

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 1

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Amend the FY 2010 General Fund Budget and Reallocate Funding for Shelter Plus Care

RECOMMENDATION: Adopt a resolution to amend the FY 2010 General Fund Budget and reallocate \$18,007 with resources from the General Fund Juvenile Detention Center per diem to the Shelter Plus Care grant within the City/Federal/State Aid Fund to provide interim financial assistance and services to qualified persons who have transitioned from homelessness to permanent housing.

SUMMARY: In 2002, the City received a Shelter Plus Care grant in the amount of \$320,700 from the U.S. Department of Housing and Urban Development (HUD). The City, together with Miriam's House and the Lynchburg Neighborhood Development Foundation (LNDF), have coordinated the grant to provide Tenant-Based Rental Assistance to approximately ten eligible persons who have transitioned from homelessness to permanent housing. Miriam's House has provided the program participants with the relevant supportive services to meet the needs created by their disabilities and the circumstances that led to initial homelessness. Miriam's House provides transitional housing services and has contracted with LNDF to assure appropriate housing is delivered to the participants.

Due to the slow start-up of the program, HUD granted a five-year extension beyond the initial five-year grant period that ended in 2006. Currently, monthly assistance from this grant is \$4,993. Unfortunately, due to staffing transition in both the financial and program management areas for this grant within the City as well as insufficient tracking of expenditures by LNDF, staff has found itself with an approximate four month funding gap before the grant is renewed by HUD. HUD program staff has offered considerable assurance that the grant will be renewed in early calendar year 2010.

Staff is recommending that City Council reallocate funding in the amount of \$18,007 from the budgeted per diem for the Juvenile Detention Center to the Federal/State Aid Fund to provide interim funding for this program for the months of December-March. Based on projected Detention Center population through the end of FY 2010, staff believes that funding is available for reallocation. This funding would provide assistance to ten individuals through the month of March 2010. In the event that the Shelter Plus Care grant renewal is approved by HUD prior to March, City funds would not be used. If HUD does not approve the grant, then adequate notice could be given to landlords and tenants regarding lease concerns and case management staff at Miriam's House would be given adequate time to work with clients to find alternate housing for the persons served by this grant. HUD will not reimburse the City for this interim assistance as it is the City's responsibility to have renewed the grant prior to finding itself in this situation.

If City Council does not approve this reallocation of funds, persons served by this grant will be served eviction notices by their landlords for non-payment of rent. Due to the time-sensitive nature of this item, staff recommends that the Finance Committee and City Council consider this item on November 24, 2009.

PRIOR ACTION(S): Appropriation of Shelter Plus Grant funds in FY 2003
Finance Committee, November 24, 2009

FISCAL IMPACT: Reallocation of funds from Juvenile Detention Center per diem to Shelter Plus Grant within the City/Federal/State Aid Fund in the amount of \$18,007 (\$4,993 x 4 months = \$19,972 – remaining balance of \$1,965)

CONTACT(S): Bonnie Svrcek, Deputy City Manager and Acting Director of Community Development, 455-3987

ATTACHMENT(S): Initial Shelter Plus Care Grant Agreement dated May 20, 2002
Shelter Plus Care Grant Amendment dated September 29, 2009
Council Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2010 General Fund Budget is amended and \$18,007 is reallocated with resources from the General Fund Juvenile Detention Center per diem to the Shelter Plus Care grant within the City/Federal/State Aid Fund to provide interim financial assistance and services to qualified persons who have transitioned from homelessness to permanent housing.

Adopted:

Certified:

Clerk of Council

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**COMMUNITY PLANNING
& DEVELOPMENT**

AGREEMENT

This AGREEMENT, made and dated this 20th day of May, 2002, sets forth the terms and responsibilities of the parties involved in the Lynchburg Shelter Plus Care program, funded by the U.S. Department of Housing and Urban Development (HUD) and supported by the Central Virginia Homeless and Housing Coalition's Continuum of Care. The parties to this Agreement are: City of Lynchburg (City), grantee; Lynchburg Neighborhood Development Foundation (LNDF), sponsor; and Miriam's House (MH), service provider.

1. Background

The Lynchburg Shelter Plus Care Program is funded by a grant from the United States Department of Housing and Urban Development (HUD). The Program is designed to provide affordable housing and a full range of services to homeless individuals who are mentally ill, have chronic alcohol and drug problems, and/or have AIDS or related disorders. The Program is jointly administered by the City and LNDF.

2. Purpose of Memorandum of Understanding

LNDF and MH have committed to participate in the Shelter Plus Care Program to provide necessary service to target population. The purpose of this Agreement is to clearly identify the services to be provided and the responsibilities of LNDF, MH and the City.

3. Term

The term of this Agreement is for five years beginning on May 20, 2002 and ending on May 19, 2007, unless the Agreement shall be sooner terminated as provided herein.

4. Scope of Services and Grant Funding

LNDF shall provide services in connection with obtaining and maintaining safe, affordable permanent rental housing through the existing rental market, working with property managers and landlords to support the client and protect their interests in the lease and any additional documentation. MH shall provide case management and direct counseling services and skills training as identified in the intake procedures. Both areas of service are described in the letter from LNDF, as set forth in "Exhibit A."

HUD has awarded the City grant funding in the total amount of \$320,700. for the five year term of this Agreement. During the term of this Agreement LNDF will submit monthly requests with appropriate supporting documentation to the City for eligible expenses and the City shall review and review such requests and provide LNDF with the appropriate grant funds. The City shall administer all grant requirements, and oversee the work of the sponsor and services providers to assure compliance with appropriate regulations. The City shall make good faith effort to advance the necessary funds for eligible expenses of Shelter Plus Care Program and related activities. Funds will be advanced upon receipt of appropriate draw requests and will be reimbursed by the HUD grant.

5. Records and Reports

LNDF and MH shall submit an annual performance report to the City for submission to HUD in such format and at such time as prescribed by the City.

LNDF and MH shall maintain adequate financial records to the extent and, in such detail, as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies, and services, and other costs and expenses of whatever nature for such payment claimed under the provisions of this Agreement.

LNDF and MH shall maintain adequate project files to the extent and in such detail as will properly reflect performance under the provisions of this Agreement.

LNDF and MH shall preserve and make available at all reasonable times during the term of this Agreement, and for three years thereafter, any books, documents, papers, or records (hereinafter collectively called the "records") of LNDF and MH pertaining to this HUD funded Program. Any authorized representative of the City, the Secretary of HUD, and the Comptroller General of the United States, may inspect, audit or reproduce said records.

6. Relationship of Parties

The parties to this Agreement intend that the relationship between them created by this Agreement is that of independent contractors. No agent, employee, or servant of LNDF or MH shall be, or shall be deemed to be, the employee, agent or servant of City. The City is interested only in the results obtained under this Agreement; the manner and means of conducting the work are under the sole control of LNDF and MH. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from City to the employees, agents, or servants of LNDF or MH. LNDF and MH will be solely and entirely responsible for his acts and for the acts of their agents, employees, servants and subcontractors during the performance of this Agreement.

7. Liability

The LNDF and MH shall indemnify, hold harmless and provide a defense for the City, its agents, officials and employees, from and against any and all claims, liabilities, judgments, costs, damages and expenses of any nature whatsoever, including the cost of defending such claims, which may accrue against, be charged to, be recovered from or sought to be recovered from the City, its agents, officials or employees, on account of any personal injury, death or damage to property, arising out of LNDF's and MH's performance of this Agreement or arising from the conditions created thereby, or based upon any violation of any statute, ordinance, building code or regulation. LNDF and MH shall also indemnify, hold harmless, and assume the defense of the City, its agent, officials, and employees against all liability and loss in connection with, including all costs and expenses, and shall assume full responsibility for payment of all Federal, State and local taxes or contributions imposed or required under employment insurance, social security, and income tax laws, with respect to the LNDF's and MH's employees engaged in the performance of this Agreement. LNDF and MH will be responsible for procuring all general liability, worker's

compensation, automobile and professional insurance as may be required and appropriate. Proof of such insurance coverage will be provided upon request to the City.

8. Termination for Cause

If LNDF or MH shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if LNDF or MH shall violate any of the covenants, Agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving prior written notice to LNDF and MH at least five days before the effective date of such termination. In that event, all documents, records, plans, data, and reports prepared by LNDF and MH, finished or unfinished, shall become the property of the City.

Notwithstanding the above, LNDF and MH shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by LNDF or MH, and the City may withhold any payments to LNDF or MH for the purpose of setoff until such time as the exact amount of damages due the City from LNDF or MH is determined.

9. Termination for Convenience of City

The City may terminate this Agreement at any time by giving written notice to LNDF and MH of such termination and specifying the effective date thereof, at least 30 days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described in Section Eight above shall become the property of the City. If the Agreement is terminated by the City as provided herein, LNDF and MH will be paid for the reasonable and allowable expenses incurred by LNDF and MH in the performance of the work contemplated herein.

10. Changes and Amendments

The City may, from time to time, require changes in the scope of the services of LNDF and MH to be performed hereunder in order to comply with HUD regulations. Such changes, including any increases or decreases in the amount of LNDF's or MH's compensation, which are mutually agreed upon by and between the City and LNDF and MH, shall be incorporated in written amendments to this Agreement.

This Agreement may be amended from time to time with the written agreement of all of the parties hereto.

11. Nondiscrimination and Equal Opportunity

LNDF and MH agree that no person shall, on the grounds of race, color, religion, sex or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program participating in the Shelter Plus Care Program or funded in whole or part with funds made available pursuant to this Agreement.

There shall be no discrimination against any employee who is employed in the work covered by this Agreement, or against any applicant for such employment, because of race, color, religion, sex or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. LNDF and MH shall insert a similar provision in all subagreements for services covered by this Agreement.

12. Interest of Officials, etc of City and LNDF and MF

No officer, public official, member or employee of the City, and no officer or members of the board of directors of LNDF or MH who exercise any functions or responsibilities in the review or approval of the undertaking or carryout of this project, shall participate in any decision relating to this Agreement which affects his/her personal interest or having any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

13. Assignability

LNDF and MH shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to LNDF or MH from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any assignment or transfer shall be furnished promptly to the City.

14. Interests of LHDF and MH

LNDF and MH covenant that they presently have no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of the services required to be performed under this Agreement. If such interest should occur, then, it is incumbent upon LNDF and MH to immediately notify the City so that appropriate steps may be taken to either modify the scope of the Agreement or LNDF's and MH's interests in question to negate the effect of any such conflict.

15. Confidentiality

Any reports, information, data, etc., given to or prepared or assembled by LNDF and MH under this Agreement which the City requests to be kept as confidential shall not be made available to any individual or organization by LNDF or MH without the prior written approval of the City, except where disclosure is required by law.

16. Disputes

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City, which shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the LNDF and MH. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the LNDF mails or otherwise furnishes to the City a written appeal addressed to the Director of Community Planning and Development. The decision of the City or its duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the LNDF and MH shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, LNDF and MH shall proceed diligently with the performance of the Agreement and in accordance with the decision of the City.

This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in the above paragraph, provided that nothing in this Agreement shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

17. Record Keeping and Examination of Records

- A. LNDF and MH agree to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this Agreement (hereinafter collectively called the "records") to the extent and such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment supplies and services, and other costs and expenses of whatever nature for such reimbursement is claimed under the provisions of this Agreement.
- B. LNDF and MH agree to make available at the offices of LNDF and MH at all reasonable times during the period set forth in Paragraph D below any books, documents, papers or records of LNDF and MH, that directly pertain to, and involve transactions relating to this Agreement or subagreements hereunder for inspection, audit or reproduction by an authorized representative of the City, the Secretary of HUD, and the Comptroller General of the United States or any of the duly authorized representatives thereof.
- C. LNDF and MH shall preserve and make available the records until expiration of three years after final payment under this Agreement or for such longer period, if any, as is required by applicable statute, by any other clause of this Agreement, or by (a) or (b) below.
 - (a) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available until expiration of three years from the date of any resulting final settlement.
 - (b) Records which are related to (i) appeals under the "Disputes" clause of this Agreement, (ii) litigation or the settlement of claims arising out of the performance of this Agreement, or (iii) cost and expenses of this Agreement as to which exception has been taken by the City, shall be retained by LNDF and MH until such appeals, litigation, claims, or exceptions have been disposed of.

- D. The provisions of this Paragraph A, including this Paragraph D, shall be applicable to and included in each subagreement hereunder.

LNDF and MH further agree to include in each of their subagreements hereunder, a provision to the effect that the subcontractor agrees that the City shall, until the expiration of three years after final payment under the subagreement, have access to and the right to examine any books, documents, papers, and records of such subcontractor that directly pertain to, and involve transactions relating to the subcontractor. The term "subagreement", as used in this subparagraph (b) only excludes (i) purchase orders not exceeding \$2,500, and (ii) subagreements or purchase orders for public utility services at rates established for uniform applicability to the general public.

18. Compliance with Virginia Law

The Agreement shall be interpreted according to the laws of the Commonwealth of Virginia and the parties agree that they will be bound by all applicable laws of the Commonwealth of Virginia, including the Code of Virginia, 1950, as amended.

19. Audit Requirements

If LNDF and MH receive a total of \$300,000 or more in one year Federal or State funds, or any combination thereof, from any source, including the City of Lynchburg, LNDF and MH must retain the services of an independent, certified public accountant to perform an annual organizational wide audit for each fiscal year for which LNDF and MH receives any Federal or State grant funds from the City. The annual organizational audit shall be performed in accordance with the following standards: (a) in accordance with the generally accepted Government auditing standards as defined by Standards for Audit of Governmental Organizations, Programs, Activities, and Functions issued by the Comptroller General or the United States; (b) in accordance with the standards and specifications as prescribed by the Auditor of Public Accounts for the Commonwealth of Virginia; (c) generally accepted auditing standards as defined by the American Institute of Certified Public Accountants; and, (d) in accordance with the Single Audit Act of 1984 (as amended in 1996) for fiscal years beginning after June 30, 1996.

If LNDF and MH do not meet the threshold for an audit in accordance with OMB Circular A-133, which addresses the Single Audit Act of 1984 (as amended in 1996), LNDF and MH shall submit a limited-scope audit by the deadline noted in the paragraph below. A limited-scope audit is as defined in Section 230 (b)(2) of A-133 as agreed-upon procedures engagements that are conducted in accordance with either GAAS or the AICPA attestation standards, and that are paid for and arranged by a pass-through entity and only address one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; matching, level of effort, earmarking; and reporting.

Each annual organizational wide audit or limited-scope audit shall be for the fiscal year beginning July 1, of any year in which LNDF or MH receives Federal or State funds from the City and ending on June 30 of the following year. The independent auditor shall, after completing the audit examination, submit a formal written report of audit to the City's Director of Finance. The written report of audit shall be filed with the Director of Finance no later than August 31, of each fiscal year. If for any reason the independent auditor is not able to file a written audit report with the City's Director of Finance by August 31, LNDF or MH shall notify the Director of Finance in writing as soon as it becomes apparent that the audit report will not be ready by August 31, the reason for the delay and the date on which the audit report can be expected.

LNDF and MH shall keep true and accurate accounts, records, books and data of their activities and the City and its independent auditors shall have the right at all reasonable times, and at all ordinary business hours of the day, to inspect and examine such records, books and other data.

20. Rules and Regulations

LNDF and MH covenant and agree to observe and abide by all reasonable rules and regulations that may be promulgated from time to time by the City concerning the use of funds received from the City and used by LNDF and MH in their activities. The City agrees that except in cases of emergency, it will give notice to LNDF and MH of all such rules and regulations adopted by it at least thirty days before LNDF and MH shall be required to comply therewith.

21. Uniform Administrative Requirements

During the term of this Agreement, LNDF and MH shall comply with all of the policies, guidelines and requirements of 24 CFR Ch. V, Part 582, Shelter Care Plus Regulations which apply to their activities under this Agreement and all other applicable Federal and HUD rules and regulations.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lynchburg, Virginia, on the 20th day of May 2002.

CITY OF LYNCHBURG, VIRGINIA

By: X L Kimball Payne
L. Kimball Payne, III, Lynchburg City Manager

LYNCHBURG NEIGHBORHOOD DEVELOPMENT FOUNDATION

By: Laura N Dupuy
Laura N. Dupuy, Executive Director

MIRIAM'S HOUSE

By: Rhonda Ford
Rhonda Ford, Executive Director



U. S. Department of Housing & Urban Development

SEP 29 2006

Richmond Field Office
Community Planning &
Development Division
600 E. Broad Street, 3rd Floor
Richmond, VA 23219
1-800-842-2610

Mr. L. Kimball Payne, III
City Manager
The City of Lynchburg
900 Church Street
Lynchburg, VA 24504

Dear Mr. Payne:

SUBJECT: Shelter Plus Care (S+C): Agreement Amendment #1
Project Number: VA36C108001

The purpose of this letter is in response to your letter dated September 7, 2006, to change the subject S + C grant. As you are aware, the original grant agreement is scheduled to expire on June 16, 2007. Your request is to extend the expiration date of the subject Shelter Plus Care (S + C) grant and to increase the number of units receiving Tenant-Based Rental Assistance.

Since the city and LNDF have determined that there is sufficient funds remaining and have demonstrated the need for more than the initial 10 units specified in the city's application to HUD, an increase to 13 or more units is approved. Please note, when the city applies for its first renewal grant for the subject S+C project, the request for funding should reflect the actual number of units under lease at the time the renewal application is submitted to HUD. It is not necessary to include the increased number of units in the enclosed amendment.

Based on the documentation of sufficient funding in your letter, your extension request is approved. Since statutory language requires that the term of any S+C grant be five years, each amendment/extension is set up for five years. This extension should not be interpreted as implying that HUD expects grantees to need that amount of time to complete S+C expenditures. Grants extended in this manner will be able to seek renewal funding when needed and will not need to wait until expiration of the new five year term. It is our understanding that the City of Lynchburg has a sufficient amount funds in this grant to continue all activities until the FY 2007 application cycle for a renewal grant to be awarded and funded in Spring 2008.

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Enclosed are three signed copies of the Grant Agreement Amendment #1 that constitutes the agreement between City of Lynchburg and HUD. Please sign all three, retain one copy for your records and return two copies to this office within two weeks of receipt of this letter.

Should you have questions concerning this letter or other items related to special needs assistance programs, please call me at extension 3770. Staff requiring technical assistance should contact Bill Burnham, Senior CPD Representative, at extension 3739 or Pearl C. Peebles, CPD Representative at extension 3701. We look forward to working with you toward the successful continuation of your Shelter Plus care project.

Sincerely,



Ronnie J. Legette
Director

Enclosures

cc: Ms. Melva Walker
Administrative and Grants Manager

Ms. Laura N. Dupuy
Lynchburg Neighborhood Development
Foundation

Memorandum

To: The Honorable City Council

From: Walter C. Erwin, City Attorney

Date: November 10, 2009

Subject: Filling a Vacancy on Council

1) Section 2.2-2807 of the Virginia Code prohibits a person from holding more than one elected office at the same time. The taking of the oath for a second elected office by a person operates to vacate any other elected office held by such person.

2) Section 5(f) of the City Charter provides that a vacancy on City Council shall be filled as follows:

Sec. 5. Council-Composition; election of members; terms and vacancies.

(f) The council shall be a continuing body and no measure pending before such body shall abate or be discontinued by reason of the expiration of the term of office or removal of the members of said body or any of them. Vacancies occurring in the membership of the council shall be filled by the council within thirty days for a term to expire when the qualified voters of the city at large or the ward in which the vacancy occurred, as the case may be, have elected a successor at the next ensuing general election for councilmen and the person so chosen has duly qualified. If the vacancy occurs in a ward, the successor so chosen shall be a registered voter of that ward. All vacancies filled by the council shall be by majority vote of the remaining members.

3) The City Charter does not require Council to follow any particular procedure when filling a vacancy. For example, Council can ask interested citizens to submit applications for the vacancy or the members of Council can simply decide among themselves who to select to fill the vacant position.

4) The City Charter does not specify what happens if City Council fails to fill a vacancy within thirty days. However, in an October 28, 1982 Opinion to Senator Elliott Schewel, the Virginia Attorney General advised that even though the City Charter intends that a vacancy on City Council shall be filled within thirty days, the failure to make an appointment within thirty days does not cause Council to lose its power to make the appointment at a later date or give the circuit court judges the authority to make the appointment. If Council does not choose to fill the vacant position it simply remains unfilled until the candidate elected at the May 2010 general election takes office on July 1, 2010.

// A regular meeting of the Council of the City of Lynchburg was held on the 10th day of November, 2009, at 5:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Absent: Johnson 1

// Mayor Foster announced that Council Member Johnson was representing the City at the National League of Cities conference in Texas.

// City Manager Kimball Payne along with Legislative Liaison Linda McMinimy presented a proposed Legislative Agenda for the 2010 session of the General Assembly. Mr. Payne stated that a number of positions from the 2009 Legislative Agenda have been removed as they are no longer relevant. Mr. Payne also noted that there are no new positions. Ms. McMinimy provided an overview regarding the Proposed 2010 Legislative Priorities:

Comprehensive Services Act (CSA): New CSA policy changes and guidelines are being implemented which duplicate the mission of the existing community services board system (to provide mental health services for children). This results in an expansion of mandated services to include a vaguely defined population that does not fit under the traditional foster care or special education definitions. In light of the current budget situation the new policies and guidelines should be reconsidered or their costs borne solely by the State and not shifted to localities.

Local Law Enforcement Funding: The Commonwealth should be equitable in its support for local law enforcement funding both to those localities with police departments (HB 599 funding) and to those in which Sheriff's Departments provide law enforcement (through the Compensation Board). Cities should not bear a disproportionate burden for law enforcement funding through continued reductions in funds provided by HB 599.

Transportation: The General Assembly should ensure that adequate dedicated, non-general fund revenues are available to maintain the current transportation infrastructure, especially bridges and key arterial and collector roadways and adequately support non-automobile transportation modes such as public transportation, pedestrian and bikeways and airports. In addition, provide a dedicated, long-term funding source for intercity rail, specifically, the new Amtrak service between Lynchburg and Boston and the extension of passenger service south to Bristol, the TransDominion Express.

Utility Marking: The General Assembly should support efforts to exempt local governments from State Corporation Commission (SCC) requirements to mark private water and sewer lines. This imposes additional costs and liability exposure on localities.

Ms. McMinimy briefly reviewed the other legislative positions. Mr. Payne stated that the Police Department would like to add the following position to the agenda:

Law Enforcement: In June of 2009 the U.S. Supreme Court upheld a Nevada statute making it a misdemeanor offense for someone who has been lawfully stopped by a law enforcement officer for reasonably suspicious behavior to refuse to identify themselves to the officer. The Supreme Court found

that requiring someone who has been lawfully stopped because of suspicious behavior to identify themselves to a law enforcement officer serves legitimate government interests and is not a violation of the individual's privacy rights. The City recommends that the General Assembly adopt a similar statute during the 2010 Session.

// Council Member Garrett left the meeting at 5:13 p.m.

On motion of Council Member Perrow, seconded by Council Member Gillette, Council by the following recorded vote adopted the 2010 Legislative Agenda with the inclusion of the Law Enforcement position:

Ayes: Dodson, Gillette, Helgeson, Perrow, Foster	5
Noes:	0
Absent: Garrett, Johnson	2

// Council Member Garrett returned to the meeting at 5:18 p.m. during agenda item #2.

// City Manager Kimball Payne reviewed the draft agenda for the joint City Council/School Board meeting on November 17. Several Council Members suggested that an item regarding the FY2011 Budget should be added to the agenda. Mr. Payne stated that he would inform the Schools that this item has been added to the agenda.

// City Attorney Walter Erwin provided an overview regarding options available to City Council in filling the upcoming vacancy on Council. Mr. Erwin stated that the City Charter does not require Council to follow any particular procedure when filling a vacancy. Mr. Erwin explained that the State Code prohibits a person from holding more than one elected office at the same time, and that the taking of the oath for a second elected office by a person vacates any other elected office held by such person. Mr. Erwin went on to say that Section 5(f) of the City Charter provides that a vacancy on City Council shall be filled as follows:

Sec. 5. Council-Composition; election of members; terms and vacancies.

(f) The council shall be a continuing body and no measure pending before such body shall abate or be discontinued by reason of the expiration of the term of office or removal of the members of said body or any of them. Vacancies occurring in the membership of the council shall be filled by the council within thirty days for a term to expire when the qualified voters of the city at large or the ward in which the vacancy occurred, as the case may be, have elected a successor at the next ensuing general election for councilmen and the person so chosen has duly qualified. If the vacancy occurs in a ward, the successor so chosen shall be a registered voter of that ward. All vacancies filled by the council shall be by majority vote of the remaining members.

Mr. Erwin explained that the City Charter does not specify what happens if City Council fails to fill a vacancy within thirty days. Mr. Erwin stated that an October 28, 1982 Opinion from Virginia Attorney General advised that even though the City Charter intends that a vacancy on City Council shall be filled within thirty days, the failure to make an appointment within thirty days does not cause Council to lose its power to make the appointment at a later date or give the circuit court judges the authority to make the appointment. Mr. Erwin went on to say that if Council does not choose to fill the vacant position it simply remains unfilled until the candidate elected at the May 2010 general

election takes office on July 1, 2010. Mr. Erwin also advised Council regarding the procedure to fill the upcoming vacancy of the Clerk of Court when he retires at the end of the year. Council Members reviewed the various options that could be used to fill the upcoming vacancy when Council Member Garrett resigns from City Council to become a member of Virginia House of Delegate. Council Member Helgeson stated that with the challenges that the City will face during the upcoming budget process, that a former Council Member, with City budget experience, would be an ideal person for Council to appoint to fill the remainder of Council Member Garrett's term. Other suggestions included using the process for filling a vacancy on the School Board, i.e., receiving applications/interviewing interested candidates, or having each Council Member bring a list of names of qualified individuals for discussion in a closed meeting. Vice Mayor Dodson questioned if City Council should wait until Council Member Garrett resigns from City Council before proceeding with filling the vacancy, while other Council Members stated that Council needed to proceed with the process in order to have a person ready to take office when the vacancy occurs. Council agreed that since Council Member Johnson was not present this item will be added to the next work session agenda for further discussion.

// During roll call and in response to Council Member Perrow's inquiry, City Manager Kimball Payne stated that the Finance and IT Departments are working on procedures and software changes that need to be in place in order for the City to implement on-line billings/payments, and that it is anticipated that on-line water and sewer billings will be available by March 2010. Mayor Joan Foster announced that there are five members of the Mayor's Youth Council attending the National League of Cities Conference in Texas.

// City Council recessed the meeting at 5.58 p.m.

// City Council reconvened the meeting at 7:30 p.m. Vice Mayor Dodson gave the Invocation, followed by the Pledge of Allegiance.

// Copies of the minutes of the October 27, 2009 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote approved the minutes as presented:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Finance – General, Resolution #R-09-127 appropriating \$500,000 to the FY 2010 General Fund Reserve for Contingencies with resources from the Designated Local Aid to the Commonwealth Reserve, and appropriating \$18,045 to the Office of the Clerk of Court to restore funding cut by the State, laid over from the October 27, 2009 meeting, was again presented and read, and on motion of Vice Mayor Dodson, seconded by Council Member Gillette, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Courts - General, City Council Report #7 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-129, as presented, amending the FY 2010 City/Federal/State Aid Fund budget and appropriating \$80,000, fully reimbursable, for the provision of screening, assessment, supervision, treatment, and intervention services for the mentally ill who come in contact with the criminal justice system:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Taxes, City Council Report #8 was considered. On motion of Vice Mayor Dodson, seconded by Council Member Gillette, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-130, as presented, amending the FY 2010 General Fund budget and appropriating \$171,968 to refund an overpayment of erroneously paid business license taxes by Candler Oil Company, Inc. for the calendar years 2006 and 2007:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Police - General, City Council Report #9 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-131, as presented, amending the FY 2010 City/Federal/State Aid Fund budget and appropriating \$39,933, with \$37,408 reimbursement, to provide selective DUI and Occupant Restraint enforcement activities, attend related training, and purchase equipment:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Police - General, City Council Report #10 was considered. On motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-09-132, as presented, amending the FY 2010 City/Federal/State Aid Fund budget and appropriating \$26,500, fully reimbursable, to send crash team members to accident reconstruction training and to purchase equipment:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Community Planning - Zoning Amendments, a public hearing was held regarding City Council Report #11 outlining the petition of Lynchburg College to rezone 2.54 acres from I-2, Light Industrial District, to B-5C, General Business District (Conditional), and for a Conditional Use Permit (CUP) to allow the renovation and use of an existing building and paved area as a college academic

building with associated parking at 300 Monticello Avenue. City Planner Tom Martin provided a brief summary regarding the petition, stating that the Planning Commission recommended approval for the rezoning and CUP. Mr. John Lewis, representing the petitioner, outlined the request and asked for approval. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Helgeson, seconded by Council Member Perrow, Council by the following recorded vote adopted Ordinance #0-09-133, as presented, approving the rezoning of 2.54 acres at 300 Monticello Avenue from I-2, Light Industrial District, to B-5C, General Business District (Conditional):

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

On motion of Council Member Helgeson, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-09-134, as presented, granting a Conditional Use Permit to allow the renovation and use of an existing building and paved area as a college academic building with associated parking at 300 Monticello Avenue:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning – Historic Board, a public hearing was held regarding an appeal by Michael and Karen Owen to a decision by the Historic Preservation Commission (HPC) regarding the denial of a Certificate of Appropriateness (COA) to paint the brickwork at 3206 Rivermont Avenue. Dr. James Mundy, representing the HPC, provided a brief summary regarding the request. Dr. Mundy explained that a COA is required for any alterations to the exterior of property in Historic Districts. Dr. Mundy stated that the painting of the brickwork was done prior to HPC review, was in violation of the Historic District guidelines, and therefore the HPC denied the COA after the fact. Mr. Michael Owen explained that his house was built in 1941 rather than 1914. Mr. Owen stated that the design guidelines states that brickwork that has never been painted should not be painted unless the exterior is extremely mismatched from earlier repairs or patching. Mr. Owen went on to say that the brickwork on his house is extremely mismatched and that he had already scheduled the brickwork to be painted before he could meet with the HPC. Mr. Owen noted that there are six houses within three blocks of his house with painted brickwork and that he does not feel that he violated the integrity of the historic district. One individual spoke in favor of the request, stating that painting the brickwork makes the house look beautiful. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson stated that the HPC guidelines should not be used to take away private property rights with regard to making changes to the exterior of their houses. Some Council Members commented that Council was being asked to evaluate the appropriateness of the work itself and not the way it came about, that it was unfortunate that the HPC guidelines could not be followed in this instance

due to time constraints regarding the scheduling of the painter, but noted that the brickwork was mismatched and the painting of the brickwork did improve the appearance of the property. Following discussion, and on motion of Council Member Gillette, seconded by Council Member Garrett, Council by the following recorded vote adopted Resolution #R-09-135, as presented, to reverse the decision of the Historic Preservation Commission to deny the Certificate of Appropriateness to paint the brickwork at 3206 Rivermont Avenue:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// In the matter of Community Planning - General, City Council Report #13 was considered.

On motion of Council Member Helgeson, seconded by Council Member Perrow, Council by the following recorded vote adopted Resolution #R-09-136, as presented, approving the dedication and naming of two Public Streets located on the south side of Phillips Circle to be known as "Emeline Drive" and "Creekview Court":

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions, i.e., Community Development Advisory Committee, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster	6
Noes:	0
Absent: Johnson	1

// The meeting was re-opened to the public.

// Council Member Perrow made the following motion:

WHEREAS, the Council of the City of Lynchburg has convened a closed meeting on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by City Council that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Lynchburg certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by Council.

November 10, 2009

103

The Motion was seconded by Council Member Gillette, and Council by the following recorded vote adopted the motion:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote appointed Michael Bedsworth to serve on the Community Development Advisory Committee to fill an unexpired term ending December 31, 2011:

Ayes: Dodson, Garrett, Gillette, Helgeson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// The meeting was adjourned at 8:23 P.M. to November 17, 4:30 P.M. to meet with the Lynchburg School Board.

Clerk of Council

// An additional scheduled meeting of the Council of the City of Lynchburg, was held on the 17th day of November, 2009, at 4:30 P.M., in the School Administration Building, Joan F. Foster President, presiding. The purpose of the meeting was to conduct a joint meeting with the School Board regarding several items. The following Members were present:

Present: Dodson, Garrett, Helgeson, Perrow, Foster

5

Absent: Gillette, Johnson

2

// School Board Chair Mary Ann Barker welcomed everyone to the meeting.

// Linda Jones along with Blair Smith provided a progress report regarding the construction of the new Sandusky Middle School, stating that the project is still on schedule and within budget. Ms. Jones highlighted some challenges facing the school administration regarding the move to the new facility. Ms. Jones went on to say that the Schools should take possession of the new Sandusky Middle School on May 15, 2010.

// Council Member Johnson arrived at 4:48 p.m.

// Superintendent Paul McKendrick provided an overview regarding the Schools enrollment statistics. Dr. McKendrick reviewed information regarding combined student enrollment, combined high school enrollment, combined elementary school enrollment, and capacity and enrollment information regarding the City's elementary schools. Dr. McKendrick explained some of the reasons regarding the decline in the high school enrollment and the increase in the elementary school enrollment through 2014.

// City Manager Kimball Payne provided an overview regarding the FY2011 Budget. Mr. Payne stated that the national recession, unemployment, stimulus money and long term implications of deficit spending are still a big concern. Mr. Payne stated that the State budget situation will have an impact on local government spending. Mr. Payne explained that the State is projecting as much as \$2.5 to \$3.5 billion deficit over the next two years, and that there is no way the State can address its shortfall without affecting localities. Mr. Payne provided an overview regarding the local budget situation and discussed concerns that the City will be facing during the next fiscal year and beyond. Mr. Payne noted that he has asked City departments to prepare budget scenarios to see what can be done with 90% of the resources that we have this year.

// City Manager Kimball Payne provided an overview regarding the City/Schools Consolidation Initiative. Mr. Payne highlighted the results in some of areas that have been reviewed, i.e., joint procurement, food services, financial and Human Resources systems, consolidation of travel & procurement cards, telephone services, Building & Grounds, and Human Resources. Mr. Payne noted that the ongoing consolidation effort has already generated some minor savings and bigger-ticket ideas are under development. Mr. Payne went on to say that he and Dr. McKendrick along with staff are continuing to meet every two weeks and are committed to completing the review of the areas that were identified for consolidation. City and School Board members spoke positively regarding the changes made to date, but several members also pressed for more aggressive action on more profitable ideas, such as combining health care plans or merging parallel positions.

// The meeting was adjourned at 6:00 P.M.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 10

CONSENT: **X**

REGULAR:

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Commonwealth Attorney Funding**

RECOMMENDATION: Adopt a resolution to amend the FY 2010 General Fund Adopted Budget and appropriate \$66,755 with resources from the General Fund Reserve for Contingencies to partially restore funding cut by the State to the Commonwealth Attorney's Office.

SUMMARY: At the October 13, 2009 City Council meeting, the Commonwealth Attorney explained that his office was not only experiencing State funding reductions but also lost funding for a large domestic violence grant. Council agreed to assist the Commonwealth Attorney's Office so that he would not have to lay off employees as a result of State funding cuts.

PRIOR ACTION(S): As noted. This matter will be reviewed by the Finance Committee on November 24, 2009

FISCAL IMPACT: Use of Reserve for Contingencies of \$66,755

CONTACT(S): Donna S. Witt, Director of Financial Services 455-3968

ATTACHMENT(S): Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2010 General Fund budget is amended and \$66,755 is appropriated to the Commonwealth Attorney's Office with resources from the General Fund Reserve for Contingencies to restore funding cut by the State.

Introduced:

Adopted:

Certified:

Clerk of Council

148L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 11

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Sale of Approximately 0.08 Acre of Surplus Property on Breezewood Drive**

RECOMMENDATION: After a public hearing, authorize the City Manager to sell the subject property.

SUMMARY:

On September 22, 2009, Mr. Alvin Mayberry, owner of 129 and 131 Breezewood Drive, asked to acquire approximately 0.08 acre piece of property from the City that adjoins his property at 129 Breezewood Drive. This is property that was acquired from him as part of a larger tract for the construction of the extension of Breezewood to tie-in to Lakeside Drive. Mr. Mayberry is eligible for a grant from the Department of Veterans Affairs to construct a handicapped accessible home for himself. The small area would allow him to construct his house closer to the street and higher in elevation to possibly not have to pump the sewer. Mr. Mayberry has maintained the property at his cost even though it is owned by the City.

This property is excess right of way and is not needed for the road. The State purchased the property for the City from Mr. Mayberry in 2007 for \$160,000 for approximately 0.8 acres.

Mr. Mayberry has offered the City \$5,000; the City Assessor's opinion of the assessed value for this right of way is \$0.69 per square foot or \$2,536.

PRIOR ACTION(S): October 27, 2009 Physical Development Committee - Approved

BUDGET IMPACT:

The property will be returned to the tax rolls.

CONTACT(S):

Lee Newland, PE, City Engineer, 455-3947

Bonnie Svrcek, Deputy City Manager/Acting Director of Community Development, 455-3900

ATTACHMENT(S):

Resolution

Subdivision Plat

Aerial Photo

Letter from Mr. Mayberry

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION TO SELL APPROXIMATELY 0.08 ACRE OF SURPLUS PROPERTY ON BREEZEWOOD DRIVE

WHEREAS, the City of Lynchburg owns approximately 0.08 acre of surplus property located on Breezewood Drive in the City of Lynchburg, Virginia; and

WHEREAS, Alvin Mayberry has requested to purchase the 0.08 acre of surplus property which adjoins his property at 129 Breezewood Drive; and

WHEREAS, the City Assessor's Office has determined that the 0.08 acre of surplus property has a fair market value of two thousand five hundred thirty-six dollars (\$2,536.00) and Alvin Mayberry is willing to pay five thousand dollars (\$5,000.00) for this property; and

WHEREAS, the City is not using the 0.08 acre of surplus property in question and has no plans to use the property in the future.

NOW, THEREFORE, BE IT RESOLVED that City Council determines the City has no need for the 0.08 acre of surplus property on Breezewood Drive and finds the City's continued ownership of the property is no longer necessary or required for the best interests of the City; and

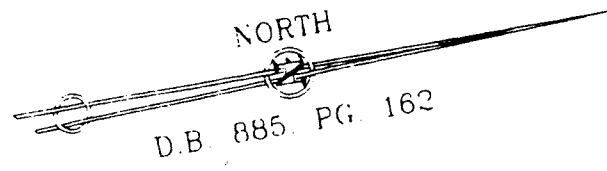
BE IT FURTHER RESOLVED that the City Council hereby approves the sale of the approximately 0.08 acre of surplus property on Breezewood Drive to Alvin Mayberry and hereby authorizes the City Manager to execute a deed and any other documents that may be needed to convey said property to Alvin Mayberry.

Introduced:

Adopted:

Certified:

Clerk of Council



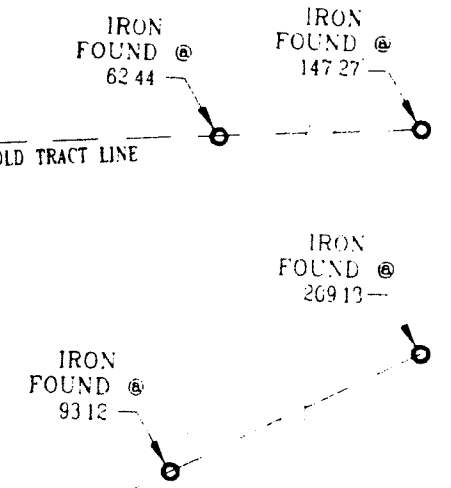
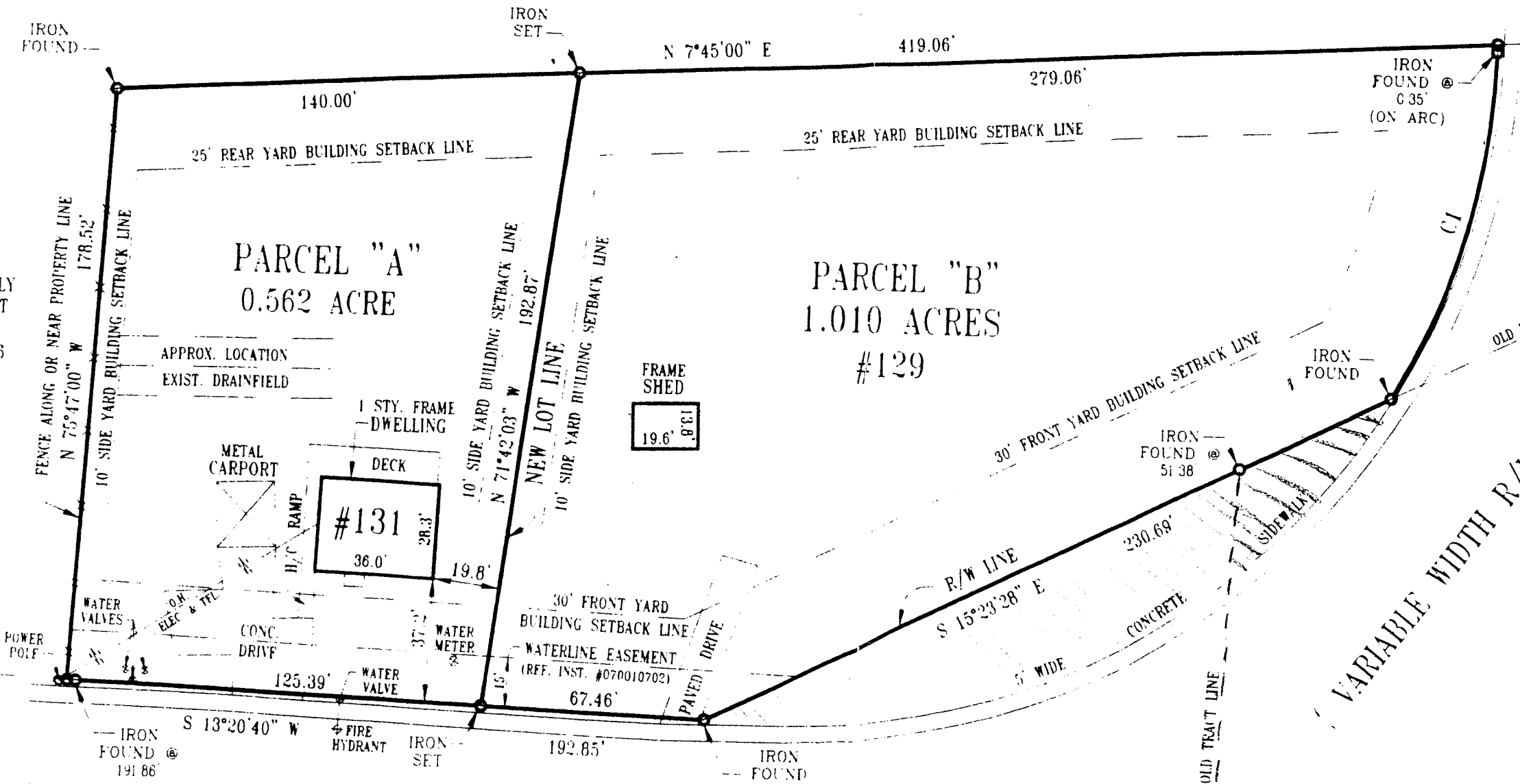
D.B. 885 PG. 162

NOW OR FORMERLY
HERITAGE BAPTIST CHURCH, INC.
DOC. #070003566
TAX MAP # 231-05-01

CURVE TABLE					
CURVE	DELTA	RADIUS	ARC	CHORD	CHORD BEARING
C1	30°02'55"	214.50'	112.49'	111.21'	N 63°50'52" W

1" = 40'

NOW OR FORMERLY
HERITAGE BAPTIST
CHURCH, INC.
DOC. #070003566
TAX MAP
#231-05-01



S
BREEZ
LYNCH

BREEZEWOOD DRIVE

MAINTAIN 2' BEHIND SW

N01
1.
2.
3.

The City of Lynchburg, VA

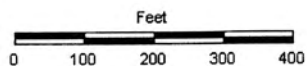
Legend

-  Corporate Limit
-  Addresses
-  Street Labels
-  Vacation
-  Parcels
-  Legal Lot Line
-  Vacated Right of Way



Title:

Date: 11/5/2009



DISCLAIMER: This drawing is neither a legally recorded map nor a survey and is not intended to be used as such. The information displayed is a compilation of records, information, and data obtained from various sources, and the city of Lynchburg is not responsible for its accuracy or how current it may be.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 12

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Conveyance of 0.52 (more or less) Acre of Property And Conveyance of 0.413 (more or less) Acre of easements to Norfolk Southern Railway Company For the Construction of Facilities to Support Enhanced Passenger Rail to Washington, D.C.

RECOMMENDATION: Adopt a resolution (second reading) authorizing the conveyance of property to Norfolk Southern Railway Company adjacent to the Kemper Street Station. After a public hearing, adopt a resolution authorizing the conveyance of easements to Norfolk Southern Railway Company adjacent to the Kemper Street Station.

SUMMARY: Enhanced passenger rail service to Washington, D.C. from Lynchburg (the first leg of the Transdominion Express) started on October 1, 2009. Supporting that service requires the construction of crew quarters in the Kemper Street Station and the construction of replacement "storage track" adjacent to the "house track" at Kemper Station where the train will be kept overnight. The attached plats indicate the limits of the property and easements to be conveyed by the City to Norfolk Southern for track construction and access. The City is presently not using the property and has no plans for its use in the future. Land will be retained to allow the widening of Kemper Street if that should prove desirable in the future. The Plats also show the limits of property to be acquired by the City from North Star Properties for dedication of Kemper Street right-of-way.

PRIOR ACTION(S): Public hearing May 12, 2009.

FISCAL IMPACT: The value of the land to be conveyed has not been determined, however, it is estimated to be approximately \$1000. Enhanced rail service will provide a positive economic benefit to the City and region.

CONTACT(S): Dee Dee Conner, 455-3928

ATTACHMENT(S): Resolution; Plats showing the property and easements to be conveyed.

REVIEWED BY: lkp

RESOLUTION

A RESOLUTION TO CONVEY A .486 ACRE PARCEL OF PROPERTY LOCATED NEAR THE KEMPER STREET TRAIN STATION TO NORFOLK SOUTHERN RAILWAY COMPANY, SUCH PROPERTY TO BE USED FOR THE CONSTRUCTION OF FACILITIES FOR ENHANCED PASSENGER RAIL SERVICE.

WHEREAS, the Commonwealth of Virginia, the City of Lynchburg, Norfolk Southern Railway Company and Amtrak recently entered into an innovative public-private partnership to enhance passenger rail train service for the citizens of Central Virginia; and

WHEREAS, the enhanced passenger rail train service will result in Amtrak providing two new passenger rail train routes that will run between Lynchburg and Washington, D.C., with an anticipated starting date of October 1, 2009; and,

WHEREAS, the enhanced passenger rail train service will require the construction of certain infrastructure improvements at the Kemper Street Train Station to support such service; and,

WHEREAS, the City of Lynchburg owns a parcel of property located at 601 Pierce Street (Tax Map Number 010-54-001), which property was conveyed to the City by Norfolk Southern Railway Company by deed dated June 4, 2001; and

WHEREAS, in order to construct the necessary infrastructure improvements needed for the enhanced passenger rail train service, Norfolk Southern Railway Company needs to acquire .486 of an acre from the larger parcel of property owned by the City at 601 Pierce Street; and,

WHEREAS, the City is not currently using the .486 acre parcel of property needed by Norfolk Southern Railway Company and has no plans to use the .486 acre parcel of property in the future; and

WHEREAS, in order to help bring enhanced passenger rail service to the citizens of Central Virginia the City has determined that it is appropriate to convey the .486 acre parcel of property to Norfolk Southern Railway Company; and,

WHEREAS, a resolution authorizing the conveyance of the .486 acre parcel of property to Norfolk Southern Railway Company was introduced to City Council at its May 12, 2009, Council meeting and was brought back to City Council for adoption at Council's November 24, 2009, Council meeting; and,

NOW, THEREFORE, BE IT RESOLVED that City Council hereby determines that the City has no need for the .486 acre parcel of property in question, and further finds the City's continued ownership of the .486 acre parcel is no longer necessary and that the best interests of the City and its citizens require the conveyance of the .486 acre parcel of property to Norfolk Southern Railway Company.

BE IT FURTHER RESOLVED that the City Council hereby approves the conveyance of the .486 acre parcel of property to Norfolk Southern Railway Company and hereby authorizes the City Manager to execute a deed and any other documents that may be needed to convey said property to Norfolk Southern Railway Company.

BE IT FURTHER RESOLVED that the conveyance of the .486 acre parcel of property to Norfolk Southern Railway Company is subject to the following conditions:

- That an easement(s) to locate, relocate, repair, replace, maintain and perpetually operate the existing storm water and sanitary sewer lines and all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg, and the construction of any building or structure or the use of the property in any manner that could interfere with the City's right to locate, relocate, repair, replace and maintain and perpetually operate utilities is prohibited without the prior written approval of the City Manager's Office, the City Utilities Division and the City Engineering Division. Such reservation of easement(s) includes the right of ingress and egress by the City for all existing and future utilities.

- That two slope easements to allow for site construction and slope maintenance be granted to Norfolk Southern Railway Company. One slope easement containing 0.331 acres more or less along the eastern boundary of the property being conveyed and one slope easement containing 0.048 acres more or less along the western boundary of Kemper Street.
- That 0.300 acres more or less of city property be dedicated as right-of-way necessary for the widening and extension of Kemper Street in order to grant Norfolk Southern Railway Company access to the 0.486 acre parcel being conveyed..

Adopted:

Certified:

Clerk of Council

145L

LINE TABLE		
L-1	S49°26'34"E	16.71'
L-2	N83°46'04"W	32.24'
L-3	S39°15'27"W	18.83'

IPF	IRON PIN FOUND
IPS	IRON PIN SET
⊙	MAN HOLE
■	STORM DRAIN DROP INLET
⊕	UTILITY POLE
SD	STORM SEWER
SS	SANITARY SEWER
=====	EDGE PAVEMENT
D.H.	DRILL HOLE IN CONCRETE
WV	WATER VALVE
P	PROPERTY LINE
—○—	CHAIN LINK FENCE
7/7	N&S EASEMENT AREA

C-1
 $\Delta = 3^{\circ}03'32''$
 $R = 2694.50'$
 $L = 143.85'$
 $CB = N09^{\circ}40'22''W$
 $CH = 143.83'$

C-2
 $\Delta = 6^{\circ}39'31''$
 $R = 326.56'$
 $L = 37.95'$
 $CB = N04^{\circ}21'30''E$
 $CH = 37.93'$

C-5
 $\Delta = 4^{\circ}23'26''$
 $R = 2945.96'$
 $L = 225.75'$
 $CB = S11^{\circ}00'04''E$
 $CH = 225.69'$

C-3
 $\Delta = 0^{\circ}39'11''$
 $R = 2945.96'$
 $L = 33.57'$
 $CB = S08^{\circ}28'46''E$
 $CH = 33.57'$

C-4
 $\Delta = 73^{\circ}05'12''$
 $R = 98.00'$
 $L = 125.01'$
 $CB = N01^{\circ}24'49''E$
 $CH = 116.70'$

THE EXISTING PROPERTY LINE
SHOWN AS L-2 IS TO BE ABANDONED
AS SOON AS KEMPER STREET IS
EXTENDED.
THE SHADED AREA (0.300) AC. PARCEL
IS TO BE DEDICATED TO THE CITY OF
LYNCHBURG FOR STREET PURPOSES.

3.514 AC.± ORIGINAL TRACT
-0.486 AC. TO NORFOLK SOUTHERN RWY.
-0.300 AC. R/W DEDICATION

2.728 AC.± RESIDUE TRACT

THE HATCHED AREA SHOWN IS AN
EASEMENT TO NORFOLK SOUTHERN RWY.
FOR MAINTENANCE OF SLOPE AND
OPERATIONS/MAINTENANCE OF
PASSENGER RAIL FACILITY. (0.331 AC.)

T.M. # 01055012

THE SUBDIVISION OF THE LAND DESCRIBED HEREIN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES. THE OWNERS CERTIFY THAT THEY ARE THE FEE SIMPLE OWNERS OF SAID LAND AND ARE LEGALLY ENTITLED TO SUBDIVIDE THE SAME.

OWNER (FOR CITY OF LYNCHBURG) _____ DATE _____

COMMONWEALTH AT LARGE TO WIT:
STATE OF VIRGINIA
COUNTY/CITY OF _____
I, _____, A NOTARY PUBLIC IN
AND FOR THE STATE AFORESAID, DO HEREBY CERTIFY THAT THE
OWNERS/REPRESENTATIVES WHOSE NAMES ARE SIGNED HERON HAVE
ACKNOWLEDGED THE SAME BEFORE ME THIS _____ DAY
OF _____, 20____. MY COMMISSION
EXPIRES _____

NOTARY PUBLIC

THE SUBDIVISION OF THE LAND DESCRIBED HEREIN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES. THE OWNERS CERTIFY THAT THEY ARE THE FEE SIMPLE OWNERS OF SAID LAND AND ARE LEGALLY ENTITLED TO SUBDIVIDE THE SAME.

OWNER (FOR NORFOLK SOUTHERN R.R.) _____ DATE _____

COMMONWEALTH AT LARGE TO WIT:
STATE OF _____
COUNTY/CITY OF _____
I, _____, A NOTARY PUBLIC IN
AND FOR THE STATE AFORESAID, DO HEREBY CERTIFY THAT THE
OWNERS/REPRESENTATIVES WHOSE NAMES ARE SIGNED HEREON HAVE
ACKNOWLEDGED THE SAME BEFORE ME THIS _____ DAY
OF _____, 20____. MY COMMISSION
EXPIRES _____

NOTARY PUBLIC

SUBDIVISION APPROVED:

CITY ENGINEER, LYNCHBURG, VIRGINIA

CITY PLANNER, LYNCHBURG, VIRGINIA

CITY MANAGER, LYNCHBURG, VIRGINIA

CLERK OF COUNCIL, LYNCHBURG, VIRGINIA

SOURCE OF TITLE:

T.M. # 01054001
CITY OF LYNCHBURG
SEE INSTR. # 010004515

T.M. # 01055012
NORFOLK SOUTHERN R.R.
SEE D.B. 76, PG. 236

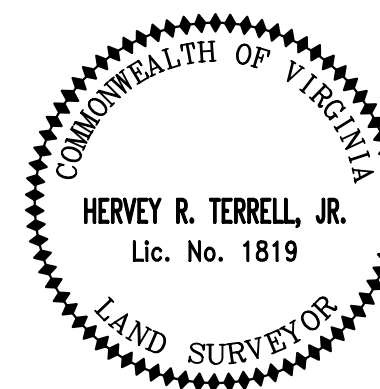
PLAT SHOWING THE DIVISION OF THE
PROPERTY OF THE CITY OF LYNCHBURG AT
AT PIERCE, BUCHANAN, KEMPER & 7TH ST.
& R/W DEDICATION FOR KEMPER STREET
LYNCHBURG, VIRGINIA



THE CITY OF LYNCHBURG VIRGINIA

ENGINEERING DIVISION

DESIGNED BY:	DRAWN BY: HRT	CHECKED BY:
HORIZONTAL SCALE: 1" =	VERTICAL SCALE: 1"=	
PLAN SCALE: 1" = 60'	PROJECT NO.: 09008-M	
DATE: 9/24/2009	SHEET 1 OF 1	
REVIEWED BY: DGC	APPROVED BY: JLN	
REVISED:		
FILE # D-2128	PROJECT NO.: 09008-M	



LINE TABLE		C-1
L-1 N35°09'16"W	43.29'	$\Delta=0^{\circ}39'11''$
L-2 N83°44'36"W	32.24'	R=2945.96'
L-3 N54°50'44"E	51.01'	L= 33.57'
L-4 N34°52'34"W	21.48'	CB=N08°28'46"W
L-5 N28°05'57"W	82.34'	CH= 33.57'

EASEMENT LINE	TABLE
L-6 S73°44'40"W	22.38'
L-7 N16°15'20"W	14.48'
L-8 S83°44'36"E	14.63'
L-9 S17°58'04"E	76.21'

THE SHADED AREAS ARE TO BE
DEDICATED TO THE CITY OF
LYNCHBURG FOR STREET PURPOSES

2.589 AC.±	ORIGINAL TRACT
-0.125 AC.	R/W DEDICATION
2.464 AC.±	RESIDUE TRACT

C-3
 $\Delta = 4^{\circ}23'26''$
 $R = 2945.96'$
 $L = 225.75'$
 $CB = S11^{\circ}00'04''E$
 $CH = 225.69'$

NORTH STAR PROPERTY, LLC
INST. # 080003714
T.M. # 01055001
#800 KEMPER STREET

EXIST. R/W LINE (L-1)
TO BE ABANDONED

SHADED AREA IS
R/W TO BE DEDICATED
TO THE CITY OF LYNCHBURG

C-2
 $\Delta = 62^{\circ}16'26''$
 $R = 37.50'$
 $L = 40.76'$
 $CB = S16^{\circ}57'28''W$
 $CH = 38.78'$

LEGEND

IPF	IRON PIN FOUND
IPS	IRON PIN SET
Ⓢ	MAN HOLE
■	STORM DRAIN DROP INLET
⤵	UTILITY POLE
SD	STORM SEWER
SS	SANITARY SEWER
▨	EDGE PAVEMENT
D.H.	DRILL HOLE IN CONCRETE
C.D.	CLEAN OUT
WM	WATER METER
WV	WATER VALVE
L	LAMP POLE
R	PROPERTY LINE
▨	EASEMENT AREA

①
N/F ALFRED A. BATES
MARY D. BATES
D.B. 489, PG. 704
T.M. # 10-55-005

CITY OF LYNCHBURG
D.B. 1113, PG. 436
T.M. # 01055006
#825 KEMPER STREET

1.730 AC.± ORIGINAL TRACT S56°21'25"W
-0.081 AC. R/W DEDICATION 6.44'
1.649 AC.± RESIDUE TRACT -"N

CITY OF LYNCHBURG
D.B. 989, PG. 379
I.M. # 01055008

SOURCE OF TITLE:

T.M. # 01055001
NORTH STAR PROPERTY, LLC
SEE INST. # 080003714

THE SUBDIVISION OF THE LAND DESCRIBED HEREIN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES. THE OWNERS CERTIFY THAT THEY ARE THE FEE SIMPLE OWNERS OF SAID LAND AND ARE LEGALLY ENTITLED TO SUBDIVIDE THE SAME.

OWNER (NORTH STAR PROPERTY, LLC) _____ DATE _____

COMMONWEALTH AT LARGE TO WIT:
STATE OF VIRGINIA
COUNTY/CITY OF _____

I, _____, A NOTARY PUBLIC IN
AND FOR THE STATE AFORESAID, DO HEREBY CERTIFY THAT THE
OWNERS/REPRESENTATIVES WHOSE NAMES ARE SIGNED HEREON HAVE
ACKNOWLEDGED THE SAME BEFORE ME THIS _____ DAY
OF _____, 20____. MY COMMISSION
EXPIRES _____

NOTARY PUBLIC

SOURCE OF TITLE:
T.M. # 01055006
CITY OF LYNCHBURG
SEE D.B. 1113, PG. 436

SUBDIVISION APPROVED:

CITY ENGINEER, LYNCHBURG, VIRGINIA

CITY PLANNER, LYNCHBURG, VIRGINIA

CLERK OF COUNCIL, LYNCHBURG, VIRGINIA

CITY MANAGER, LYNCHBURG, VIRGINIA

THE SUBDIVISION OF THE LAND DESCRIBED HEREIN IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNERS, PROPRIETORS, AND TRUSTEES. THE OWNERS CERTIFY THAT THEY ARE THE FEE SIMPLE OWNERS OF SAID LAND AND ARE LEGALLY ENTITLED TO SUBDIVIDE THE SAME.

OWNER (FOR THE CITY OF LYNCHBURG) _____ DATE _____

COMMONWEALTH AT LARGE TO WIT:
STATE OF VIRGINIA
COUNTY/CITY OF

I, _____, A NOTARY PUBLIC IN
 AND FOR THE STATE AFORESAID, DO HEREBY CERTIFY THAT THE
 OWNERS/REPRESENTATIVES WHOSE NAMES ARE SIGNED HEREON HAVE
 ACKNOWLEDGED THE SAME BEFORE ME THIS _____ DAY
 OF _____, 20____. MY COMMISSION
 EXPIRES _____

NOTARY PUBLIC

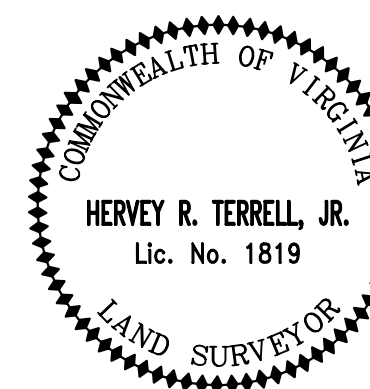
NOTES:

1. IRONS OR MONUMENTS TO BE SET AT ALL CORNERS, WHERE POSSIBLE, OR AS OTHERWISE INDICATED ON THIS PLAT.
2. THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT, THEREFORE, NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
3. THIS DRAWING HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY AS PER DATE OF THIS PLAT.
4. THIS PROPERTY IS LOCATED IN ZONE "X" AND IS NOT LOCATED WITHIN FLOOD HAZARD ZONE "AE" FOR A 100 YEAR FLOOD AS DETERMINED BY F.E.M.A., AND SHOWN ON THEIR MAP DATED JUNE 3, 2008, SEE COMMUNITY PANEL #510093 0041 D AND #510093 0043..
5. THIS SURVEY IS NOT INTENDED TO DEFINE LIMITS OF WETLANDS OR HAZARDOUS WASTE SITES.
6. THE AREA SHOWN IS TAX PARCEL # 01055001 AND # 01055006.
7. EXISTING UTILITIES ARE OVERHEAD AND UNDERGROUND.
8. THE AREA SHOWN IS SERVED BY PUBLIC WATER AND SEWER.
9. RESTRICTIONS, IF ANY, WILL BE RECORDED IN A SEPARATE DOCUMENT.

PLATS OF REFERENCE:

SEE PLAT BY BERKLEY-HOWELL & ASSOC., P.C., DATED 11-09-2001,
RECORDED IN PLAT CABINET 6, SLIDE 390, IN THE LYNCHBURG CIRCUIT
COURT CLERKS OFFICE.

THE EXISTING 30' ALLEY IS SHOWN ON A PLAT OF THE PROPERTY OF C.S. HUTTER, ESTATE, LYNCHBURG, VA., RECORDED IN D.B. 256, PG. 627 IN THE LYNCHBURG CIRCUIT COURT CLERKS OFFICE.



PLAT SHOWING
RIGHT OF WAY DEDICATION
FOR IMPROVEMENTS TO
KEMPER STREET
LYNCHBURG, VIRGINIA



THE CITY OF LYNCHBURG, VIRGINIA
ENGINEERING DIVISION

DESIGNED BY:	DRAWN BY: HRT	CHECKED BY:
HORIZONTAL SCALE: 1" =	VERTICAL SCALE: 1"=	
PLAN SCALE: 1" = 60'	PROJECT NO.: 09008-M	
DATE: 9/24/2009	SHEET 1 OF 1	
REVIEWED BY: DGC	APPROVED BY: JLN	
REVISED:		
FILE #D-2129	PROJECT NO.: 09008-M	

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 13

CONSENT:

REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Transportation Enhancement Grant – Wards Road Pedestrian & Bicycle Improvements**

RECOMMENDATION: Following a public hearing adopt a resolution in support of a Transportation Enhancement Grant application to construct pedestrian and bicycle improvements in the Wards Road Corridor.

SUMMARY: The Department of Community Development intends to submit an application for a Transportation Enhancement Grant to assist with the construction of pedestrian and bicycle improvements in the Wards Road Corridor. The City Council unanimously approved the Wards Road Pedestrian & Bicycle Plan on September 8, 2009. The City Council included the project in the FY2010 – FY2014 Capital Improvements Program (CIP) on October 27, 2009. If successful in obtaining the grant, grant funds would replace General Fund capital funds indicated on the CIP Project Detail Sheet.

The total estimated budget for the project is \$2,534,000; funds are being requested for \$2,027,200. This grant requires a twenty percent (20%) match of \$506,800.

PRIOR ACTION(S):

September 8, 2009: City Council unanimously approved the Wards Road Pedestrian & Bicycle Plan as part of the City's *Comprehensive Plan 2002-2020*.

October 27, 2009: City Council included the Wards Road Pedestrian & Bicycle improvements in the FY2010 – FY2014 CIP.

FISCAL IMPACT: \$506,800 (source to be identified)

CONTACT(S): Tom Martin, City Planner - 455-3900; Bonnie Svrcek, Deputy City Manager/Acting Director of Community Development - 455-3900

ATTACHMENT(S):

- Resolution
- CIP Project Detail Sheet

REVIEWED BY: lkp

RESOLUTION

WHEREAS, in accordance with Commonwealth Transportation Board construction procedures, it is necessary that a request by resolution be received from the local government or state agency in order that the Virginia Department of Transportation program an enhancement project in the City of Lynchburg,

NOW, THEREFORE, BE IT RESOLVED that the City of Lynchburg requests the Commonwealth Transportation Board to establish a project for the construction of Pedestrian & Bicycle improvements in the Wards Road Corridor.

BE IT FURTHER RESOLVED that the City of Lynchburg hereby agrees to pay a 20% match of the total cost for the construction of this project, and that if the City of Lynchburg subsequently elects to cancel this project the City of Lynchburg hereby agrees to reimburse the Virginia Department of Transportation for the total amount of costs expended by the Department through the date the Department is notified of such cancellation, and

BE IT FURTHER REOLVED that the City Manager is authorized to sign the necessary documents for this project.

Adopted:

Certified:

Clerk of Council

143L

SERVICE AREA
Transportation

DEPARTMENT
Community Development

LOCATION
Wards Road

PROJECT TITLE/PROJECT NUMBER
Wards Road Pedestrian & Bicycle Improvements

PROJECT TYPE
New

DEPARTMENT PRIORITY

☐	Project has legal or regulatory mandate
☐	City has contractual agreement to continue project
☐	Project has State and Federal funding
☐	Project supports essential services
☐	Project represents additional essential services
☒	Project required to support important but not essential services
☒	Project contributes to generation of new revenue

THIS PROJECT ALSO HAS (A) COMPONENT (S) IN:

☒	None
☐	Schools Capital Fund
☐	Airport Capital Projects Fund
☐	Airport Projects Grant Fund
☐	Sewer Capital Projects Fund
☐	Sewer VRLD Capital Projects Fund
☐	Water Capital Project Fund
☐	Other: Please Specify



PROJECT DESCRIPTION

The catalyst for this project is a pedestrian & bicycle tunnel connecting LU to Wards Road. The improvements will provide for safety while improving student access to businesses which could result in increased sales and meals tax revenues. The improvements will occur in three phases; Phase I, pedestrian crossing and median enhancements - \$1,000,000. Phase II, greenway trail and pedestrian crossings - \$755,500. Phase III, multi-use trail - \$778,500.

RELATIONSHIP TO COMPREHENSIVE PLAN

The Wards Road Pedestrian & Bicycle Concept plan was adopted as part of the City's *Comprehensive Plan 2002-2020* by City Council on September 8, 2009.

PROJECT MANAGER(S)
Tom Martin, Lee Newland

PROJECT START DATE 11/2009
PROJECT COMPLETION DATE 06/2012

COMPLETION SCHEDULE

Activity	Complete - Quarter	Phase I	Phase II	Phase III
City Engineering Service Charges				
Land Acquisition/Right-of-Way				
Architectural Services (Contractual)				
Surveying (Contractual)		Q4 2010	Q4 2011	Q4 2012
Consultant Engineering		Q3 2010	Q1 2011	Q1 2012
Contact Administration (Contractual)				
Inspections (Contractual)				
Construction		Q4 2010	Q4 2011	Q4 2012
Contingency		Q4 2010	Q4 2011	Q4 2012
Miscellaneous				

OPERATING BUDGET IMPACT (OVERALL OPERATING EXPENSES & PROJECTED STAFFING REQUIREMENTS):

Streetlight operating cost, (\$6000) and landscaping maintenance, (\$3000).

FIVE YEAR PROPOSED PROJECT APPROPRIATIONS BY SUB-PROJECT

Sub-Projects	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Program Period Estimate
Surveying (Contractual)	10,000	10,000	5,000	0	0	\$25,000
Consultant Engineering	92,513	70,208	72,351	0	0	\$235,072
Contact Administration (Contractual)	78,812	57,399	64,457	0	0	\$200,668
Construction	740,100	561,662	578,809	0	0	\$1,880,571
Contingency	78,575	56,231	57,883	0	0	\$192,689
TOTAL	\$1,000,000	\$755,500	\$778,500	\$0	\$0	\$2,534,000

TOTAL PROJECT COST

TOTAL PRIOR APPROPRIATIONS	FY 2010-2014	BEYOND FY 2014	TOTAL PROJECT
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	\$2,534,000		\$2,534,000
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FIVE YEAR PROPOSED PROJECT EXPENDITURE CASH FLOW PROJECTIONS BY SOURCE OF FUNDING

Funding Source	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	Program Period
Local: General Fund Engineering	0	0	0	0	0	\$0
Local: G.O. Bond	0	0	0	0	0	\$0
Local: Pay-As-You-Go	1,000,000	755,435	778,498	0	0	\$2,533,933
State: Please Specify Agency	0	0	0	0	0	\$0
Federal: Please Specify Agency	0	0	0	0	0	\$0
Other: Please Specify Agency	0	0	0	0	0	\$0
TOTAL	\$1,000,000	\$755,435	\$778,498	\$0	\$0	\$2,533,933

SOURCES OF PROJECT FUNDING FY 2010 - 2014 (%): LOCAL = 100% STATE = 0% FEDERAL = 0% OTHER = 0%

City staff are applying for transportation enhancement and safety grants which could be applied to portions of the project and offset the need for General Fund financing. A local match for grant funding will most likely be required.

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 14

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Conditional Use Permit (CUP) Extension: Parkside Villas, 903 and 903A Wiggington Road**

RECOMMENDATION: Approval of the third and final CUP extension:

SUMMARY: Tom DeWitt is petitioning for a third and final extension to the CUP approved by City Council on May 27, 2008. The CUP allows the construction of one hundred ninety (190) townhouse units at 903 and 903A Wiggington Road. The City Manager has approved two (2) six month extensions for the CUP. Section 35.1-15i(2) of the Zoning Ordinance states that "a third and final twelve (12) month extension may be requested from city council prior to the expiration of the second six (6) month administrative extension." If approved by the City Council, the extension and CUP would expire on November 27, 2010. The petitioner is requesting the extension due to residential market conditions and the need to acquire additional right-of-way to provide safe sight distance at the proposed entrance to the development.

PRIOR ACTION(S):

October 27, 2009: Tom DeWitt requests third and final extension to the CUP.

May 20, 2009: The City Manager grants a second six (6) month extension approved through November 27, 2009.

November 17, 2008: The City Manager grants the first six (6) month extension approved through May 27, 2009.

May 27, 2008: The City Council approves the CUP petition of Tom DeWitt at 903 and 903A Wiggington Road to allow the construction of one hundred ninety (190) townhouse units subject to the following conditions:

1. The petitioner will provide adequate sight distance to the west of Wiggington Road from the proposed access drive for the project.
2. The petitioner will address any additional findings of the traffic study, submitted to the City on February 29, 2008 prior to final approval of a site plan for the project.
3. A minimum of seventy-five percent (75%) of the exterior walls of each dwelling will be finished with brick or stone. Windows and doors, sunrooms, screened porches shall be excluded from this area requirement calculation.

March 12, 2008: Planning Commission recommended denial of the CUP petition.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner - 455-3900; Bonnie Svrcek, Deputy City Manager/Acting Director of Community Development - 455-3900

ATTACHMENT(S): Resolution

REVIEWED BY: lkp

RESOLUTION

A RESOLUTION GRANTING A THIRD AND FINAL TWELVE (12) MONTH EXTENSION TO THE CONDITIONAL USE PERMIT ALLOWING THE CONSTRUCTION OF ONE HUNDRED NINETY (190) TOWNHOUSE UNITS (FOR SALE)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the petition of Tom DeWitt for a third and final twelve (12) month extension to the Conditional Use Permit at 903 and 903A Wiggington Road to allow construction of one hundred ninety (190) townhouse units be, and the same is hereby, approved subject to the following conditions:

1. The petitioner will provide adequate sight distance to the west of Wiggington Road from the proposed access drive for the project.
2. The petitioner will address any additional findings of the traffic study, submitted to the City on February 29, 2008 prior to final approval of a site plan for the project.
3. A minimum of seventy-five percent (75%) of the exterior walls of each dwelling will be finished with brick or stone. Windows and doors, sunrooms, screened porches shall be excluded from this area requirement calculation.
4. The Conditional Use Permit extension shall expire on November 27, 2010.

Adopted:

Certified:

Clerk of Council

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LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 24, 2009**

AGENDA ITEM NO.: 15

CONSENT:
SESSION:

REGULAR: **X**

WORK SESSION:

CLOSED

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Public Library – Approval of Revised Internet Use Policy**

RECOMMENDATION: Approve the Revised Internet Use Policy

SUMMARY: VIRGINIA CODE #42.1-36.1 requires that the governing body of a library that receives state funding shall biennially file with the Librarian of Virginia an acceptable use policy governing the use of public and staff access to the Internet. In 2009, the policy has been revised to add a provision that users of the wireless service are also subject to the policy.

PRIOR ACTION(S): City Council approved the library's Internet Use Policy in 1999, 2001, 2003, 2005 and 2007.

FISCAL IMPACT: None

CONTACT(S): Lynn Dodge, 455-6330

ATTACHMENT(S): Lynchburg Public Library Revised Internet Use Policy

REVIEWED BY: lkp

LYNCHBURG PUBLIC LIBRARY INTERNET USE POLICY

Originally Approved by Lynchburg City Council, July, 1999
First Revision Approved by City Council, September 25, 2007
Second Revision, November, 2009

The Lynchburg Public Library is pleased to offer access to information sources through the Internet. It offers this service as part of its *Mission* “to serve as a center for education, information, recreation and culture.” The Library strives to inform, enrich and empower every person in our community by creating and promoting barrier free access to a vast array of ideas and information and by supporting an informed citizenry, lifelong learning and a love of reading. Services are provided through print and multimedia materials and the appropriate use of technology and innovative programs.

Because the Internet is a global electronic network of information, the Library cannot regulate the nature or content of the information accessed. The Library cannot protect users from information that they might find offensive. Not all information on the Internet is accurate, current or complete. Library users are encouraged to exercise critical judgment in evaluating the validity of information accessed via the Internet. If a user has concerns about the quality or content of a site, he/she should contact the original producer/developer of that site.

Access to the Internet and its resources is provided equally to all library users. Parents and/or guardians are advised to supervise their minor children’s (under age 18) use of the Internet.

In compliance with Section 42.1-36.1 of the Virginia State Code, the City of Lynchburg has installed filters on all public and staff computers for the purpose of filtering Internet access to child pornography and obscenity and to block materials deemed harmful to minors. The filter may be disabled by the city Information Technology staff for *bona fide* research or other lawful purposes, as determined by library staff.

PROHIBITED BEHAVIORS

Any use of library computers and/or Internet access by patrons or staff that interferes with activities of the library, its users or its network is strictly prohibited. Prohibited behaviors are:

- Accessing obscenity and pornography
- Accessing materials harmful to minors
- Copyright violations
- Harassing, bullying, libeling or slandering
- Violation of software licensing agreements
- Violation of another user’s privacy
- Destruction or damage of equipment
- Disruption or unauthorized monitoring of electronic communications
- Accessing gambling sites or using library computers for gambling

The library’s Internet Use Policy will apply to anyone using a library-provided computer or wireless Internet access within the library.

SANCTIONS

Library staff is responsible for ensuring this Policy is enforced. The use of computers will be monitored by Library staff. Violations of these policies can result in loss of Internet privileges and may be subject to prosecution by local, state and /or federal authorities.

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