Section 5: Performance Evaluation

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

Section 6: Hours of Work

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

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

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

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

Section 8: Meals and Lodging and Other Expenses

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

Section 9: General Provisions

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

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

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

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

Section 10: Insurance Requirements

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

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

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

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

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

Section 11: Anti-Discrimination

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

Section 12: Immigration Reform and Control Act of 1986

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

Section 13: Drug-Free Workplace

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

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

Section 15: Availability of Funds:

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

Section 16: Hold Harmless

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

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

Section 17: Venue / Jurisdiction

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

Approved as to form:

City Attorney Date

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

City of Winchester, Virginia

By: _____
City Manager Date

COMMONWEALTH OF VIRGINIA:
IN THE CITY OF WINCHESTER

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



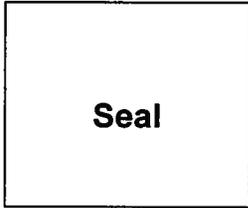
Notary
Notary Id. No.: _____
My Commission Expires: / /

[CONSULTING FIRM]

By: _____
Consultant Date

COMMONWEALTH OF VIRGINIA:
IN THE CITY OF WINCHESTER

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



Notary

Notary Id. No.: _____

My Commission Expires: / /

Commonwealth of Virginia



STATE CORPORATION COMMISSION

Richmond, April 6, 2014

This is to certify that the certificate of organization of

Freestone LLC

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



State Corporation Commission

Attest:

Joel H. Peck
Clerk of the Commission

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

AT RICHMOND, APRIL 6, 2014

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

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

CERTIFICATE OF ORGANIZATION

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

STATE CORPORATION COMMISSION

By

**Judith Williams Jagdmann
Commissioner**

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

**ARTICLES OF ORGANIZATION
OF
FREESTONE LLC**

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

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

ORGANIZER:

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

Organization Type: LLC

LLC Information

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

Addresses

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

Responsible Party

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

Principal Business Activity

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

Additional LLC Information

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

EIN Assigned: 47-1011661

Legal Name: FREESTONE LLC

Confirmation letter will be mailed to you. This letter will be
information regarding your EIN. Allow up to 4 weeks
We strongly recommend you print this page for your

CITY OF WINCHESTER, VIRGINIA

PROPOSED CITY COUNCIL AGENDA ITEM

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

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

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

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

PUBLIC NOTICE AND HEARING: N/A

ADVISORY BOARD RECOMMENDATION: N/A

FUNDING DATA: Supplemental Appropriation Required

INSURANCE:

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

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

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



APPROVED AS TO FORM:


 CITY ATTORNEY 7/17/2014

CITY COUNCIL ACTION MEMO

To: Honorable Members of Common Council

Date: June 17, 2014

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

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

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

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

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

OPTIONS: Repair/Demolish/Other.

RECOMMENDATIONS: Proceed with repairs and/or partial demolition.

Discussion of Unsafe Conditions at 414 South Braddock Street

REQUEST DESCRIPTION

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



STAFF COMMENTS

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

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

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

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

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

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

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

1st floor

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

2nd floor

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

3rd floor

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

Roof

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

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

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

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

RECOMMENDATION

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

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

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

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

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

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

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

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

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER
THE CITY OF WINCHESTER, VA**

Petitioner,

v.

840CL13000 385-00

MARTIN B. GAVIS

-and-

CLAUDETTE H. GAVIS,

Respondents.

ORDER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

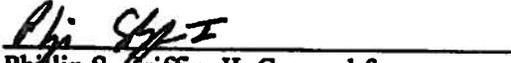
ENTERED: 1, 23, 2014

JUDGE

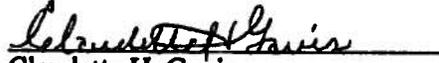
We ask for this:


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


Dale Iman, City Manager


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


Martin B. Gavis


Claudette H. Gavis

A COPY TESTE:


CLERK-DEPUTY CLERK
WINCHESTER CIRCUIT COURT

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 118½-124 EAST CORK STREET

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

Public hearing for 9/9/14 Council mtg

ADVISORY BOARD RECOMMENDATION:

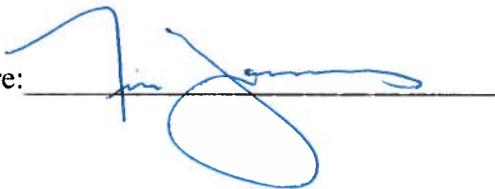
N/A

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.

<u>DEPARTMENT</u>	<u>INITIALS FOR APPROVAL</u>	<u>INITIALS FOR DISAPPROVAL</u>	<u>DATE</u>
1. Zoning & Inspections	AMG		6/20/14
2. Public Services	PE		6/20/14
3. City Attorney	CA		6/20/2014
4. City Manager	CM		6/23/14
5. Clerk of Council			

Initiating Department Director's Signature:  (Planning)

6/19/14



APPROVED AS TO FORM:


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:

_____ Date
BOWMAN-TURNER, L.C.

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

_____ Date
City Manager

Commonwealth of Virginia,

City/County of _____ To Wit:

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

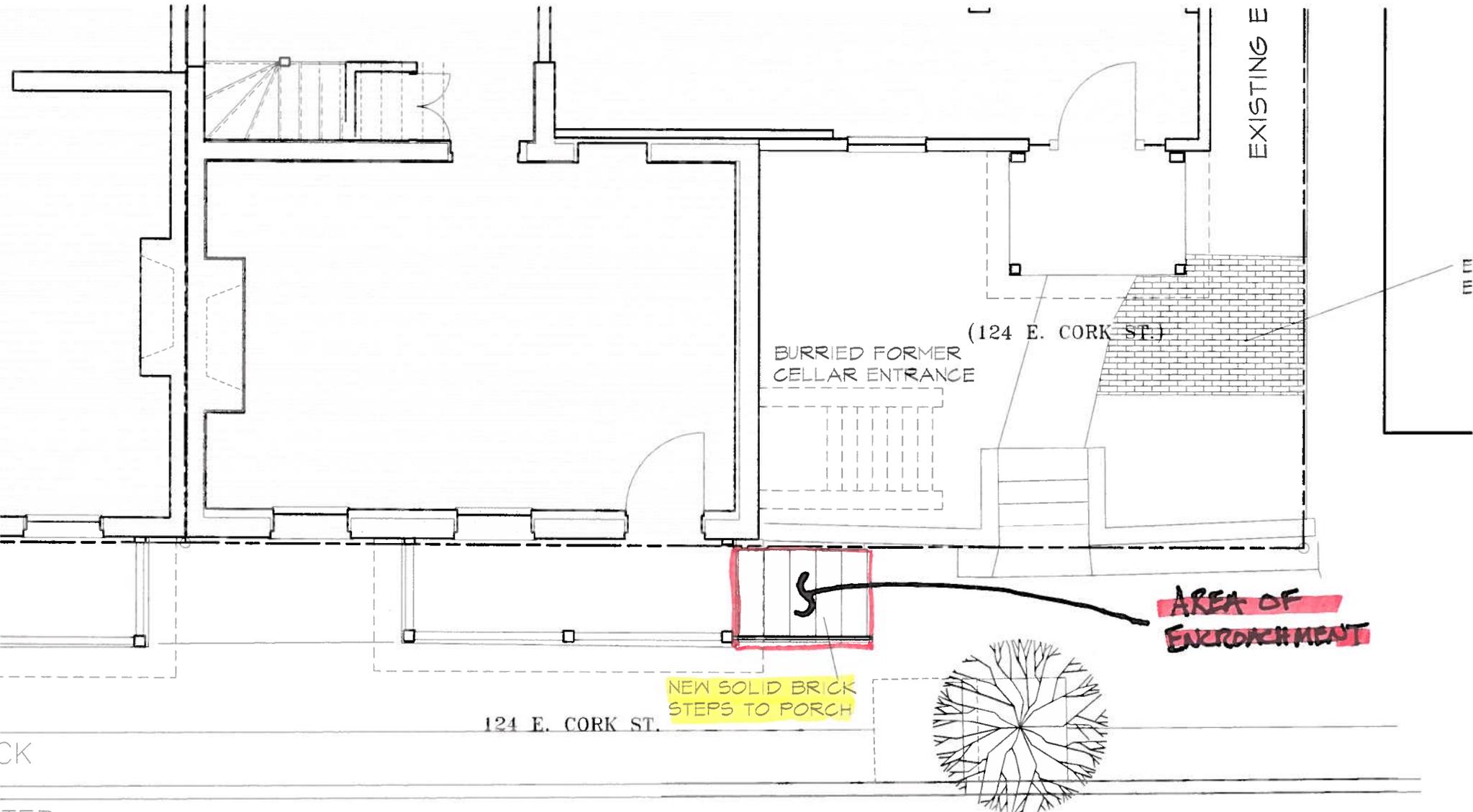
By _____.

Notary Public

My Commission Expires _____

APPROVED AS TO FORM:

Anthony C. Williams, City Attorney



CK
TER

EAST CORK STREET
(PUBLIC RIGHT-OF-WAY)

EXHIBIT A

RECEIVED

JUN 13 2014

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: 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 of the City Attorney

7/16/14



APPROVED AS TO FORM:

Handwritten signature of the City Attorney
CITY ATTORNEY

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Tim Youmans, Planning Director
Date: July 16, 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 and asked that it come back to work session. See attached staff report

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:

- Approve the rezoning ordinance
- Deny the rezoning ordinance
- Table the request

RECOMMENDATIONS:

On a 4-2 vote, the Planning Commission recommended approval on May 20, 2014.

On a 9-0 vote, Council advanced the request from the May 27th work session expressing intent to deny the original rezoning request.

Council Work Session
July 22, 2014

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

REQUEST DESCRIPTION

The request is to conditionally change the underlying zoning from CM-1 to MR and establish PUD overlay zoning on the entire property to support the proffered construction of a townhouse development of up to 26 units fronting along the south side of Commerce Street. Revised Proffers (revision date June 24, 2014), DESIGN & DEVELOPMENT STANDARDS, FLOOR PLANS, and a GENERALIZED DEVELOPMENT PLAN were submitted on July 1, 2014.

The submitted Development Plan titled "Generalized Development Plan, Commerce Street Townhomes" dated February 3, 2014 with revision dates of February 14, 2014 depicts 3 townhouse structures and 26 driveways accessed from a one-way common drive wrapping around at the rear of the buildings leading to optional 1-car garages. The Development Plan depicts 16 on-street parallel parking spaces as well as an area for an undefined number of additional parking spaces along the south side of the rear drive aisle. The request also includes a Proffer Statement dated December 3, 2013 with a latest revision date of June 24, 2014.

AREA DESCRIPTION

The site and all other properties fronting along the east-west section of Commerce Street are zoned CM-1. Land uses include a credit union, mini-warehouse and contractor use. Property to the south of the site along Glaize Avenue is zoned MR and contains single-family dwellings. Properties further to the north along the west side of Commerce St are in single-family residential use.



STAFF COMMENTS

Comprehensive Plan Consistency

The Comprehensive Plan identifies the property as a redevelopment site and calls for adaptive reuse to be more compatible with adjacent residential areas. PUD zoning allows for consideration of up to 18 residential units per acre. At 2.57 acres in size, the property could theoretically support up to 46 units. The choice of townhouse development allows for separate ownership of the units, but reduces the physical ability to maximize the density as could be done with multifamily or apartment-styled condominium development. In general the Comprehensive Plan advocates the following:

Citywide Design Objective #1:

“Employ New Urbanism Principles in new development and redevelopment.”

Citywide Housing Objective #6:

“Promote decent affordable housing, particularly to serve targeted populations such as young professionals and retirees.”

The proposed townhouses could serve these targeted populations. The site is also situated in close proximity to a transit stop on the S. Loudoun Street bus route and not too far removed from Shenandoah University.

At 2.57 acres in size, the proposed PUD is considerably below the 5-acre minimum called out in Section 13-1-4.1 of the Zoning Ordinance. However, the Zoning Ordinance allows for the Planning Commission to recommend and City Council to approve a waiver of the 5-acre minimum when the applicant can show that strict adherence would produce unnecessary hardship and preclude development that is more compatible with the Comprehensive Plan than that which could be permitted without the PUD zoning.

Potential Impacts & Proffers

The applicant submitted voluntary proffers to mitigate potential impacts arising from the rezoning of the property from CM-1 supporting nonresidential use to MR with PUD overlay zoning to support 26 townhomes. The latest submitted Proffer Statement is dated June 24, 2014. Generally, the impacts from this rezoning would be the removal of tax-generating commercial development with residential use, which could have some impacts on public education expenditures. Depending upon the number of bedrooms and market targeted for occupancy, it is possible that the 26 units could create negative impacts in the form of school-aged children requiring public education. The applicant notes that the proposal would be for a maximum of 2 bedrooms per unit in the 20-foot wide units.

Floor plans have now been included in the latest submission. Proffer 3.2a, added to the latest version of the proffer statement, proffers general conformance with the submitted floor plans. The proffered Design & Development Guidelines have also been updated and now specify a maximum of 2 bedrooms per unit (previously a max. of 3BR) and a minimum lot width of 20' (previously up to ½ of the units could have been as narrow as 16'). While a maximum of 2 bedrooms is now proffered, it should be noted that the submitted floor plans for the third floor depict a master bedroom, bedroom, and a “study” that, other than in name, is for all intents and purposes a third bedroom. The floor plans also depict the garages oriented to the front of the units with a split level foyer leading down half a level to the garage and rec room level and then up a half level to the living, dining, and kitchen areas. This is inconsistent with the Development Plan and the elevations.

The applicant does proffer to contribute \$300 per townhouse unit to the City to provide for improvements to either Overlook Park or the Quarles Elementary School playground in lieu of dedicating up to 10% of the site for public parkland. Staff believes that a cash proffer in lieu of parkland dedication is desirable.

At the February 18th, March 18th, and April 15th 2014 regular meetings, the Planning Commission tabled the rezoning request in order to allow the applicant time to prepare a Fiscal Impact Analysis for this PUD rezoning application per Sections 13-4-2.2k of the Zoning Ordinance. On May 7, 2014, a Market and

Fiscal Impact Analysis was received in the Planning Department. The report assumes that 6 school-aged children (0.222 children per unit) will be generated by the project. The report identifies a \$7,885 annual operating expense per pupil resulting in a total annual school operating cost of \$47,310. Together with other costs to the City, the total annual cost for the 26-unit development is estimated at \$86,655. This figure does not include the capital cost of school facilities to accommodate 6 additional children. This is an important factor since existing schools, especially elementary, are already over capacity in the city.

The fiscal analysis estimates total revenues arising from the development at \$101,676. This includes \$53,105 of real estate tax revenue, \$18,666 of personal property tax revenue, \$22,950 of Non-tax revenue, and a little less than \$7,000 of other revenue. The Non-tax revenue is based upon a per capita average of \$306 and an estimated total occupancy of 61 persons residing in the 26-unit development. This assumes 2.35 per household. Unless these units are intended for college student occupancies, it is logical to assume that there would likely be only 2 adults. The other .35 persons per unit (i.e. $2.35 - 2.0 = 0.35$) are most likely children. Assuming this, 0.35 multiplied by 26 units amounts to potentially 9 children, of which some will be below school age. The applicant has indicated that there will be 6 school-aged children. The average pupil generation rate for all townhouses (i.e. many 2-BR units) in Frederick Co per the Development Impact Model is 0.279. The rate employed here for this 'all 3-BR' development is 0.222. It is hard to believe that the rate for this "two-bedroom plus study" development would be any less than the average for all townhouses in the same Winchester-Frederick Co market. Recently proposed townhouse developments in Frederick County include the Madison Village project which proffered \$1,362 for each townhouse unit and \$1,139 for each apartment unit.

The Fiscal Impact Analysis for the Commerce St project indicates a Net On-Site Fiscal Benefit of \$15,021. This derived by subtracting the \$86,555 of net costs from the \$101,676 of net direct revenues. It is surprising, to some degree, that a similar townhouse just over the County line would have a negative net impact resulting in the proffering of \$1,362 for each townhouse unit. It should be noted that just 2 additional school-aged children residing in the townhouse development would tip the net benefit into a net cost to the City at \$7,885 per student.

While this residential rezoning request results in a much smaller quantity of total units than the recently approved Cedar Creek Place project (132 units) and the Jubal Square project (140 units), the quantity of two-bedroom units with "studies" that, other than in name, appear to actually be third bedrooms is a concern. The Cedar Creek Place proposal included zero (0) three-bedroom units and the Jubal Square project included only 20 three-bedroom units and 8 two-bedroom units with a den. Collectively the 28 Jubal Square units with 3 bedrooms or 2 bedrooms + den constituted only 20% of that total project.

Traffic Impacts

Staff does not believe that a Traffic Impact Analysis should be required by the Planning Commission since Commerce St has adequate capacity to handle the additional traffic.

Site Development and Buffering

Buffering has been provided to screen the townhouse building and rear parking from the existing single-family neighborhood along Glaize Avenue to the south. A detail on the Development Plan calls for an opaque board fence (6' height) and a staggered row of mixed evergreen/deciduous plantings along the rear property line adjoining the Glaize Avenue residential neighborhood. The Plan calls for 2 plants per every 15 feet with half being evergreen and the other half deciduous. The minimum height of installed evergreen plantings is specified at 4' and the minimum caliper of deciduous trees is specified at 1" caliper on the Plan. Both the Plan and the Proffer Statement note that existing "plantings and

vegetation” may be used to satisfy the intent of the landscape screens shown as required. Provision 3.5 of the Proffer Statement was amended to include “Adequacy determination to be at time of planting by Zoning Administrator.” Staff recommends that ‘Planning Director’ be substituted for ‘Zoning Administrator’ and that any existing “vegetation” proposed to meet this intent be clearly depicted on the plan so that it can be evaluated for suitability.

The Development Plan calls for either a double row of evergreen screening (4’ min height) or an opaque fence (6’ height) along the eastern boundary of the site adjoining the remaining commercially zoned development at the bend in Commerce Street. The applicant is also proffering at least a 100-square foot landscape area in the front yard of the units. (NOTE: By comparison a typical parking space is at least 162 square feet in size). Staff has encouraged the applicant to employ the New Urbanism practice of keeping the units close to the public street (and putting the parking to the rear). However, since there will be a very small quantity of green space out front, it is important that the developer demonstrate a high quality to that small amount of street-view green space.

Storm Water Management

Storm water management will need addressed. No on-site storm water management is depicted on the Plan, but can be handled during the time of site plan review. The site slopes both to the east as well as to the south. The Plan depicts a natural green area (‘Recreational Space’) along the southern boundary which should mitigate storm water runoff issues to the Glaize Avenue neighborhood.

Density

The applicant proposes a maximum of 26 townhouses with a maximum of 2 bedrooms per unit. PUD overlay allows for consideration of up to 18 dwelling units per acre, which in the case of 2.57 acres would translate to a maximum of 46 dwelling units. The applicant is proposing a maximum of 26 dwelling units. The actual project density comes out to 10.1 units per acre.

Project Phasing

The applicant has not indicated that there is any proposal to phase in the project as part of the PUD rezoning.

Design Quality

There are few proffers addressing design quality. The applicant recently submitted floor plans for this rezoning proposal. Proffer 3.1 states that “All buildings on the property shall be constructed using compatible architectural styles.” The Development Plan includes an illustrative rendering of the front elevation of the units and proffer 3.2 states that “unit architecture shall generally conform to the elevation and guidelines” on that sheet of the development plan. The Development Plan depicts rear driveways suggesting access to rear-entry garages although a “Design & Development Standards” sheet notes that the garages are optional. The submitted floor plans, however, depict the garages at the front of the units in conflict with the elevations and Development Plan layout. Staff recommends that a note be added to the Development Plan that an additional bedroom cannot be created in any unit even if the optional garage is converted to living space or the study is not used as a study. The submitted Plan depicts 3 buildings with one building containing 8 townhouse units and the other two buildings containing 9 units. The Design & Development Standards sheet notes that the lots (and thus all of the interior townhouse units) would have a 20-foot minimum width. In the High Density Residential (HR) District, where townhouses are allowed by right, the City requires a minimum average townhouse lot width of 22 feet. The applicant should clearly demonstrate how the proposed PUD provides exceptional

design to warrant exceptions to these minimum standards that apply where townhouses are permitted without PUD overlay.

RECOMMENDATION

Generally, staff feels that the proposal is consistent with many of the broader elements of the City's long-term vision to provide housing attractive to young professionals and empty-nesters to the City. Staff feels that the use of the PUD provision for this site is acceptable even though it is considerably less than five acres in size, but that the applicant needs to provide better justification from a quality design standpoint for reducing some of the minimum development standards otherwise applicable to townhouse development in the City.

Staff supports a waiver of the 5-acre minimum per Section 13-1-4.1 of the Zoning Ordinance to allow a 2.57-acre PUD because 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.

On a 4-2 vote at its May 20, 2014 meeting, the Planning Commission forwarded Rezoning RZ-14-35 to City Council recommending approval because the proposed MR (PUD) zoning, supports the expansion of housing serving targeted populations as called out in the Comprehensive Plan. The recommendation was subject to:

1. the Proffer Statement dated December 3, 2013 and revised February 14, 2014;
2. adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2);
3. the single-page document titled 'Commerce Street Townhomes, Design & Development Standards';

The Planning Commission recommended that City Council approve 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 has shown 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.

At its May 27, 2014 work session, on a 9-0 vote, Council forwarded the request for First Reading at the June 10, 2014 meeting expressing its intent to deny the request. The request was subsequently tabled after Second Reading and a public hearing on July 8th to allow more time to review the amended proposal. If Council is now satisfied with the request, a motion to forward it to Council for approval of the rezoning ordinance could read:

Move, that Rezoning RZ-14-35 be forwarded to City Council recommending approval because the proposed MR (PUD) zoning, supports the expansion of housing serving targeted populations as called out in the Comprehensive Plan. The recommendation is subject to:

1. the Proffer Statement dated December 3, 2013 and revised June 24, 2014;
2. adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2); and,
3. the single-page document titled 'Commerce Street Townhomes, Design & Development Standards revised on June 24, 2014'

AN ORDINANCE TO REZONE 2.57 ACRES OF LAND AT 1570 COMMERCE STREET FROM COMMERCIAL INDUSTRIAL (CM-1) DISTRICT TO MEDIUM DENSITY RESIDENTIAL (MR) DISTRICT WITH PLANNED UNIT DEVELOPMENT (PUD) DISTRICT OVERLAY

RZ-14-35

WHEREAS, the Common Council has received an application from Pennoni Associates Inc. on behalf of Evergreen Real Properties, LLC to rezone property at 1570 Commerce Street from Commercial-Industrial (CM-1) District to Medium Density Residential (MR) District with Planned Unit Development (PUD) Overlay; and,

WHEREAS, the Planning Commission forwarded the request to Council on May 20, 2014 recommending approval of the rezoning request as depicted on an exhibit entitled "*Rezoning Exhibit RZ-14-35 Prepared by Winchester Planning Department, February 3, 2014*" because the proposed MR (PUD) zoning supports the expansion of housing serving targeted populations. The recommendation is subject to the proffers in the Proffer Statement dated December 3, 2013 and revised February 14, 2014 and to adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 (Sheet 1) and February 17, 2014 (Sheet 2) and a single-page document titled 'Commerce Street Townhomes, Design & Development Standards'; and,

WHEREAS, the applicant has further amended the proffers in the Proffer Statement dated December 3, 2013 and revised June 24, 2014, along with the associated Design & Development Standards and Generalized Development Plan; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, all as required by the Code of Virginia, 1950, as amended, and the said Council has determined that the rezoning associated with this property herein designated supports 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 following land is hereby rezoned from the existing zoning designation of Commercial- Industrial (CM-1) District to Medium Density Residential (MR) District with Planned Unit Development (PUD) Overlay: Approximately 2.57 acres of land at 1570 Commerce Street as depicted on an exhibit entitled '*Rezoning Exhibit RZ-14-35 Prepared by Winchester Planning Department, February 3, 2014.*'

BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to the proffers in the Proffer Statement dated December 3, 2013 and revised June 24, 2014 and to adherence with the Development Plan titled 'Generalized Development Plan, Commerce Street Townhomes', dated February 4, 2014 with revision dates of February 14, 2014 and a single-page document titled 'Commerce Street Townhomes, Design & Development Standards' with a revision date of June 24, 2014.

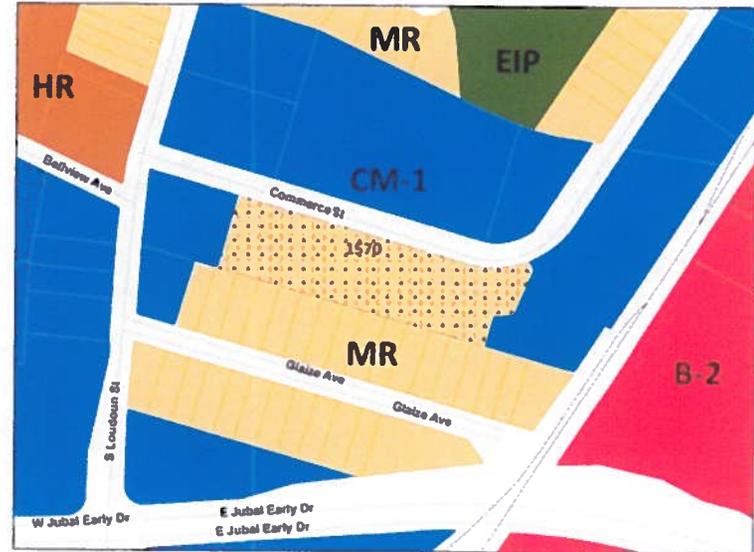
REZONING EXHIBIT RZ-14-35

PREPARED BY WINCHESTER PLANNING DEPARTMENT
FEBRUARY 3, 2014



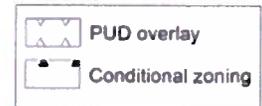
EXISTING

CM-1 ZONING FOR 1570 COMMERCE STREET



PROPOSED

CONDITIONAL MR (PUD) ZONING FOR 1570 COMMERCE STREET

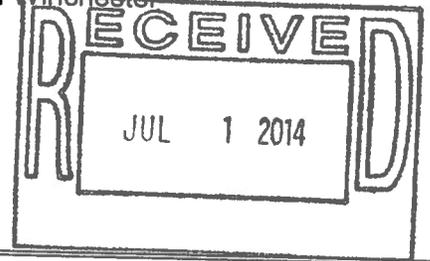




PENNONI ASSOCIATES INC.
CONSULTING ENGINEERS

MEMORANDUM

TO: Will Moore, Assistant Planning Director, City of Winchester
FROM: Ron Mislowsky, PE 
DATE: June 30, 2014
SUBJECT: Commerce Street Townhomes



We have revised the proposed proffer statement as follows:

1. We have specified that all of the units shall be a minimum 20 ft. wide.
2. We have specified that the maximum number of bedrooms will be two.
3. We have included floor plans for the units noting that the actual plan will be in general conformance with this layout to allow some flexibility in tailoring the product but still not exceeding two bedrooms.

I have enclosed two copies of the final proffer which have been signed by the owner along with one that shows the changes made in red.

If you have any questions, please let me know.

PROFFER STATEMENT

REZONING: RZ. # _____: CM-1 to MR (PUD)

PROPERTY: 2.5960 Acres +/-:
Tax Map & Parcels 252-01-2 (the "Property")

RECORD OWNER: Evergreen Real Properties LLC

APPLICANT: Evergreen Real Properties, LLC

PROJECT NAME: Commerce Street Townhomes

ORIGINAL DATE OF PROFFERS: December 3, 2013

REVISION DATE: February 3, 2014; Revised February 14, 2014; Revised June 24, 2014

The undersigned owners hereby proffer that the use and development of the subject property ("Property"), as described above, shall be in conformance with the following conditions, which shall supersede all other proffers that may have been made prior hereto. In the event that the above referenced rezoning is not granted as applied for by the Applicant ("Applicant"), these proffers shall be deemed withdrawn and shall be null and void. Further, these proffers are contingent upon final rezoning of the Property with "Final Rezoning" defined as that rezoning that is in effect on the day upon which the City of Winchester Common Council (the "Council") grants the rezoning.

The headings of the proffers set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of the proffers. The improvements proffered herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other proffered requirement, unless otherwise specified herein. The term "Applicant" as referenced herein shall include within its meaning all future owners, assigns, and successors in interest. When used in these proffers, the "Generalized Development Plan" shall refer to the plan entitled "Generalized Development Plan, Commerce Street Townhomes" prepared by Pennoni Associates Inc., (the "GDP") dated February 3, 2014.

1. LAND USE:

- 1.1 The project shall be designed to create townhouse building lots in general conformance with the GDP, and as specifically set forth in these proffers subject to modifications as necessary upon final engineering including but not limited to intersection alignments.
- 1.2 All development shall be accomplished in general conformance with the "Commerce Street Townhomes, Design and Development Standards", prepared by Pennoni attached hereto and incorporated herein by reference (the "Design and Development Standards").

- 1.3 Residential development on the Property shall not exceed 26 dwelling units.
- 1.4 Surface parking shall be allowed in areas delineated. As a minimum, 2 parking spaces per unit shall be provided which may include onsite parking lots, garage and associated private drive spaces, and if provided, public spaces within 300 ft.
- 1.5 If provided picnic shelters shall not exceed 50 S.F.
- 1.6 Home occupations as approved by the HOA and allowed by ordinance.

2. CONSTRUCTION OF A UNIFIED DEVELOPMENT:

- 2.1 The Property shall be developed as one single and unified development in accordance with applicable ordinances and regulations, the GDP as approved by the Council, and this Proffer Statement.

3. ARCHITECTURE, SIGNAGE, AND LANDSCAPING:

- 3.1 All buildings on the Property shall be constructed using compatible architectural styles. The Applicant shall establish the required Property Owners' Association to enforce and administer a unified development plan in general conformity with the proffered requirements.
- 3.2 Unit architecture shall generally conform to the elevations and guidelines provided on Sheet 2 of the GDP.
 - a. The building floor plans shall be in general conformance with those plans attached hereto and made a part of this proffer.
- 3.3 A 100 SF landscaped area must be maintained within the front yard of each lot.
- 3.4 Trees meeting the City of Winchester Street Tree Standard shall be provided along the right-of-way. The total trees provided shall be at least 1 tree per 30 ft. of total road frontage.
- 3.5 Existing onsite plantings and vegetation may be used to satisfy the intent of the landscape screens shown as required on the Generalized Development Plan. Adequacy determination to be at time of planting by Zoning Administration.
- 3.6 All parking, sidewalk areas shall be of hard surface material, such as concrete, asphalt or pavers. A porous paver system shall also satisfy this requirement.

4. RECREATION AREAS:

- 4.1 In lieu of the up to 10% land set aside required by the City of Winchester Land Subdivision Ordinance Para. 5-40 and satisfy the recreation

development required by Zoning Ordinance Para. 13-1-6, the Applicant shall contribute to the City of Winchester \$300 per lot for improvements to park facilities as deemed appropriate. It is intended that these funds be used for improvement to recreational facilities at Overlook Park or Quarles Elementary School. Payment to be made at time of occupancy permit issuance.

- 4.2 Common open space shall be provided by designation of an open space easement over landscaped areas of the site and shall be a minimum of 30% of the site area.

5. CREATION OF PROPERTY OWNERS' ASSOCIATION:

- 5.1 The residential portion of the development shall be made subject to a Property Owners' Association(s) (hereinafter "POA") that shall be responsible for the ownership, maintenance and repair of all common areas, including parking areas and driveways within appropriate easements subject to their jurisdiction, and shall be provided such other responsibilities, duties, and powers as are customary for such associations or as may be required for such POA herein.
- 5.2 The POA shall be so established that it possesses all necessary powers to set and revise fees and dues in sufficient sums to perform the responsibilities assigned to it hereunder and under the Declaration to be recorded creating such Association. In addition, upon any conveyance of a residential unit from the builder thereof to a home purchaser, there shall be a fee paid by the home purchaser to the POA in an amount equal to three times the then-current monthly residential dues applicable to the unit so conveyed.
- 5.3 The POA shall comply with Article 9-9 of the Zoning Ordinance.
- 5.4 The POA documents shall be generally modeled on the Rules and Regulations made a part of these proffers.

6. WATER & SEWER:

- 6.1 The Applicant shall be responsible for connecting all lots to the City of Winchester public water and sewer. It shall further be responsible for constructing all facilities required for such connection. All water and sewer infrastructure shall be constructed in accordance with the requirements of the City of Winchester.

7. TRANSPORTATION:

- 7.1 All private streets and parking areas shall be constructed in accordance with the current Virginia Department of Transportation structural standards and shall be owned and maintained by the Property Owners Association served via appropriate easement.

SIGNATURES APPEAR ON THE FOLLOWING PAGES

Evergreen Real Properties, LLC

By:

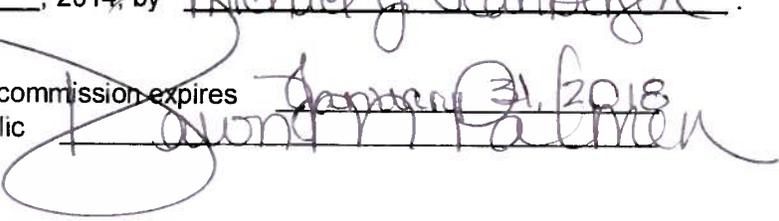

Michael J. Ranberger

Title: President

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

The foregoing instrument was acknowledged before me this 30th day of June, 2014, by Michael J. Ranberger.

My commission expires
Notary Public

January 31, 2018


Commerce Street Townhomes

Design & Development Standards

Revised June 24, 2014

In order to establish the quality appearance of the development the following standards are proposed.

Structure

Single Family Attached, one home per lot.

Relationship of primary façade to Commerce Street.

Setbacks – Allow intimate pedestrian scale to be developed between building and street.

Parking

On-street parking provided.

Overflow parking in rear yard area. Screening to prevent light spillage to adjacent residential.

Number of Units:	26 Maximum
Bedrooms per Unit:	2 Maximum
Parking:	2 Spaces Required per Unit, can be met by public and off street spaces, garage units and private driveways.
Building Height:	35' Maximum
Building Use:	Single Family Attached Units
Lot Width:	20' Minimum
Front Setback:	Minimum 10'; Maximum 20'
Side Setback:	Minimum 0'; Maximum 10'
Rear Setback:	To Parking – Minimum 10' To Property Line – Minimum 50'
Block Length:	No More Than 10 Units
Parking Setbacks:	To Residentially Zoned Property – Minimum 35' To Property Not Zoned for Residential Use – Minimum 6' To Public Right-of-Way (exclusive of entrances on public streets) – Minimum 10'

RULES AND REGULATIONS
FOR
COMMERCE STREET REZONING

GENERAL

1. Commerce Street Development Unit Owners Association ("Association"), acting through its Board of Directors, has adopted the following Rules and Regulations ("Regulations"). These Regulations may be amended from time to time by resolution of the Board of Directors.

2. Wherever in these Regulations reference is made to "unit owners," such term shall apply to the owner of any unit, to such owner's tenants whether or not in residence, and such Owner's (or such tenant's) household, servants, employees, agents, visitors, guests, invitees or licensees. Wherever in these Regulations reference is made to the Association, such reference shall include the Association and the managing agent when the managing agent is acting on behalf of the Association.

3. The unit owners shall comply with all the Regulations hereinafter set forth governing the buildings, patios, drives, recreational areas, grounds, parking areas and any other appurtenances.

4. The Association reserves the right to alter, amend, modify, repeal or revoke these Regulations and any consent or approval given hereunder at any time by resolution of the Association or the Board of Directors.

RESTRICTIONS ON USE

5. No part of the development shall be used for any purpose except housing and the common purposes for which the development was designed. Other than any unit designated by the Board of Directors for home occupation use, each unit shall be used as a private residence.

6. No unit owner shall obstruct any of the common elements nor shall any unit owner place or cause or permit anything to be placed on or in any of the common elements (except the areas designated for storage by the Development Instruments or the Board of Directors) without the approval of the Board. Nothing shall be altered or constructed in or removed from the common elements except with the prior written consent of the Board of Directors or the Covenants Committee, as appropriate.

7. The common elements shall be used only for the furnishing of the services and facilities for which the same are reasonably suited and which are incident to the use and occupancy of the units. The sidewalks shall be used for no purpose other than for normal transit.

8. Nothing shall be done or kept in any the common elements which will increase the rate of insurance for the buildings or contents thereof applicable for residential use without the prior written consent of the Board of Directors. No unit owner shall permit anything to be done or kept

in the unit or on the common elements which will result in the cancellation of insurance on the buildings or contents thereof or which would be in violation of any public law, ordinance or regulation. No gasoline or other explosive or inflammable material may be kept in any unit or storage area.

9. All garbage and trash must be placed in proper receptacles designated for refuse and no garbage or trash shall be placed elsewhere on any common element.

10. Except in the recreational areas designated as such by the Board of Directors, no playing or lounging shall be permitted, nor shall baby carriages, velocipedes, bicycles, playpens, wagons, toys, benches, chairs or other articles of personal property be left unattended in parking areas, on sidewalks or lawns or elsewhere on the common elements.

11. The toilets and other water and sewer apparatus shall be used only for the purposes for which they were designed, and no sweepings, matches, rags, ashes or other improper articles shall be thrown therein. The cost of repairing any damage resulting from misuse of any such apparatus shall be borne by the unit owner causing such damage.

12. Each unit owner shall keep the unit in a good state of preservation, repair and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors, windows or patios thereof, any dirt or other substance.

13. Nothing shall be done in any unit or on the common elements which may impair the structural integrity of any building or which may structurally change any building nor shall anything be altered or constructed on or removed from the common elements, except upon the prior written consent of the Board of Directors.

14. No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations or all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with, by and at the sole expense of the unit owner or the Board of Directors, whichever shall have the obligation to maintain or repair such portion of the Property, and, if the latter, then the cost of such compliance shall be a common expense.

15. No unit owner shall make or permit any disturbing noises in any building or do or permit anything which will interfere with the rights, comforts or convenience of other unit owners. All units owners shall keep the volume of any radio, television, musical instrument or other sound producing device in their units sufficiently reduced at all times so as not to disturb other unit owners.

16. The right is hereby given to any owner of any unit to place for sale or for rent signs on any unit owned, but in no event will any sign be larger than one foot by two feet.

17. Draperies, curtain or venetian blinds must be installed by each unit owner on all windows of the unit and must be so maintained thereon at all times.

18. No unit owner shall cause or permit anything to be hung, displayed or exposed on the exterior of a unit, whether through or upon the windows, doors, masonry or patio of such unit that can be seen from the City public street (Commerce Street). The prohibition herein includes without limitation laundry, clothing, rugs, signs, awnings, canopies, shutters, radio or television antennas or any other items. Under no circumstances shall any exhaust fan, air conditioning apparatus, television or radio antennas or other items be installed by the unit owner beyond the boundaries of the lot. No clothesline, clothes rack or any other device may be used to hang any items on any window or patio, nor may such devices be used anywhere on the common elements except in such areas as may be specifically designated for such use by the Board of Directors. Patios shall not be used as storage areas.

PET RULES

19. No animals, livestock, poultry or reptiles of any kind, regardless of number, may be maintained, kept, boarded or raised, in any unit or upon the common elements, except that the keeping of orderly domestic pets (e.g., dogs, cats or caged birds) not to exceed one per unit without the approval of the Board of Directors, and aquarium fish and other limited species of animals which do not normally leave the unit and which do not make any unreasonable disturbance or noise is permitted, subject to the Rules and Regulations adopted by the Board of Directors, and provided that such animals are not kept for breeding purposes.

20. A pet may be maintained in a unit only for so long as it is not a nuisance. Any such pet causing or creating a nuisance or any unreasonable disturbance or noise may be permanently removed from the Development upon ten days written notice from the Board of Directors. Actions which will constitute a nuisance include but are not limited to abnormal or unreasonable crying, barking, scratching or unhygienic offensiveness.

21. Except in pet exercise areas designated by the Board of Directors, pets must be leashed or carried; leashes may not exceed a length which will permit close control of the pet.

22. Pet owners are fully responsible for personal injuries and/or property damage caused by their pets and shall indemnify and hold the Association, each unit owner and the Declarant free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Development.

23. All pets which may leave the unit must be registered and inoculated as required by law and registered with the Association office. The Board of Directors may establish reasonable fees for registration, not to exceed the additional costs incurred by the Association resulting from the presence of the pets.

24. Owners of pets walked upon the common elements must promptly clean up their pet's droppings in all areas outside any authorized pet exercise areas.

PARKING AND STORAGE

25. No personal property may be stored on the common elements except in storage areas designated as such by the Development Instruments or by the Board of Directors. All personal property placed in any portion of a building or any place appurtenant thereto, including without

limitation the storage areas, shall be at the sole risk of the unit owner and the Association shall in no event be liable for the loss, destruction, theft or damage to such property.

26. Should any employee of the Association at the request of a unit owner move, handle or store any articles or handle, move park or drive any automobile placed in the parking areas, then, and in every such case, such employee shall be deemed the agent of the unit owner. The Association shall not be liable for any loss, damage or expense that may be suffered or sustained in connection therewith.

27. Trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if expressly permitted by the Rules and Regulations and only in such parking areas, if any, as may be designated for such purpose by the Board of Directors. All vehicles shall be parked wholly within parking space lines. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any of the common elements; provided, however, that such vehicles may be parked inside the garage located within a unit (if provided). Except in areas designated by the Board of Directors, vehicle repairs other than: (i) emergency maintenance, (ii) ordinary light maintenance (excluding fluid changes and other operations which might soil the common elements) and (iii) normal cleaning are not permitted on the common elements.

28. All unit owners shall observe and abide by all parking and traffic regulations posted by the Association or by municipal authorities. Vehicles parked in violation of any such regulations may be towed away at the unit owner's sole risk and expense.

29. Parking so as to block sidewalks or driveways shall not be permitted. If any vehicle owned or operated by a unit owner shall be illegally parked or abandoned on the Development, the Association shall be held harmless by such unit owner for any and all damages or losses that may ensue, and any and all rights in connection therewith that the owner or driver may have under the provisions of state or local laws and ordinances are hereby expressly waived. The unit owner shall indemnify the Association against any liability which may be imposed on the Association as a result of such illegal parking or abandonment and any consequences thereof.

RECREATIONAL AND COMMON FACILITIES

30. All persons using any of the recreational or common facilities do so at their own risk and sole responsibility. The Association does not assume responsibility for any occurrence, accident or injury in connection with such use. No unit owner shall make any claim against the Association, its servants, agents, or employees, for or on account of any loss or damage to life, limb or property sustained as a result of or in connection with any such use of any of the recreational or common facilities. Each unit owner shall hold the Association harmless from any and all liabilities and any action of whatsoever nature by any tenants, guests, invitees or licensees of such unit owner growing out of the use of the recreational or common facilities, except where such loss, injury or damage can be clearly proved to have resulted from and been proximately caused by the direct negligence of the Association or its agents, servants or employees in the operation, care or maintenance of such facilities.

31. Any damage to a building, the recreational facilities or other common elements or equipment caused by a unit owner or such unit owner's guests or pets shall be repaired at the expense of the unit owner.

ASSOCIATION

32. All charges and assessments imposed by the Association are due and payable on the _____ . Payment shall be made at the managing agent's office by check or money order, payable to the Development. Cash will not be accepted.

33. Complaints regarding the management of the Development or regarding actions of other unit owners shall be made in writing to the managing agent or the Board of Directors.

34. No unit owner shall direct, supervise or in any manner attempt to assert control over or request favors of any employee of the managing agent or the Unit Owners Association.

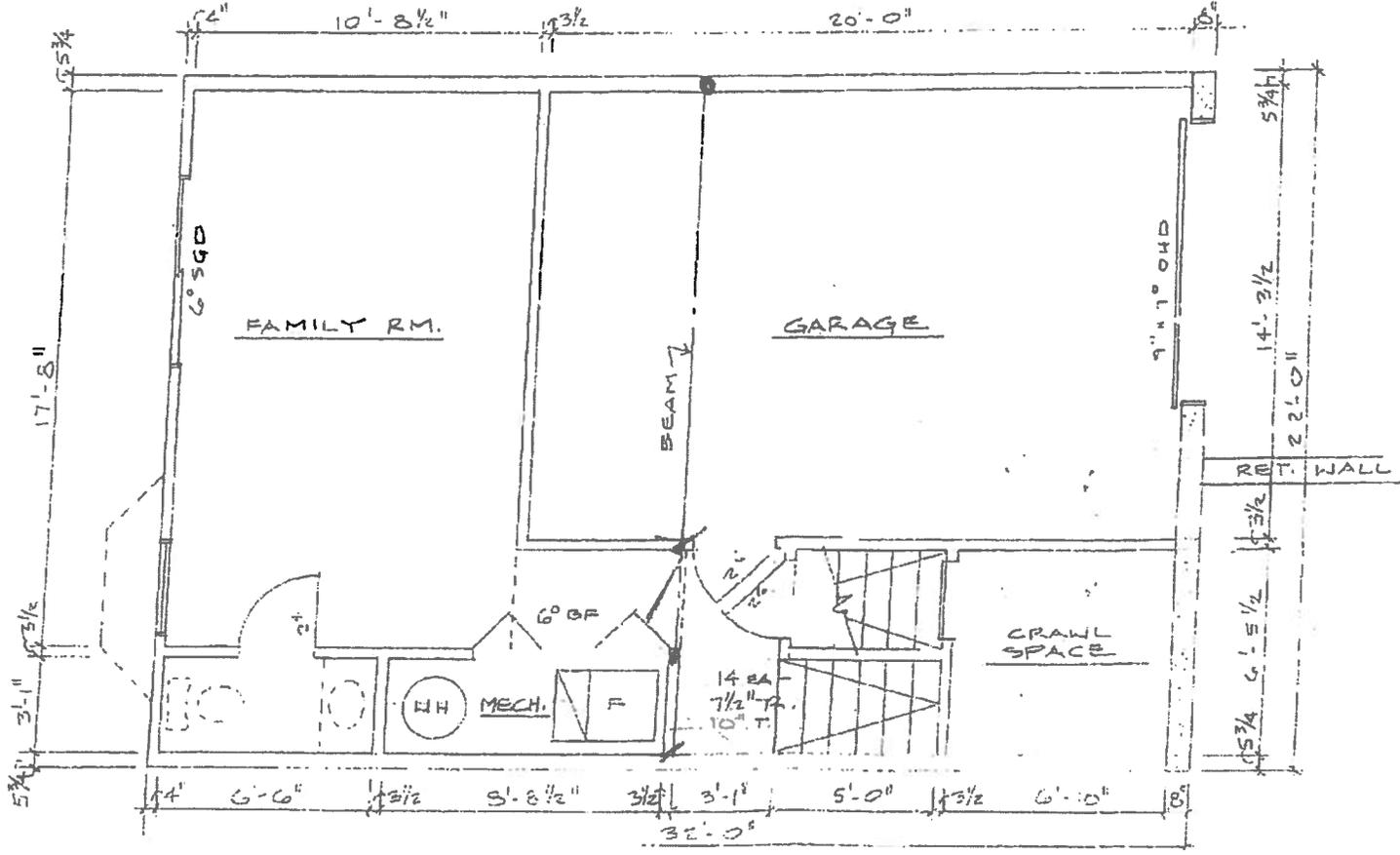
CONSIDERATION IN USE OF UNITS

35. All persons shall be properly attired when appearing in any common area of the Property and any other public spaces of the Development.

36. All radio, television or other electrical equipment of any kind or nature installed or used in each unit shall fully comply with all rules, regulations, requirements or recommendations of the Board of Fire Underwriters and the public authorities having jurisdiction, and the unit owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such unit.

GENERAL

37. The planting of plants, flowers, trees, shrubbery and crops of any type is prohibited anywhere on the common elements without the prior written consent of the Board of Directors. No fences may be erected around or on the common elements.



Pennoni Associates Inc.
 Engineers • Surveyors • Planners
 Landscape Architects

117 East Piccadilly Street • Winchester, VA 22601
 T 540 867.2139 • F 540.665.0493

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DRAWN BY:
 KLM

CHECKED BY:
 RAM

PROJECT NO.
 ADVH1301

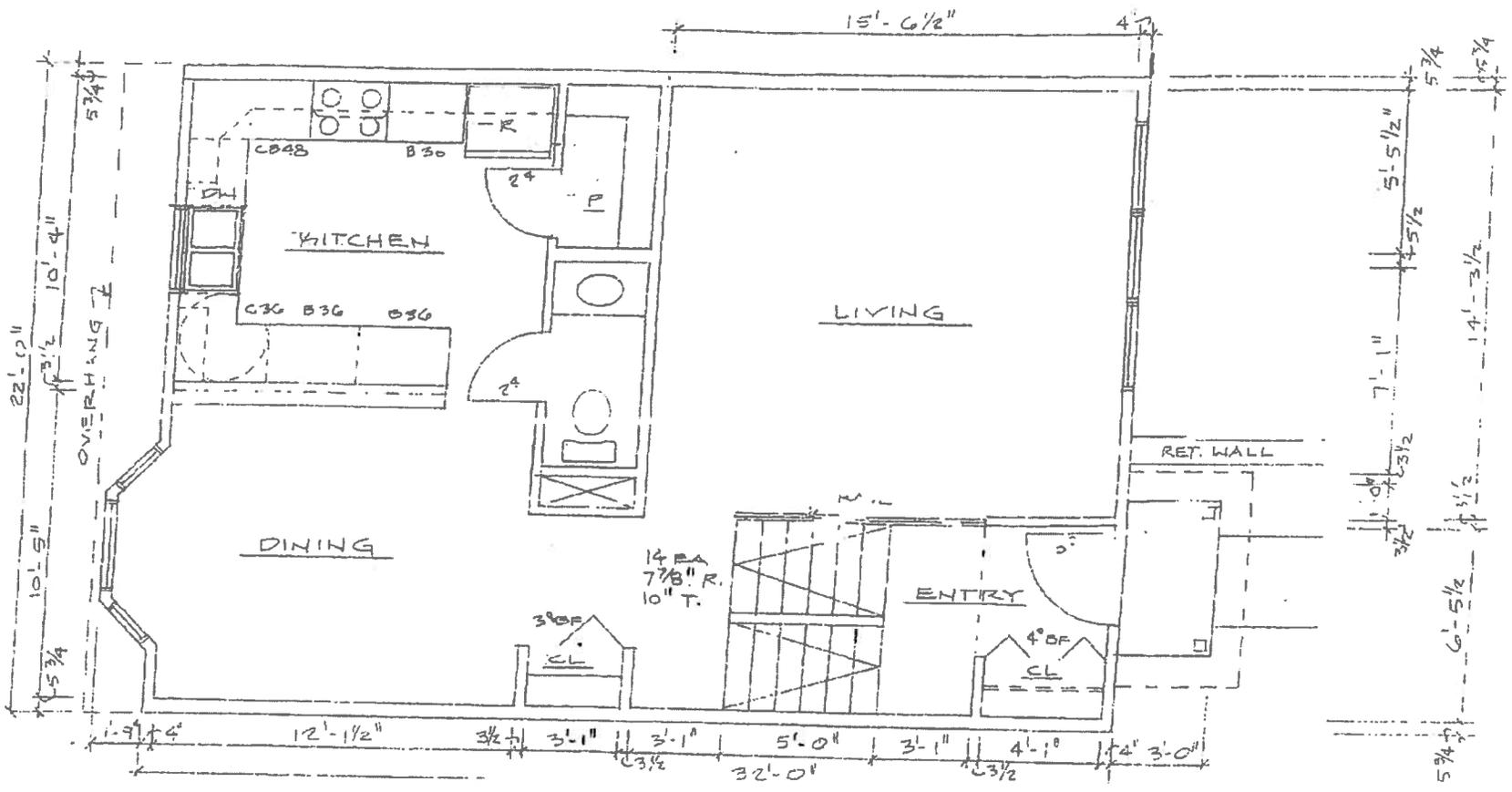
SCALE:
 NO SCALE

DRAWING NO.

DATE:
 2014-06-30

COMMERCE STREET TOWNHOMES - FLOOR PLAN SHEET 1

CS1001



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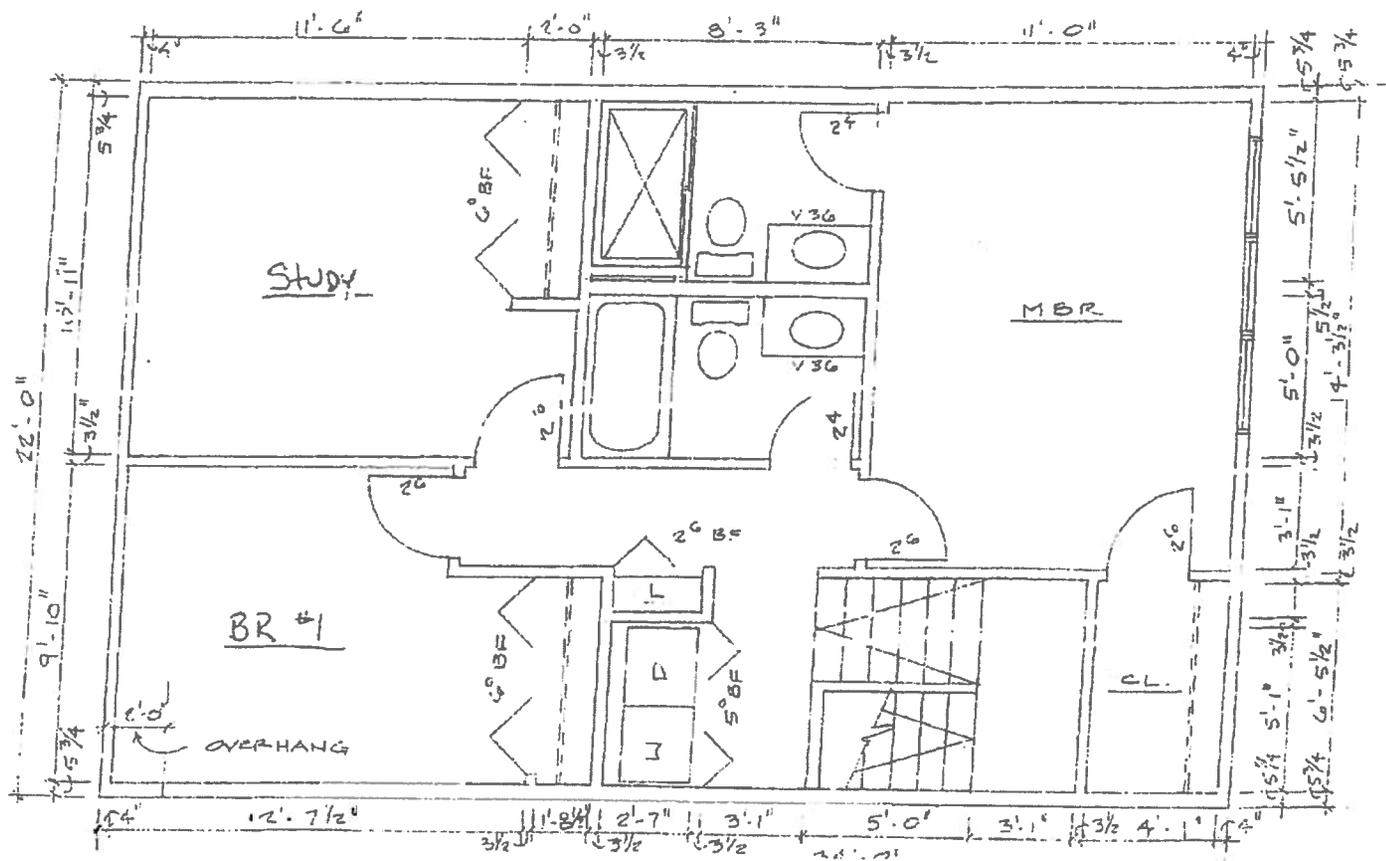
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DRAWN BY: KLM
 CHECKED BY: RAM
 PROJECT NO. ADVH1301

SCALE: NO SCALE
 DATE: 2014-06-30
 DRAWING NO.

CS1002

COMMERCE STREET TOWNHOMES - FLOOR PLAN SHEET 2



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 Landscape Architects

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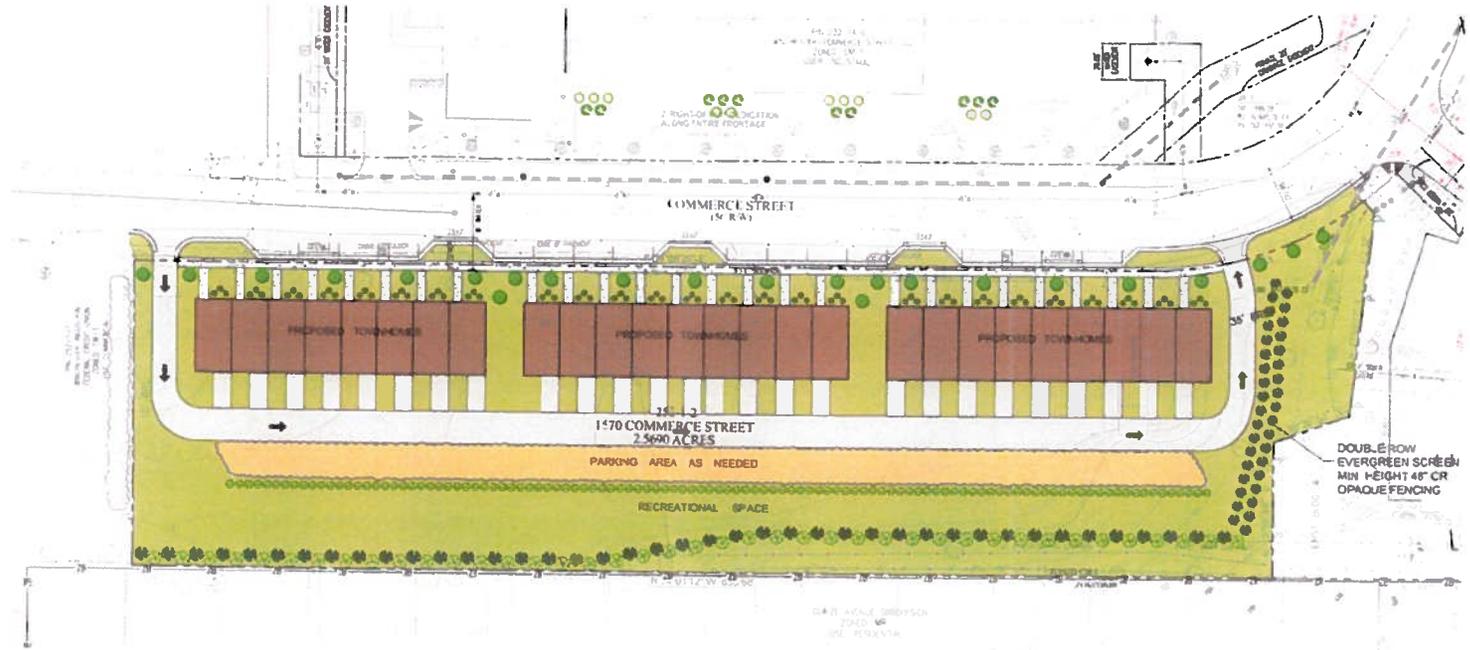
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 PROJECT NO: ADVH1301

SCALE: NO SCALE
 DATE: 2014-06-30

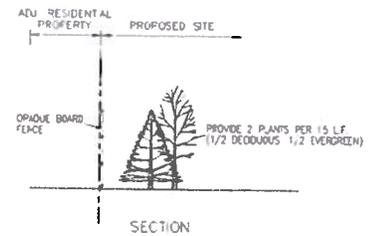
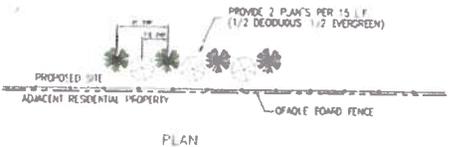
DRAWING NO.

CS1003

COMMERCE STREET TOWNHOMES - FLOOR PLAN SHEET 3



EXISTING PLANTINGS AND VEGETATION MAY BE USED TO SATISFY THE INTENT OF THE LANDSCAPE SCREENS, S479A AS REQUIRED.



ZONING DISTRICT BUFFER
NTS



Prepared by:
Pennoni Associates Inc.
117 East Piccadilly Street, Suite 200
Winchester, Virginia 22601
Tel: 540-667-2139 Fax: 540-665-0493

GENERALIZED DEVELOPMENT PLAN COMMERCE STREET TOWNHOMES

1570 COMMERCE STREET
CITY OF WINCHESTER, VIRGINIA
DATE: FEB. 3, 2014



UNIT A - ELEVATION #1

UNIT A - ELEVATION #2

UNIT A - ELEVATION #3

UNIT A - ELEVATION #4

Front Elevation

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

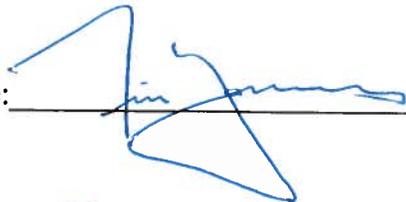
INSURANCE: N/A

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			7/17/2014
2. City Manager			7/17/14
3. Clerk of Council			



Initiating Department Director's Signature:
(Planning)



7/16/14



APPROVED AS TO FORM:


102
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.

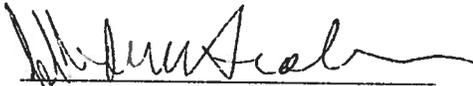
Improvements

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

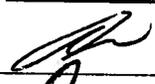
ADVISORY BOARD RECOMMENDATION:

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:


CITY ATTORNEY 7/17/14

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*".

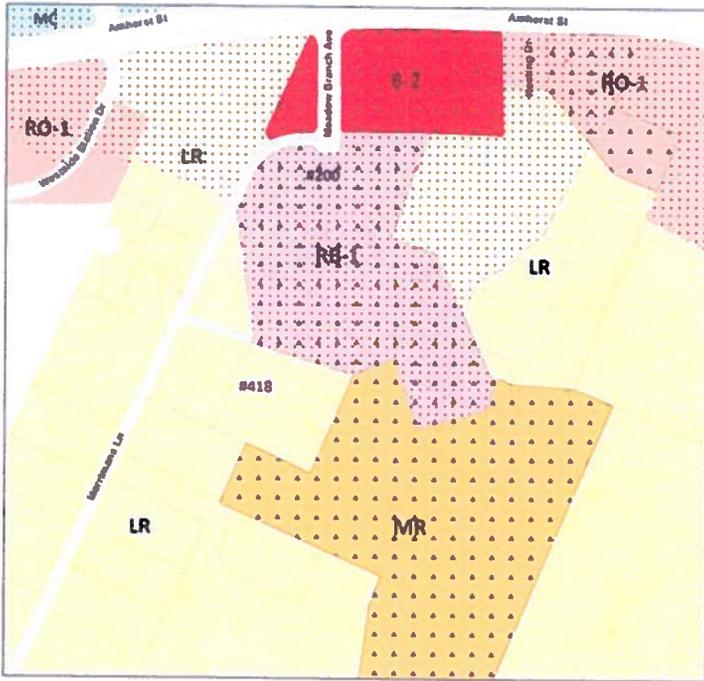
BE IT FURTHER ORDAINED by the Common Council of the City of Winchester, Virginia that the rezoning is subject to adherence with the Generalized Development Plan titled 'Ridgewood Orchard and DBL Holdings' dated July 11, 2014 and the submitted proffers dated June 2, 2014 and last revised July 11, 2014.

REZONING EXHIBIT

RZ-14-351

PREPARED BY WINCHESTER PLANNING DEPARTMENT

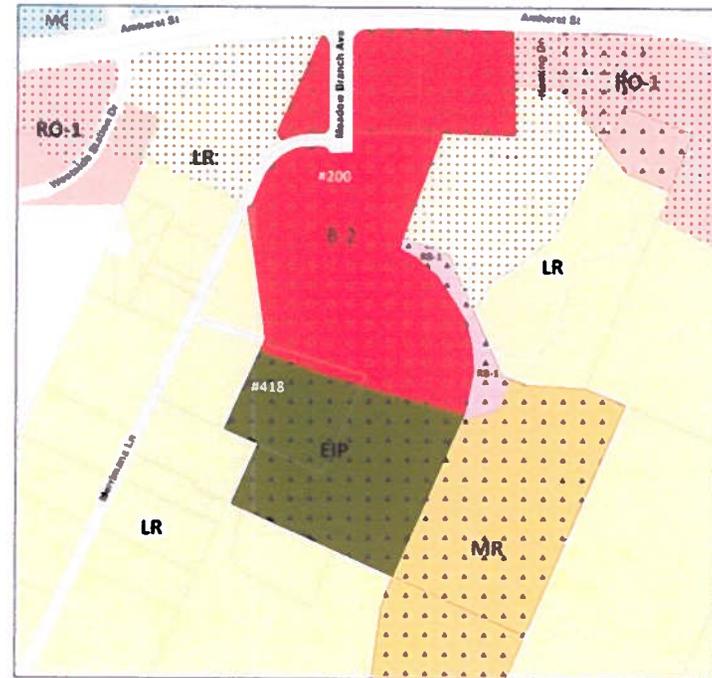
JULY 14, 2014



EXISTING:

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

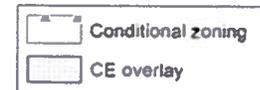
418 MERRIMANS LN
LR



PROPOSED:

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

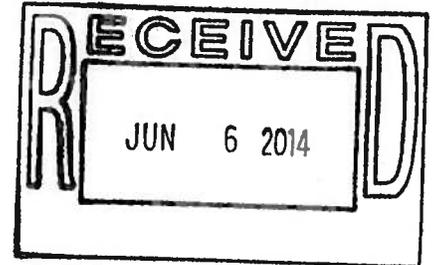
418 MERRIMANS LN
Conditional EIP
Conditional B-2





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.
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 _____.

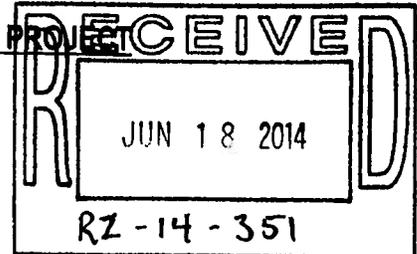
My commission expires on _____

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 MEETING OF: 7/22/14 (work session),
8/12/14 (reg mtg)

CUT OFF DATE: 7/16/14

RESOLUTION X ORDINANCE ___ PUBLIC HEARING ___

ITEM TITLE:

RESOLUTION ADOPTING GUIDELINES PERTAINING TO SUBSTITUTE MATERIALS AS AN ADDENDUM TO THE EXISTING WINCHESTER HISTORIC DISTRICT DESIGN GUIDELINES

STAFF RECOMMENDATION:

Approval

PUBLIC NOTICE AND HEARING:

N/A

ADVISORY BOARD RECOMMENDATION:

The Board of Architectural Review endorsed the guidelines and recommended approval 6/19/14.

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	<i>w.m</i>		<i>7/16/14</i>
2. City Attorney	<i>[Signature]</i>		<i>7/17/2014</i>
3. City Manager	<i>[Signature]</i>		<i>7/17/14</i>
4. Clerk of Council			

Initiating Department Director's Signature: *[Signature]* *7/16/14*
(Planning)



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: June 24, 2014
Re: RESOLUTION ADOPTING GUIDELINES PERTAINING TO SUBSTITUTE MATERIALS AS AN ADDENDUM TO THE EXISTING WINCHESTER HISTORIC DISTRICT DESIGN GUIDELINES

THE ISSUE:

Amending the existing, adopted seven-part series of Winchester Historic District Guidelines to include an eighth booklet pertaining to use of substitute materials.

RELATIONSHIP TO STRATEGIC PLAN:

Winchester Vision 2028; Principle 1 - Beautiful and Historic City;
Item #3: Preservation and restoration of historic buildings and sites

BACKGROUND:

The existing Guidelines were drafted using a Certified Local Government grant and adopted in 1999. The intent was to provide guidance toward exterior changes that is more carefully tailored to the Winchester Historic District than the broader Secretary of Interior's Standards for Rehabilitation.

The introduction of substitute, or nontraditional, materials is an ongoing process. The Board of Architectural Review (BAR) regularly receives applications for the use of such materials in the District. However, the current Guidelines, as well as the Secretary of Interior's Standards, provide only limited guidance or reference to the use of such materials.

Both staff and the BAR recognize that there are opportunities in certain circumstances to use such materials within the District, particularly when they are proposed to replace existing materials that are clearly inappropriate to the District (such as vinyl siding) or when they are proposed for use on additions or new construction.

The Board reviewed and modified the proposed guidelines pertaining to the use of substitute materials over several meetings from April through June 2014.

BUDGET IMPACT:

N/A

OPTIONS:

- Adopt as proposed
- Adopt with modifications
- Refer back to BAR with recommendations for modifications
- Deny

RECOMMENDATIONS:

- Staff recommends approval.
- BAR endorsed the guidelines and forwarded to Council recommending approval at its 6/19/14 meeting.

RESOLUTION ADOPTING GUIDELINES PERTAINING TO SUBSTITUTE MATERIALS AS AN ADDENDUM TO THE EXISTING WINCHESTER HISTORIC DISTRICT DESIGN GUIDELINES

WHEREAS, on December 14, 1999, the Common Council adopted by resolution the seven-part series of booklets known as the Winchester Historic District Guidelines (“Guidelines”) developed as a result of a Certified Local Government grant and established the Guidelines as official City of Winchester policy; and,

WHEREAS, the Board of Architectural Review (“Board”) regularly receives applications for the use of substitute or nontraditional materials; and,

WHEREAS, the Guidelines currently contain very limited guidance pertaining to the use of substitute materials; and,

WHEREAS, the Guidelines have not been amended since their initial adoption in 1999; and,

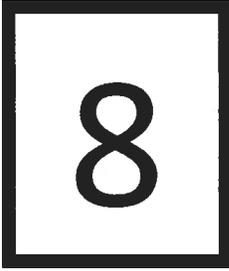
WHEREAS, the Secretary of Interior’s Standards for Rehabilitation are largely weighted toward guidance pertaining to preservation, rehabilitation, restoration, and reconstruction of existing, contributing resources; and,

WHEREAS, the Board has drafted guidelines pertaining to the use of substitute materials, in particular to address opportunities to replace existing, inappropriate materials and to provide better guidance toward applications for additions and new construction; and,

WHEREAS, the Board, after months of deliberation and careful consideration, at its June 19, 2014 meeting endorsed a proposed eighth booklet pertaining to the use of substitute materials and forwarded this booklet to Council recommending its adoption as an amendment to the existing Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Common Council hereby adopts the eighth booklet pertaining to substitute materials as an addendum to the existing Winchester Historic District Design Guidelines and re-adopts the Guidelines, as amended, as official City of Winchester policy.

Winchester Historic District Design Guidelines



SUBSTITUTE MATERIALS

This brochure serves as an amendment to the adopted [Winchester Historic District Design Guidelines](#), published in 1999 in a series of seven brochures. The intent of this brochure is to update or reinforce existing guidelines pertaining to the use of substitute or nontraditional materials.

New building materials routinely become available for use. Each of these can change the character of a building depending on the nature of the material, the material it is intended to replace, and the prominence of where the material is placed. In the mid to late 20th century, vinyl, aluminum, and asphalt shingle siding, synthetic frame windows, and thin asphalt roofing shingles came into common usage. These materials are usually inconsistent with the historic character of buildings in the District. More recently a variety of composition board sidings have been developed. While these materials more closely resemble traditional wood siding, they often lack the subtle visual characteristics that define the overall historic character of a building.

As stated in Brochure 1, *Owning Property in the Historic District*, and in Article 14 of the Winchester Zoning Ordinance, the [Secretary of the Interior's Standards for Rehabilitation](#) remain as the primary guidance for the Board of Architectural Review when considering an application for a Certificate of Appropriateness. The Secretary's Standards, plus its related Technical Guidance Publications (including its Preservation Briefs), are largely weighted toward guidance pertaining to preservation, rehabilitation, restoration, and reconstruction of existing, contributing resources. Guidance as to additions and new construction is much more limited.

Standards applicable to additions/new construction:

Standard #9: New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

Standard #10: New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

GENERAL GUIDELINES

When using substitute materials, avoid combinations that contribute to a patchwork appearance. For example, use a uniform application of primary wall-cladding material on all sides of the building rather than different materials on various elevations. Creating a false façade (such as using a traditional material on a front elevation and a substitute material on secondary elevations) is generally not appropriate. However, a combination may be appropriate to differentiate separate elements (such as an addition from the original structure).

When considering the application of substitute materials, the Board shall consider the prominence of such features in relation to the primary structure (for additions) and adjacent properties and, in general, Standard #9 pertaining to differentiation of old and new work and compatibility with regard to massing, size, scale, and architectural features. The relationship of a building to its site and its surrounding neighborhood is a significant dimension of its character; as such, ***the context of the application is important***. Just as a particular roof dormer, ornate cornice, or porch column on an historic structure may be appropriate in one application but not another, approval of use of a substitute material in one application does not imply a precedence by which it is appropriate in other applications without regard to context. Such materials, when used judiciously, can effectively complement other properties in the District without becoming defining characteristics themselves.

The consideration of the use of substitute materials will generally fall into one of three categories:

- 1) Replacement/Rehabilitation of Existing Appropriate Materials;
- 2) Replacement/Rehabilitation of Existing Inappropriate or Synthetic Materials; or,
- 3) New Additions or New Construction.

The appropriateness of such materials will vary depending on the intended application.

The owner of this two-story vernacular dwelling chose to use traditional materials in all aspects:

-Previously applied stucco was removed to expose beaded lap siding, much of which was deteriorated beyond repair and required replacement (cat. 1);

-Wood windows were installed, replacing inappropriate vinyl-sash windows (cat. 2); and,

-A small front porch was then constructed using wood framing and columns with a metal roof and half round gutters to match the main structure (cat. 3).



endorsed by BAR June 19, 2014

1) Replacement/Rehabilitation of Existing Appropriate Materials

The Secretary of Interior's Standards and existing *Winchester Historic District Design Guidelines* continue to serve as the guiding documents for preservation, rehabilitation, restoration, and reconstruction. Original materials should be retained and repaired as needed wherever practical. All repairs should match the original work in design, material, texture and workmanship. Where replacement is necessary due to excessive deterioration or damage, appropriate replacements should match the historic conditions in design, materials, appearance and workmanship to the greatest degree practical.

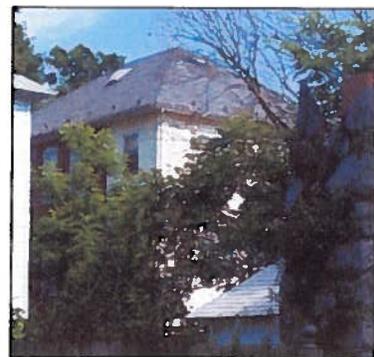
In general, substitute or synthetic materials will not be approved for replacement or repair of original or otherwise appropriate materials on existing structures. For example, replacement of deteriorated wood siding with fiber-cement siding is not appropriate. Preservation Brief 16, [*The Use of Substitute Materials on Historic Building Exteriors*](#), is a good resource for examining the limited circumstances that warrant consideration of use of substitute materials.

2) Replacement/Rehabilitation of Existing Inappropriate or Synthetic Materials

This category is intended to address rehabilitation of structures that were constructed or modified with non-traditional materials prior to the adoption of the Historic Winchester District. Examples may include structures that were fitted with vinyl, aluminum, or asphalt shingle siding, synthetic frame windows, or thin asphalt roofing shingles prior to the requirements for obtaining a Certificate of Appropriateness. This category is not intended to provide a means of redress for work that was done in violation of the Ordinance.

Owners of such properties are encouraged to remove synthetic materials where they have been previously installed and to reclaim and restore any underlying original materials or replace with traditional materials. However, ***it may be appropriate to replace previously applied synthetic materials with substitute synthetic materials that better replicate original/traditional materials found in the District.*** For example, it may be appropriate to upgrade from vinyl or aluminum siding to fiber cement siding (a composite material made of sand, cement and cellulose fibers), or to upgrade from three-tab shingles to "architectural" shingles (also known as "dimensional" shingles; a multi-layer, laminated shingle which gives more varied, contoured visual effect to a roof surface).

The two-story, integral rear porch of this dwelling with limited visibility from a public alley was previously enclosed and clad in metal siding. The owner replaced the deteriorated metal with fiber-cement siding.



endorsed by BAR June 19, 2014

3) Additions or New Construction

Synthetic materials generally do not replicate the defining characteristics - warmth, patina, texture, light-reflecting qualities, etc. - of traditional materials. An abundance of such materials detract from the District's character. ***Traditional materials remain preferred for additions or new construction; however, certain substitute materials may be appropriate when they are compatible and complementary to materials on adjacent historic structures and when such materials do not detract from the overall character of the District.*** Such materials should replicate the workability of original materials (i.e. substitute siding should be adhered and applied in traditional patterns such as wood siding commonly found in the District).

While constructed of limestone and concrete with a metal roof and other traditional materials sympathetic to the original structure, the rear of the Handley Library is easily discernable as an addition.



Variation in the roof line and breaks in the awnings allow the use of architectural shingles to not become too predominant on this newer commercial building.

While the main structure (background) on this property is brick construction with a standing seam metal roof and has a highly visible front elevation, the rear addition and small detached garage seen here are only visible from along a narrow, infrequently traveled alley. Both were constructed with fiber-cement lap siding and shingles were deemed appropriate for the garage.



endorsed by BAR June 19, 2014

Winchester Department of Social Services

People helping people triumph over poverty, abuse and neglect to shape strong futures for themselves, their families and communities.



Social Services Staffing

- 49 staff members, includes:
 - Director
 - 1 Assistant Director
 - 1 Admin. Coordinator/6 Clerical FTE's, 1 PTE
 - 1 CSA Coordinator
 - 2 Family Services Coordinators/14 Service FTE's
 - 2 Benefit Program Coordinators/15 Benefit FTE's, 3 PTE's
 - 2 Housing Choice Voucher Program Staff



The Winchester Social Services (WDSS) is one of 120 local departments in Virginia's state-supervised, locally-administered public social services system. WDSS is an agency of city government which administers federal, state, and local public assistance and social service programs.

- ❖ City Manager serves as the Administrative Board
- ❖ City Council appoints Advisory Board

Virginia Code § 63.2



FY2015 WDSS Operating Budget

\$3,308,200--FY15 Administration Budget
Local share \$1,369,249 (40.03%)

\$1,381,800--FY 15 Program Budget
Local share \$111,703.91 (8%)

\$4,690,000 --Total FY2015 Operating Budget
Total Local share \$1,480,953.87 (31.58%)

**local share estimate based upon historical revenue trends*

WDSS Advisory Board



- To interest itself in all matters pertaining to the public assistance and social services
- To monitor the formulation and implementation of public assistance and social services programs
- To meet with the City Manager who constitutes the board at least four times a year for the purpose of making recommendations on policy matters concerning
- To make an annual report to the City Manager
- To submit to the City Manager, from time to time, other reports that the Advisory Board deems appropriate

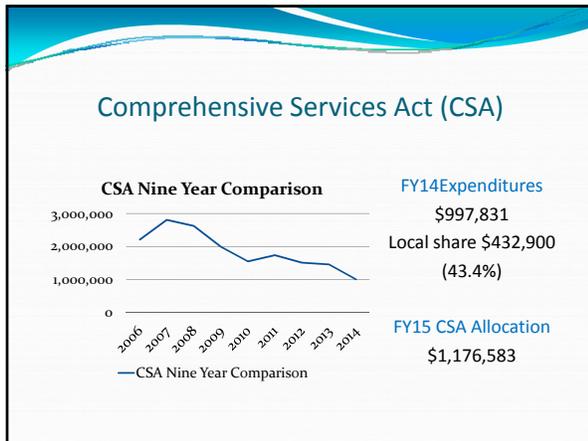
Total Amount spent in Social Services in the locality (FY2013)

\$41,222,964

Social Services Spending in Locality by Funding Source, SFY 2013



Funding Source	Percentage
Federal	5%
State	37%
Local	58%



- ### WDSS Mandated Programs
- Family Strengthening
- Child Protective Services
 - Foster Care
 - Independent Living
 - Adoption
 - Family Services-Foster Care Prevention
 - Adult Protective Services
 - Adult Services

WDSS Programming

Income Stability and Self-Sufficiency
Family Strengthening

- ### Major Initiatives 2014-2015
- Eligibility Modernization
 - Common Help Customer Portal Stations
 - Comprehensive Service Act Strategic Planning
 - Child Welfare Training--Poverty, Trauma, Substance Abuse & Safety
 - Parental Substance Abuse & Impact on Child Welfare
 - Mass Care Planning

- ### WDSS Mandated Programs
- Income Stability & Self Sufficiency
- Medical Assistance
 - Supplemental Nutritional Assistance (SNAP)
 - Temporary Assistance for Needy Families (TANF)
 - Virginia Initiative for Employment not Welfare (VIEW)
 - Child Care Assistance
 - Auxiliary Grant
 - Low Income Home Energy Assistance Program (LIHEAP)

Eligibility Modernization

A consolidated, integrated, end-to-end delivery model to support Social Service programs

Eligibility Modernization

- Implementation of new data system—Virginia Case Management System (VaCMS)
- Expanded access to apply for benefits, phone, fax and online
- Common Help- a web-based, self-service application tool
- Access to Federal Data Hub; Electronic coordination of applications between Medicaid and the Health Insurance Marketplace (HIM)
- Online credentials checked electronically-fighting fraud and abuse
- Implementation of new eligibility rules (Modified Adjusted Gross Income - MAGI); Standardization of eligibility rules across all 50 states

Common Help

www.commonhelp.virginia.gov

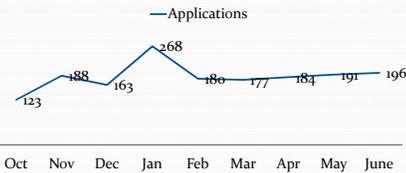
- ✓ Screen for eligibility
- ✓ Apply for benefits and services
- ✓ Check your benefits and services
- ✓ Report Changes
- ✓ Renew Online




Virginia Case Management System (VaCMS)

Transition of the delivery of Virginia's health and social services programs onto a single technology platform is being performed over multiple years on three major phases

Common Help Applications



Month	Applications
Oct	123
Nov	188
Dec	163
Jan	268
Feb	180
Mar	177
Apr	184
May	191
June	196

VaCMS Development Phases

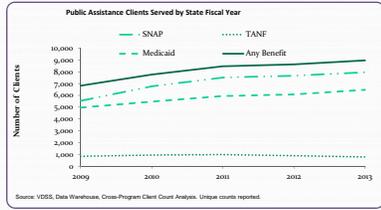
October 2013
Accepts new Medical Assistance (Families & Children) & Child Care

June 2015
Conversion of pre-existing Medical Assistance cases, Document Imaging, and Central Printing

April 2016
Conversion of LIHEAP, SNAP, TANF, and VIEW & remaining Medical Assistance (ABD, Long-term Care)

Winchester Social Services provided Medicaid, SNAP, or TANF benefits to 8,978 clients in fiscal year 2013.

In April 2014, 7,013 clients received at least one these benefits.



Source: YDSE, Data Warehouse, Cross-Program Client Count Analysis. Unique counts reported.





A Virginia Accredited Law Enforcement Agency

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

Telephone: (540) 545-4700
FAX: (540) 542-1314
Website: www.winchesterva.gov

**WINCHESTER POLICE DEPARTMENT
MONTHLY COUNCIL REPORT
June 2014**

5 YEAR TREND FOR MAJOR CRIMES- JUNE

	2010	2011	2012	2013	2014
THEFT	79	96	109	61	61
GRAND THEFT	17	9	23	18	21
MVT	0	2	1	2	2
ROBBERY	1	0	0	2	1
RAPE	0	1	0	0	1
B&E	16	8	17	8	12

5 YEAR TREND ENFORCEMENT -Enforcement for JUNE - 5 year trend

	2010	2011	2012	2013	2014
Felony Arrests	39	30	16	31	76
Misdemeanor Arrests	115	212	154	148	248
Legal Document - Felony	50	26	39	31	55
Legal Document - Misdemeanor	150	145	150	119	164
DUI Arrests	20	21	11	20	12
Incident Reports	348	344	389	298	358
Field Contacts Documented	93	52	104	21	9
Speeding - Radar	92	134	51	50	41
Traffic Violations	226	474	172	197	151
Vehicle Crash Investigations	40	65	63	60	36
Warning Citations					29
Vehicle Stops				779	611
Parking Violations	132	216	90	96	47

Up-to-date statistics can be found at www.winchesterpolice.org/crimestats/index1.html and up-to-date crime maps are available at www.winchesterpolice.org/crimemap/index1.html.

“Committed to improving the quality of life for all people by preventing crime in the city.”

2014 Fire and Rescue Department Statistics

Month	Incidents											Casualties		Training Hours		Resuscitation Efforts	
	EMS	Fire	Total	Struc. Fire	Fire Other	ALS 1	ALS 2	BLS	Pt. Ref.	Mutual Aid Given	Mutual Aid Recvd.	Fire	Civ.	Dept. Personnel	LFCC Ride-Along Students	Cardiac Arrest	Cardiac Arrest Saved
January	420	151	571	4	147	184	7	166	26	49	16	0	0	780	0	6	1
February	298	90	388	3	87	156	4	103	14	22	9	0	0	1034	0	3	2
March	332	107	439	2	105	187	3	96	32	22	4	0	0	1232	0	3	0
April	380	114	494	7	107	189	5	136	24	35	12	0	2	2148	0	3	0
May	440	112	552	7	105	195	4	131	40	43	29	0	1	1621	0	3	2
June	354	105	459	2	103	145	2	133	37	27	5			2232	0	2	0
July			0		0												
August			0		0												
September			0		0												
October			0		0												
November			0		0												
December			0		0												
TOTAL	2224	679	2903	25	654	1056	25	765	173	198	75	0	3	9047	0	20	5

25.00%
26.3% National Average

10 Years of Incidents											
2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
4932	5288	5711	5673	5571	5365	5407	5539	5541	5756	5605	

Other Monthly Activity:



AFM Gearhart, Fire Marshal Academy Graduation - Lt. G. Bohus and BC Henschel, VA Fire Officer Academy Graduation - PFF Greenbacker, Operational Clearance - Kids and Cops Camp

FY 2014 EMS Revenue Recovery Statistics

	Gross Revenue	Manual Contractural Allowances	Automatic Contractural Allowances	Refunds	Net Collectable	Payments from Patients	Payments from Insurance	Total Deposits
JULY	\$165,393.00	\$9,462.27	\$29,077.91	\$0.00	\$126,852.82	\$7,413.38	\$78,111.51	\$85,524.89
AUGUST	\$148,508.00	\$8,904.19	\$32,272.97	\$786.97	\$106,543.87	\$6,672.14	\$73,530.39	\$80,202.53
SEPTEMBER	\$174,430.00	\$4,958.92	\$36,138.00	\$309.00	\$133,024.08	\$4,021.36	\$63,514.42	\$67,535.78
OCTOBER	\$141,169.00	\$5,994.27	\$31,826.91	\$0.00	\$103,347.82	\$5,189.38	\$96,063.85	\$101,253.23
NOVEMBER	\$157,224.00	\$5,120.35	\$25,784.77	\$1,066.84	\$125,252.04	\$5,183.62	\$76,254.21	\$81,437.83
DECEMBER	\$177,896.00	\$7,557.28	\$29,243.81	\$0.00	\$141,094.91	\$6,753.98	\$91,187.58	\$97,941.56
JANUARY	\$185,524.00	\$11,029.19	\$41,344.94	\$264.06	\$132,885.81	\$6,093.49	\$98,396.35	\$104,489.84
FEBRUARY	\$138,159.00	\$4,126.97	\$26,314.77	\$50.00	\$107,667.26	\$7,989.94	\$77,949.95	\$85,939.89
MARCH	\$151,307.00	\$9,888.64	\$24,140.06	\$1,103.67	\$116,174.63	\$9,631.01	\$86,129.80	\$95,760.81
APRIL	\$167,035.00	\$7,107.34	\$35,794.07	\$954.59	\$123,179.00	\$7,291.69	\$92,346.92	\$99,638.61
MAY	\$175,087.00	\$7,781.18	\$31,534.11	\$10.00	\$135,761.71	\$6,455.88	\$82,578.69	\$89,034.57
JUNE	\$143,359.00	\$9,730.60	\$27,547.01	\$0.00	\$106,081.39	\$9,345.49	\$95,227.67	\$104,573.16
TOTALS	\$1,925,091.00	\$91,661.20	\$371,019.33	\$4,545.13	\$1,457,865.34	\$82,041.36	\$1,011,291.34	\$1,093,332.70



2014 Fire Marshal Division Statistics

Month	City Fire Property Dollar Loss/Save			Plan Review		Inspections/Investigations								Public Education			
	Loss	Value	Saved	#	Revenue	Fire Insp.	Follow-up	Sprinkler	Alarm	Supres.	Site	Other Insp.	Investig.	Smoke Alarms Installs	Car Seat Installs	Pub Ed Children	Pub Ed Adult
January	\$21,750.00	\$294,500.00	\$272,750.00	7	\$1,249.50	9	8	1	0	3	0	17	1	1	9	32	16
February	\$37,400.00	\$301,500.00	\$264,100.00	7	\$278.48	0	1	1	0	0	0	7	1	1	8	13	60
March	\$50,070.00	\$180,550.00	\$130,480.00	17	\$1,302.03	16	4	2	6	1	1	7	1	2	15	253	62
April	\$41,500.00	\$529,600.00	\$488,100.00	1	\$0.00	7	9	2	5	4	1	1	2	3	16	34	50
May	\$10,100.00	\$468,057.00	\$457,957.00	8	\$0.00	2	1	0	1	1	0	2	0	4	10	127	29
June	\$33,080.00	\$290,805.00	\$257,725.00	8	\$864.45	12	2	3	1	0	1	4	1	1	20	142	68
July			\$0.00														
August			\$0.00														
September			\$0.00														
October			\$0.00														
November			\$0.00														
December			\$0.00														
TOTAL	\$193,900.00	\$2,065,012.00	\$1,871,112.00	48	\$3,694.46	46	25	9	13	9	3	38	6	12	78	601	285



2014 Station/Apparatus Statistics

	Station Logbook Runs			
Month	1	2	4	5
January	155	126	180	275
February	143	79	136	178
March	168	87	157	210
April	190	100	156	249
May	224	81	166	224
June	170	92	150	223
July				
August				
September				
October				
November				
December				
TOTAL	1050	565	945	1359