

CITY OF WINCHESTER, VIRGINIA

CITY COUNCIL AGENDA ITEM

CITY COUNCIL MEETING OF: September 22, 2015

RESOLUTION ___ ORDINANCE DESCRIPTION/PRESENTATION ___

ITEM TITLE: Sv-15-406 an Ordinance to Vacate a Portion of an Alley Right of Way Between 328 and 400 Highland Avenue and Convey it to the Adjacent Property Owner(S).

PUBLIC HEARING DATE: October 13, 2015 at 6:00 PM

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 completion of review only addresses the readiness of the issue for Council consideration. This does not address the recommendation for approval or denial of the issue.

Review:

| | | |
|--------------------|-----------|---------------------|
| Timothy A. Youmans | Completed | 11/05/2015 11:33 AM |
| Kevin Sanzenbacher | Completed | 11/05/2015 2:11 PM |
| Anthony Williams | Completed | 11/05/2015 2:38 PM |
| Eden Freeman | Completed | 11/05/2015 3:44 PM |

Approved as to form:

Timothy A. Youmans
Timothy A. Youmans, Planning Director 11/5/2015

By: _____

Winchester
office of the
city attorney *Virginia*

Anthony C. Williams, City Attorney
Office of the City Attorney
15 N. Cameron Street, Suite 313
Winchester, VA 22601
Phone: 540-667-1815, x 1433
Fax: 540-667-2259

Eden Freeman
Eden Freeman, City Manager 11/5/2015

CITY COUNCIL ACTION MEMO

To: Honorable Mayor and Members of City Council
From: Josh Crump, Planner
Date: September 22, 2015
Re: Sv-15-406 an Ordinance to Vacate a Portion of an Alley Right of Way Between 328 and 400 Highland Avenue and Convey it to the Adjacent Property Owner(S).

THE ISSUE:

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

RELATIONSHIP TO STRATEGIC PLAN:

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

BACKGROUND:

See attached staff report and Viewers Report

BUDGET IMPACT:

Nominal revenue from sale of vacated right of way.

OPTIONS:

1. Approve as recommended by Planning Commission.
2. Approve with modifications to allow conveyance to adjoining property owner(s) instead of only to the owner of 400 Highland Ave.
3. Deny.

RECOMMENDATIONS:

Recommend Option 3

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

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

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

WHEREAS, the Planning Commission of the City of Winchester has reviewed the aforesaid request and, at its meeting of August 18, 2015, recommended approval of this action; and,

WHEREAS, a synopsis of this Ordinance has been duly advertised and a Public Hearing has been conducted by the Common Council of the City of Winchester, Virginia, and viewers were appointed to report on the inconvenience, if any, of said vacation, all as required by and provided for under the Code of Virginia, 1950, as amended; and,

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

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

WHEREAS, the owner of the property at 328 Highland Avenue immediately adjacent to the south side of the public right of way proposed to be vacated and conveyed has no objection to the vacation but maybe interested in acquiring a portion of the vacated right-of-way; and,

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

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

BE IT FURTHER ORDAINED that this ordinance shall not take effect until such time as approval of a Minor Subdivision plat depicting the easements and the required assemblage of the vacated area in with certain adjoining properties along Highland Avenue has been secured, with the sale price for the vacated area being **Fifty Cents**

(\$0.50) per square foot. The City Attorney is directed to prepare a deed for the conveyances and the City Manager is directed and authorized to execute all documents and take all actions necessary to carry out this Ordinance.

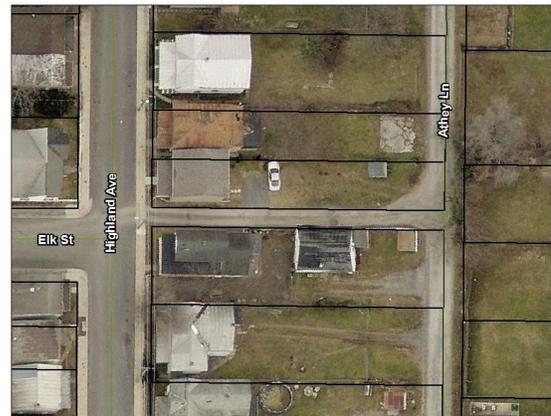
SV-15-406 AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE ADJACENT PROPERTY OWNER(S).

REQUEST DESCRIPTION

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

AREA DESCRIPTION

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



STAFF COMMENTS

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

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

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

RECOMMENDATION

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



MEMORANDUM

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

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

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

Date: 6.18.15

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

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

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

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

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

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

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

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

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

Thank you for your support of the Habitat mission.



MEMORANDUM

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

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

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

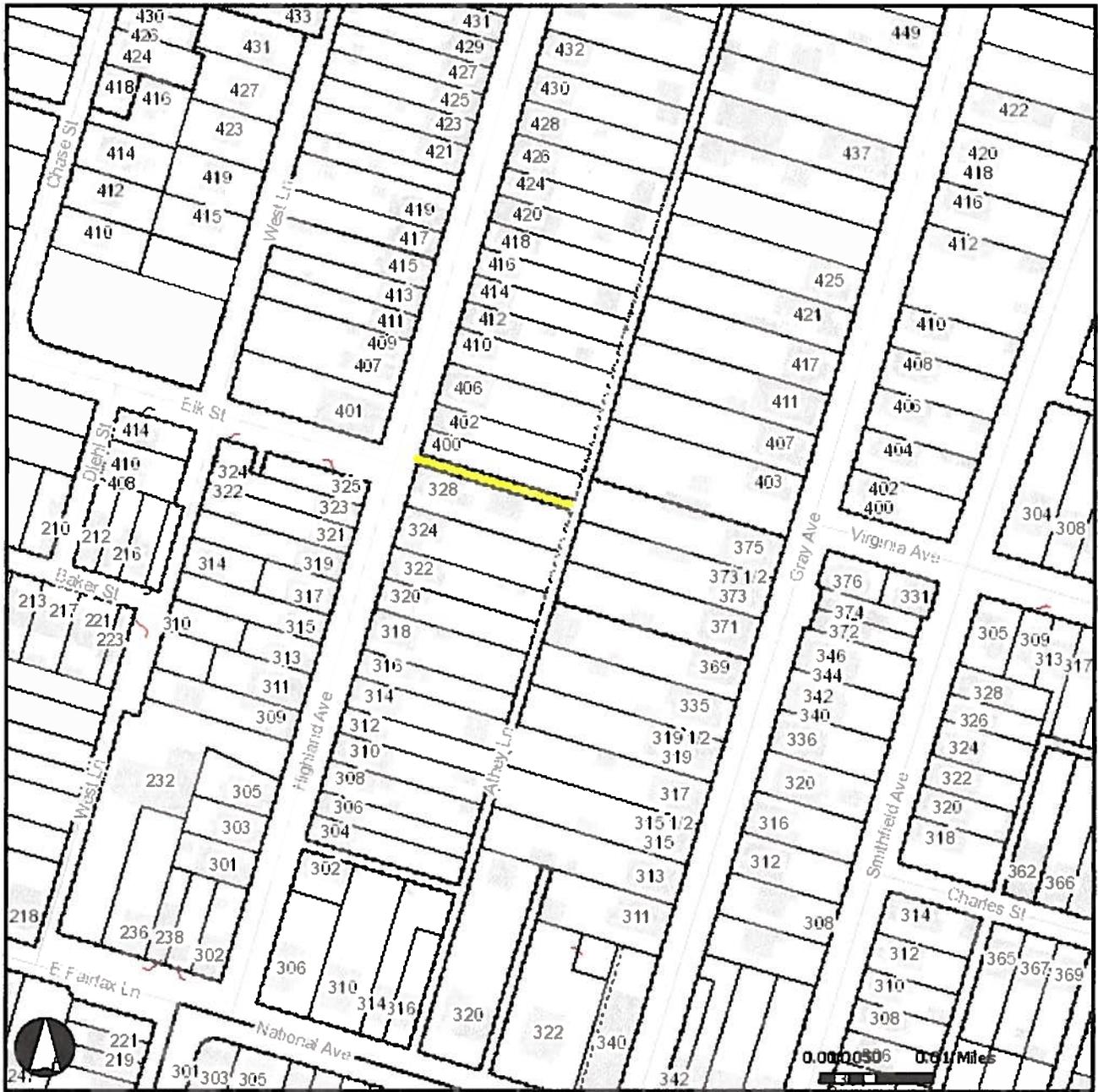
Date: 6.18.15

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

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

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

Map



- Parcels 
- Double Circle 
- Buildings 
- Corporate Limits 

From: [Timothy Youmans](#)
To: [Josh Crump](#)
Subject: FW: Alley between Athey Lane and Highland
Date: Wednesday, September 09, 2015 2:11:49 PM

From: Carol Maben [mailto:cncmaben@yahoo.com]
Sent: Tuesday, September 08, 2015 4:26 PM
To: Timothy Youmans
Subject: Alley between Athey Lane and Highland

Tim-

This is to confirm our conversation regarding the alley that runs between 328 and 400 Highland, and Athey Lane. This alley borders my property at 328 and 328 #A Highland. I have no objection to the request by Habitat to close off this alley. I may be interested in acquiring a portion of the city land that is currently the alley.

Upon consideration, since this is a project most desired by Habitat, I would most likely expect that they bear the expense of any required survey work.

Thanks,

Chris Maben
9/8/15



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

VIEWERS REPORT

The undersigned, pursuant to their appointment by the Common Council of the City of Winchester, Virginia, have made investigation of the property named below and have reviewed statements, if any, by the adjoining property owners concerning what, if any, inconvenience would be caused the public and/or adjacent landowners if the following were vacated:

O-2015-18: AN ORDINANCE TO VACATE A PORTION OF AN ALLEY RIGHT OF WAY BETWEEN 328 AND 400 HIGHLAND AVENUE AND CONVEY IT TO THE ADJACENT PROPERTY OWNER(S) – SV-15-406

Whereas, the Viewers have reviewed the request by Habitat For Humanity on behalf of Brandie and Brandon Brown, owners of 400 Highland Avenue to have the alley vacated and conveyed to them so that it can be fenced off to surround their property; and,

Whereas, the Viewers viewed the subject area on October 30, 2015, and observed public use of the alley as well as existing sanitary sewer facilities within the public right-of-way; and,

Whereas, the Viewers observed a dwelling at the rear of 328 Highland Avenue which has an address of 328 ½ Highland Avenue and relies upon the alley to allow for mail delivery and also relies upon the alley to set refuse out along Highland Avenue for pickup; and,

Whereas, Chris Maben, the owner of 328 ½ Highland Avenue has indicated that closure of the public alley would present an inconvenience to the tenant residing in that dwelling.

Now therefore, it is the opinion of the undersigned viewers that an inconvenience would result to the public and the adjacent property owners from vacating the above-mentioned property, even if necessary easements for utilities are established.

Kevin Sanzenbacher

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(Seal)

Perry Eisenach

Handwritten signature of Perry Eisenach in black ink.

(Seal)

Allen Baldwin

Handwritten signature of Allen Baldwin in black ink.

(Seal)