

// A special meeting of the Council of the City of Lynchburg was held on the 18th day of October, 2011, at 8:30 A.M. at Claytor Nature Center, 1844 Woods Road, Bedford, Virginia, Joan F. Foster, President, presiding. The purpose of the meeting was to conduct City Council's Annual Retreat. The following Members were present:

Present: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster

7

Absent:

0

// City Manager Kimball Payne reviewed the agenda and expectations for the retreat.

// Leslie King, Assistant to the City Manager, presented the Proposed City Council Vision Statement. Ms. King gave an overview of the 2006 Council's Vision of the "Good Government" component. During the discussion Council suggested that Staff revise the language to the "Good Government" component of Council's Vision Statement and present City Council Vision Statement at the next Council meeting for discussion and adoption.

// Bonnie Svrcek, Deputy City Manager, presented the Sustainable Lynchburg including the Statement of Purpose, Vision, Definitions, Guiding Principles, Goals and Objectives. Ms. Svrcek stated that Staff has provided annual reports to City Council since 2008 and has continued working on the effort by strengthening the goals and identifying initiatives for each of the goals. The following are the goals that were discussed:

- Arts & Culture
- Citizen Engagement
- Economic Development
- Green
- Healthy and Active Living
- Infrastructure
- Land Use
- Lifelong Learning
- Natural and Environmental Resources
- Neighborhoods

// City Council took a short break at 11:05 a.m., reconvening at 11:15 a.m.

// Bonnie Svrcek, Deputy City Manager, and JoAnn Martin, Director of Communications and Marketing, gave an overview of current Citizen Engagement Tools which are:

- Facebook
- Lynchburg is Listening
- Citizens Academy
- City Source
- Public Education Campaign
- Surveys
- Twitter

- LTV
- First to Know
- Police Academy
- Special Events
- Volunteer Lynchburg

During Council discussion, Council continued to ask the question: Is the City doing the right things to engage citizens on important topics?

// City Council recessed at 12:25 p.m. for lunch.

// City Council reconvened the meeting at 1:11 p.m.

// Donna Witt, Financial Services Director, provided a Fiscal Outlook with the major drivers for FY 2013 which are:

- State Funding
- Revenue Highlights
- Expenditure Highlights
- Education
- Infrastructure
- Compensation and Benefits

Margaret Schmitt, Human Services Director, provided a status report on the Compensation and Benefits for City/Schools Benefit Consolidation. Ms. Schmitt stated that the benefits that are under discussion are:

- Medical
- Pharmacy
- Health Management (Wellness)
- Dental
- Vision

Ms. Schmitt further stated that the biggest advantage to consolidation is potential for expanded Health Management services/savings, schools need to reduce utilization, and the City wants to expand services to include on-site pharmacy and physician; also expect to maintain two medical plans until full implementation of health care reform, working toward a consolidated Health Management Plan, and planning to issue RFP's for:

- Medical
- Pharmacy
- Dental
- Vision

// City Manager Kimball Payne discussed the Big Challenges that the City is facing for the upcoming budget. Mr. Payne went on to say the major challenge is how to close the gap for as much as \$5M for FY 2013 Budget, which included:

- School Funding
- Stormwater
- Virginia Retirement System (VRS) Benefits
- Federal/State Mandates
- Heritage High School

// The meeting was adjourned at 3:55 p.m.

Clerk of Council

// A regular meeting of the Council of the City of Lynchburg was held on the 25th day of October, 2011, at 4:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The following Members were present:

Present: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Absent: Johnson 1

// Vice Mayor Johnson arrived at 4:04 p.m.

// City Manager Kimball Payne again explained the Greater Lynchburg Transit Company Funding Request by stating that GLTC is no longer asking for an immediate cash infusion to balance the FY 2012 Budget. Mr. Payne went on to say while this issue remains on the table, the GLTC Board will instead be considering service reductions. Mr. Payne referenced correspondence from the GLTC Board related to the ongoing fiscal challenges of the organization and a letter from First Transit that addresses the findings of the recent financial audit.

// Legislative Liaison Linda McMinimy presented the proposed Legislative Agenda for the 2012 session of the General Assembly. Ms. McMinimy did state this would be a long session starting in January and ending in May. Ms. McMinimy provided an overview regarding the Proposed 2012 Legislative Priorities:

- State Aid to Localities
- Comprehensive Services Act (CSA)
- Educational Funding
- Local Law Enforcement Funding
- Water Quality

Ms. McMinimy further presented the other legislative positions. Several Council Members had concerns regarding the wording of the Eminent Domain and the water quality positions. Also one Council Member asked that the Virginia Retirement System (VRS) position be moved up to the priorities section and after further discussion, Council consensus was to make the necessary changes to the draft 2012 Legislative Agenda and present at the next Council meeting on November 8th.

// Leslie King, Assistant to the City Manager, presented the Proposed City Council Vision Statement. Ms. King stated that during Council retreat it was suggested that the "Good Government" component of Council's Vision Statement be revised to acknowledge the City's role in regional initiatives. The following language was proposed for adoption by Council: Good Government: City government will deliver, in an equitable manner, public services through the effective and efficient stewardship of resources. *We will also engage in regional efforts that advance the interests of our citizens.* Council Member Perrow stated he would not support the Proposed City Council Vision Statement because he felt it was not a statement that rises to the level of vision and does not think it is appropriate. On motion of Council Member Nelson, seconded by Council Member Gillette, Council by the following recorded vote adopted Resolution #R-11-119, as presented, revising City Council's Vision Statement:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Foster 6

Noes: Perrow 1

// During roll call Council Member Gillette stated he would like the Clerk to send a proposed calendar by email on the anticipated Budget Work Session for 2012. Council Member Perrow received a call regarding the pedestrian access to City streets around Lynchburg College. Also the caller asked about a pedestrian crossing at the stoplight on Wards Road at CVS and Kroger stores. Vice Mayor Johnson recognized the Virginia Home Makers Society on their State Conference that was held in Lynchburg at the Holiday Inn. Mayor Foster suggested a change in the November 22 Council Meeting to begin at 1:00 P.M. instead of 4:00 P.M. since there were only a few items on the agenda. Council by consensus agreed to start the November 22 Council Meeting at 1:00 P.M.

// On motion of Council Member Cary, seconded by Council Member Gillette, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Council-appointed Boards and Commissions, i.e., Transit Company Board and the Lynchburg Parking Authority; and for consultation with legal counsel and briefings by staff members regarding a specific legal matter requiring the provision of legal advice, specifically, the discussion of legal issues concerning the City boundaries that were created by the 1976 annexation, and for consultation with legal counsel and briefings by staff members about probable litigation by Justin Sandling, pursuant to Section 2.2-3711(A.)(1) and (7), respectively, of the Code of Virginia, 1950:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

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

// Council Member Helgeson 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.

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

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote re-appointed Jennifer D. Martin and James H. Mundy, to serve another term on the Transit Company Board for terms to expire October 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

On nomination of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote appointed L. Kimball Payne to serve a term on the Transit Company Board for a term to expire October 31, 2014:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

On nomination of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote re-appointed J. Randolph Nelson to serve another term on the Lynchburg Parking Authority for a term to expire October 31, 2013:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

On nomination of Council Member Gillette, seconded by Council Member Helgeson, Council by the following recorded vote appointed Anna Bentson to serve a term on the Lynchburg Parking Authority for a term to expire October 31, 2012:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// City Council recessed the meeting at 6:28 p.m.

// City Council reconvened the meeting at 7:30 p.m.

The following Members were present:

Present: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Absent: Johnson 1

Council Member Gillette gave the Invocation, followed by the Pledge of Allegiance.

// Copies of the minutes of the October 11, 2011 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Cary, seconded by Council Member Helgeson, Council by the following recorded vote approved the minutes as revised:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Fire – General, Resolution #R-11-107 amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$7,200, to purchase a Forcible Entry Simulator for the Fire Department's Burn Building, laid over from the October 11, 2011 meeting, was again presented and read, and on motion of Council Member Cary, seconded by Council Member Helgeson, Council by the following recorded vote adopted the Resolution to purchase a Forcible Entry Simulator for the Fire Department's Burn Building:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Fire – General, Resolution #R-11-108 amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$7,527, to purchase a Temperature Monitoring System (TMS) for the Fire

Department's Burn Building, laid over from the October 11, 2011 meeting, was again presented and read, and on motion of Council Member Cary, seconded by Council Member Helgeson, Council by the following recorded vote adopted the Resolution to purchase a Temperature Monitoring System (TMS) for the Fire Department's Burn Building:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Police – General, Resolution #R-11-109 amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$35,820 with resources of \$29,850 and in-kind match of \$5,970 to send crash team members to accident reconstruction training and to purchase equipment, laid over from the October 11, 2011 meeting, was again presented and read, and on motion of Council Member Cary, seconded by Council Member Helgeson, Council by the following recorded vote adopted the Resolution to send crash team members to accident reconstruction training and to purchase equipment:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Police – General, Resolution #R-11-110 amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$51,224, fully reimbursable, to purchase replacement digital in-car video recording equipment and computer tablets, laid over from the October 11, 2011 meeting, was again presented and read, and on motion of Council Member Cary, seconded by Council Member Helgeson, Council by the following recorded vote adopted the Resolution to purchase replacement digital in-car video recording equipment and computer tablets:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// In the matter of Police – General, Resolution #R-11-111 amending the FY 2012 City/Federal/State Aid Fund budget and appropriating \$53,227 with resources of \$42,137, an in-kind match of \$8,438, to provide selective DUI and occupant restraint enforcement activities, attend related training and purchase equipment, laid over from the October 11, 2011 meeting, was again presented and read, and on motion of Council Member Cary, seconded by Council Member Helgeson, Council by the following recorded vote adopted the Resolution to provide selective DUI and occupant restraint enforcement activities, attend related training and purchase equipment:

Ayes: Cary, Gillette, Helgeson, Nelson, Perrow, Foster 6

Noes: 0

Absent: Johnson 1

// Vice Mayor Johnson joined the meeting at 7:33 p.m. after the vote on the Consent Agenda.

// In the matter of City Code/Registrar, a public hearing was held regarding City Council Report #12

regarding an Ordinance to amend the City Code relating to the City's Election Wards, Election Precincts and Voting Places. City Planner Tom Martin gave a summary of the request stating as a result of population changes identified in the 2010 Census, boundary adjustments are necessary to Ward and Precinct Boundaries. Mr. Martin further stated that guidelines for redistricting advise that the population for Wards should be within five percent (5%) of the ward's ideal population relative to the total population of the City. The ideal population of each ward would be eighteen thousand eight hundred and ninety-two (18,892) individuals. Mr. Martin went on to say that boundary adjustments also cannot result in "retrogression" or a condition where the minority population does not have the same voting strength. 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 Cary, Council by the following recorded vote adopted Ordinance #O-11-120, as presented, to amend the City Code relating to the City's Election Wards, Election Precincts and Voting Places:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster

7

Noes:

0

// In the matter of Cable, a public hearing was held regarding City Council Report #13 regarding an Ordinance for a second amendment to the Cable Franchise Agreement between the City of Lynchburg, Virginia and Ntelos Media Inc. Mike Goetz, Director of Information Technology, gave a summary of the Ntelos Cable television Franchise request. Mr. Goetz stated that Ntelos has requested that its cable television franchise be amended to expand its franchise to provide cable television services to areas in the City beyond the Cornerstone neighborhood. There was no one else present who wished to speak to this item, and the public hearing was closed. After Council discussion it was consensus of Council to present this item at the November 8th Council meeting.

// In the matter of City Code, a public hearing was held regarding City Council Report #14 regarding an Ordinance amending the City Code relating to the regulation of Stormwater within the City. Tim Mitchell, Utilities Director, gave a summary on the existing and future stormwater management needs and pending regulations associated with the Chesapeake Bay clean-up efforts. Mr. Mitchell further stated that a stormwater utility and enterprise fund are recommended in order to effectively and efficiently address these needs. Mr. Mitchell went on to say a fee based on the amount of impervious area on individual properties is recommended as it would apply to all developed properties with the City and is regarded as the most equitable method of funding the stormwater management needs of the City. There were two individuals that spoke in favor of the Ordinance amending the City Code relating to the regulation of Stormwater within the City. There were two individuals that spoke in opposition regarding this item against adding more fees to the water bill. There was no one else present who wished to speak to this item, and the public hearing was closed. During Council discussion several Council Members had the following concerns:

- . use a stormwater fee
- . add the fee to current utility bills
- . send the bills to property owners or tenants

Council Member Helgeson made a motion, seconded by Council Member Perrow to table the discussion until the Budget session. Council Member Gillette suggested that it would be too long to table this item and asked the item be discussed at the December 13 meeting. Council Member Helgeson agreed to change his motion and Council Member Perrow seconded the change. Council by the following recorded vote agreed to take this item to the December 13 Council Meeting:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of Public Works – General, a public hearing was held regarding City Council Report #15 regarding requesting the Commonwealth Transportation Board to establish a project for the construction of a pedestrian/bike trail along the former Kanawha Canal in Lynchburg. Charles Grant, Construction Manager, gave a summary to request the Commonwealth Transportation Board to establish a project for the construction of a pedestrian/bike trail along the former Kanawha Canal in Lynchburg, including improvements to the 9th Street Kanawha Canal Bridge to allow pedestrian/bike travel under the bridge, creation of a Canal Park to serve as a trailhead, and stabilization of the adjacent historic train tunnel for a future transportation exhibit. Mr. Grant further stated that this work is a continuation of the Downtown & Riverfront Master Plan 2000. This phase of work will focus on the Kanawha Canal revitalization as a trailhead connection between Percival's Isle and Blackwater Creek. Mr. Grant went on to say included is the stabilization of the old railroad tunnel located behind Amazement Square and this tunnel will be used for a future transportation exhibit. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson, Chair of the Finance Committee (FC), stated that this item came before FC and made a motion to request the Commonwealth Transportation Board to establish a project for the construction of a pedestrian/bike trail along the former Kanawha Canal in Lynchburg. The motion did not require a second, and Council by the following recorded vote adopted Resolution #R-11-121, as presented, to establish a project for the construction of a pedestrian/bike trail along the former Kanawha Canal in Lynchburg:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// In the matter of Finance - Bonds, a public hearing was held regarding City Council Report #16 regarding authorizing the issuance of not to exceed \$10,000,000 General Obligation Public Improvement Bond Anticipation Notes (BANS). Donna Witt, Financial Services Director, provided a brief summary regarding the request. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Helgeson, Chair of the Finance Committee (FC), stated that this item came before FC and made a motion to approve the \$10,000,000 General Obligation Public Improvement Bond Anticipation Notes (BANS). The motion did not require a second, and Council by the following recorded vote adopted Resolution #R-11-122, as presented, authorizing the issuance of not to exceed \$10,000,000 General Obligation Public Improvement Bond Anticipation Notes (BANS) pursuant to Section 15.2-2606.A of the Code of Virginia, 1950:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster 7

Noes: 0

// Council Member Helgeson, Chair of the Finance Committee (FC), stated that this item came before FC and made a motion to adopt the Resolution. Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-11-123, as presented, amending the FY 2012 General Fund's Adopted Budget and appropriating \$34,956, for issuance costs related to the FY 2012 General Obligation Public Improvement Bond Anticipation Notes for the Bank Qualified Line of Credit:

Ayes: Cary, Gillette, Helgeson, Johnson, Nelson, Perrow, Foster

7

Noes:

0

// In the matter of City Council, Ms. Barbara Petit spoke before Council regarding a concern with the Lynchburg Police Department.

// The meeting was adjourned at 9:32 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 4

CONSENT: **X**

REGULAR:

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Proposed 2012 Virginia General Assembly Legislative Agenda**

RECOMMENDATION: Adopt the proposed legislative agenda as amended.

SUMMARY: The attached proposed legislative agenda for the 2012 session of the Virginia General Assembly has been prepared by Legislative Liaison Linda McMinimy with input from Council and the Leadership Team.

The agenda presented to Council for consideration on October 25th has been revised as directed.

PRIOR ACTION(S): The proposed legislative agenda is based on those previously adopted by Council amended to reflect current issues and Council's guidance on October 25, 2011.

FISCAL IMPACT: N/A

CONTACT(S): Linda McMinimy, (804) 643-1166; Walter Erwin, 455-3973; Kimball Payne, 455-3990

ATTACHMENT(S): Proposed 2012 Legislative Agenda, Final Draft

REVIEWED BY: lkp

FINAL DRAFT
CITY OF LYNCHBURG
2012 LEGISLATIVE AGENDA

The City of Lynchburg is a member of both the Virginia Municipal League and the Virginia First Cities Coalition and supports the legislative agendas of both organizations. The City of Lynchburg 2012 Legislative Agenda is meant to highlight those issues of particular importance to the City.

The Lynchburg City Council understands the fiscal challenges facing the Commonwealth as the 2012 session of the Virginia General Assembly convenes. Those challenges make it even more important that the legislators keep the following principles in mind as they evaluate and vote on legislation and the budget for the upcoming biennium.

PRINCIPLES

- Local governments are instruments of the state, created in large measure to deliver state responsible services in a more efficient and effective manner. This state/local partnership requires an equitable allocation of costs between the two levels of government and across the various jurisdictions of the Commonwealth.
- The state must continue to meet constitutional and statutory responsibilities to adequately fund the state share of state/local services, especially in education, human services, and public safety. Any shortfall in state revenues should not be shifted to local governments.
- Rather than shifting responsibilities for programs that the state is unwilling to fund down to the localities, the state should consider eliminating those programs.
- The state should explore ways to increase the efficiency and effectiveness of the delivery of state services at the local level including the regionalization of service delivery (e.g. Social Services) and the elimination of inefficient structures such as the Compensation Board.
- The General Assembly should defeat proposed legislation that would erode local taxing authority, cap or reduce local revenue sources or that would impose unfunded mandates on localities.
- The General Assembly should support legislation that provides greater authority to localities in implementing sustainability initiatives especially with regard to land use and transportation planning.
- The General Assembly should preserve local zoning and land use authority, allowing flexibility to meet the needs of individual communities.

2012 LEGISLATIVE PRIORITIES

State Aid to Localities: Eliminate the annual \$60 million reduction in State Aid to Localities (ATL). This across the board cut to local core services has been in effect for the last 4 years and has enabled the state to balance its budget during the recession and run a surplus for the last two years, even as local revenues continue to be depressed. The cost to the City of Lynchburg, in FY12 alone, was \$644,424. The four year cost to core services in all localities has been \$220 million dollars. Eliminating the ATL reduction would restore funds to fund state mandated local services.

Comprehensive Services Act (CSA): CSA funding continues to be a serious concern. Actions taken by the General Assembly have increased mandated services and shifted costs to the localities. The General Assembly should refrain from adding additional mandated services and should fund its full share of the CSA program.

Educational Funding: Jobs are the key to economic recovery and adequate education is essential for preparing the current and future workforce. The State should fully fund the Standards of Quality (SOQ), including support staff costs and categorical incentive funds for At-Risk students and restore funding from cuts to education over the last biennium. The state has a constitutional duty to meet its education funding obligations and should refrain from changes in methodology and the division of financial responsibility that result in a further shift of funding responsibility from the state to localities. These shifts do not change what it actually costs to provide education but simply transfer additional costs to local governments, and ultimately to the local real estate tax base.

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 street maintenance of bridges, key arterial and collector roadways and non-automobile transportation modes such as public transportation, pedestrian and bikeways and airports.

Identify a sustainable source of operating funds for the Amtrak intercity passenger rail service from Lynchburg to Boston including continued funds for the Bus Bridge to Roanoke. In addition, support extension of passenger rail service from Lynchburg to Roanoke as part of the Trans Dominion Express.

Virginia Retirement System: Support legislation that provides localities with greater flexibility in making adjustments to VRS benefits in order to reduce the increasing costs

of the program, including but not limited to legislation to allow localities the option to require employees hired before July 1, 2010 to pay the 5% employee share of VRS.

Water Quality: The City's Combined Sewer Overflow (CSO) Program will cost an additional \$280 million to complete in addition to total expenditures to date of \$154 million. Additional water quality requirements related to the cleanup of the Chesapeake Bay and its tributaries will add as much as \$180 million in local costs for stormwater management and wastewater treatment plant upgrades. Further Federal and State assistance is required to avoid an unreasonable economic burden on City residents and businesses: ~~In addition to the City's Combined Sewer Overflow (CSO) Program additional water quality requirements related to the cleanup of the Chesapeake Bay and its tributaries will significantly impact the costs of stormwater management and wastewater treatment facilities.~~ The City urges support for the following positions:

- Provide \$5.0 million in each year of the biennium for Lynchburg and Richmond's CSO program (\$2.5 Million each year for each city).
- Continue to increase funding to the Virginia Revolving Loan (VCWRLF) program and earmark those funds for CSO abatement in order to qualify Lynchburg and Richmond for zero interest rates.
- Support expansion of Virginia's Nutrient Credit Exchange Program to include other sectors such as stormwater as long as it is not to the detriment of the established point source trading or risk a reduction in point source allocations.
- Provide local authority to charge connection and availability or facility fees for stormwater systems similar to those charged by water and wastewater utilities.
- Insist that any regulations enacted to implement the Total Maximum Daily Load (TMDL) in the Chesapeake Bay watershed be based on factual information, propose a reasonable schedule and are sensitive to the fiscal ability of local governments.
- Support reasonable and affordable implementation of any new stormwater management requirements. EPA storm water requirements should be reviewed and revised to avoid placing an unreasonable economic burden on communities.
- Oppose efforts to implement further point source (wastewater treatment plant) reductions of nutrient discharges beyond those allocations currently in the Chesapeake Bay Nutrient General Permit.
- ~~Support any~~ Provide state or federal funding support for all water quality initiatives, as well as continued funding for the Water Quality Improvement Fund (WQIF).

OTHER LEGISLATIVE POSITIONS

Binding Arbitration: Oppose legislation that mandates binding arbitration, meet and confer requirements, and imposed grievance procedures for local employees.

Communications Sales and Use Tax: Support legislation to reclassify the communications sales and use tax as a local not a state tax.

Economic Development: Provide \$2 million for the Virginia Brownfield Redevelopment Assistance Fund, to continue the redevelopment of brownfield sites.

Eminent Domain: ~~Oppose a constitutional amendment to restrict the local use of eminent domain.~~ Oppose a constitutional amendment that would unreasonably restrict the local use of eminent domain. The City supports private property rights which are strictly protected by recent additions to state law that prevent a “Kelo” type taking in Virginia. However, the constitutional amendment currently under consideration goes far beyond current law and would impair the ability of local government to perform essential utility and transportation responsibilities at a reasonable cost. The proposed amendment could add significant costs to local taxpayers for CSO and other utility projects and for street improvements like the Crosstown Connector. It could also preclude utility or transportation improvements required to bring a major employer like Frito-Lay to the City. Landowners would no longer have to show that public improvements projects actually reduced the fair market value of their property in order to recover damages and could claim damages for lost profits resulting from the temporary closing of a street for such things as utility line projects, street repairs or even closing a street for community events such as the Lynchburg Ten Miler and the Christmas parade

Exemptions: Oppose any legislation that would exempt churches and other religious and non-profit organizations from neutral, generally applicable local ordinances, and in particular local health, safety and zoning ordinances."

Employee Retirement and Benefits: Support the local option of participating in the Virginia Sickness and Disability Program.

Line of Duty Act: Support initiatives that return program funding responsibility to the state. Should this unfunded mandate continue, give localities the authority to establish these benefits rather than participate in the state program.

Mental Health/Mental Retardation Services: Community Service Boards (CSB's) should be required to provide mental health services to children as mandated by state law.

Prevention: Restore state funds for prevention services.

Region 2000: Maintain funding for the Center for Advanced Engineering and Research (CAER)

Social Services: Maintain funding for workforce re-training through appropriate agencies, retaining VIEW staff and funding in Social Services. This program has successfully helped TANF recipients secure and maintain jobs.

State Aid to Public Libraries: Retain state aid for libraries. Public libraries are experiencing unprecedented demand for their services due to the recession. In FY 2011 state aid was provided at a level of only 56% of that mandated by the Code of Virginia. Further cuts will threaten the future viability of local libraries.

Substance Abuse Treatment: Restore state funding for substance abuse treatment programs. Such funding could be provided to Community Service Boards, programs such as “The Healing Place” or other pilot programs.

Taxes on Local Services: Oppose the imposition of a state fee, tax or surcharge on water, sewer, and solid waste or on any other local government funds or services.

Taxes- Machinery and Tools: Oppose legislation that would reduce or eliminate a localities authority to impose a machinery and tools or business license tax.

Taxes- Business License: Oppose legislation that would reduce or eliminate a localities authority to impose a business license tax.

Taxes- Transient Occupancy and On-line Travel Companies: Support legislation to ensure that transient occupancy taxes are based on the cost of the room as paid by the consumer. On-line travel companies collect and remit transient occupancy taxes based on the wholesale room price hotels and motels paid by the travel companies not the room price paid by the consumer.

Telecommunications: Maintain local authority over zoning, land use, rights-of-way and taxation. Limit new state regulation preempting local authority regarding the use and compensation of local rights of way for telecommunications.

~~**Virginia Retirement System:** Support legislation that provides localities with greater flexibility in making adjustments to VRS benefits in order to reduce the increasing costs of the program, including but not limited to legislation to allow localities the option to require employees hired before July 1, 2010 to pay the 5% employee share of VRS.~~

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 5

CONSENT: **X**

REGULAR:

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Police Bulletproof Vest Partnership 2011 Grant Funding**

RECOMMENDATION:

Adopt a resolution to amend the FY 2012 City/Federal/State Aid Fund budget and appropriate \$35,450 with resources of \$17,725 from the Bulletproof Vest Partnership 2011 Grant Program and \$17,725 of match from the General Fund Police Department (\$11,250) and Sheriff's Office (\$6,475) budgets to purchase 50 replacement bulletproof vests for law enforcement officers.

SUMMARY:

The Police Department and Sheriff's Office have been awarded a grant under the Bulletproof Vest Partnership. Funding will be used to purchase 50 replacement bulletproof vests for law enforcement officers.

Total vest replacement costs are \$35,450 with half of the expense reimbursed by the grant and the other half funded out of the Police Department and Sheriff's Office FY 2012 Operating budgets.

PRIOR ACTION(S):

Finance Committee, October 25, 2011

FISCAL IMPACT:

The grant requires a 50% local match; the match is available in the FY 2012 General Fund Police Department and Sheriff's Office Operating Budgets.

CONTACT(S):

Police Chief Parks Snead, 455-6104
Police Captain R.M. Zuidema, 455-6052
Sheriff Ron Gillispie, 847-1301
Chief Deputy D.T. Sloan (LSO), 847-1301

ATTACHMENT(S):

Resolution

REVIEWED BY: lkp

RESOLUTION:

BE IT RESOLVED that the FY 2012 City/Federal/State Aid Fund budget is amended and \$35,450 is appropriated with resources of \$17,725 from the Bulletproof Vest Partnership 2011 Grant Program and \$17,725 of match from the General Fund Police Department (\$11,250) and Sheriff's Office (\$6,475) budgets to purchase 50 replacement bulletproof vests for law enforcement officers.

Introduced:

Adopted:

Certified:

Clerk of Council

169L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 6

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Conditional Use Permit (CUP) – Virginia University of Lynchburg, Office uses in an R-3, Medium Density Two-Family Residential District – 2147 & 2460 Campbell Avenue

RECOMMENDATION: Approval of the conditional use permit petition.

SUMMARY: Virginia University of Lynchburg is petitioning for a conditional use permit at 2147 Campbell Avenue and 2460 Campbell Avenue to allow the conversion of dwellings into office uses in an R-3, Medium Density, Two-Family Residential District. The proposed offices at 2147 Campbell Avenue would contain coaches' offices. The proposed offices at 2460 Campbell Avenue would be used for administrative purposes. The Planning Commission recommended approval of the petition because:

- The petition agrees with the *Comprehensive Plan 2002-2020* which recommends a Traditional Residential use for the property.
- The petition agrees with the *Zoning Ordinance* which permits college and university uses in a R-3, Medium Density Two-Family Residential District upon approval of a CUP by Council.

PRIOR ACTION(S):

October 12, 2011: Planning Division recommended approval of the CUP petition.

Planning Commission recommended approval (6-0, 1 abstention, Coleman) of the CUP petition with the following conditions:

1. The property shall be used and developed in substantial compliance with the concept plan dated October 6, 2011, by Virginia University of Lynchburg.
2. All lighting shall be glare shielded and non-directional.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner - 455-3900
Kent White, Director of Community Development – 455-3900

ATTACHMENT(S):

- Resolution
- Planning Commission Report – October 12, 2011
- Planning Commission Minutes – October 12, 2011
- Vicinity Zoning Pattern
- Vicinity Future Land Use
- Watershed Location Map
- Site Plan
- Parking Agreement
- Narrative
- Property Photograph
- Speaker Signup Sheet

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO THE VIRGINIA UNIVERSITY OF LYNCHBURG TO ALLOW FOR THE CONVERSION OF RESIDENTIAL DWELLINGS TO OFFICE USES ASSOCIATED WITH THE UNIVERSITY AT 2147 CAMPBELL AVENUE AND 2460 CAMPBELL AVENUE IN AN R-3, MEDIUM DENSITY, TWO-FAMILY RESIDENTIAL DISTRICT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the petition of the Virginia University of Lynchburg for a conditional use permit to allow for the conversion of residential dwellings to office uses associated with the University at 2147 Campbell Avenue and 2460 Campbell Avenue in an R-3, Medium Density, Two-Family Residential District, is hereby approved subject to the following conditions:

1. The property shall be used and developed in substantial compliance with the concept plan dated October 6, 2011, by Virginia University of Lynchburg.
2. All lighting shall be glare shielded and non-directional.

Adopted:

Certified:

Clerk of Council

170L

The Department of Community Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: October 12, 2011
Re: **Conditional Use Permit (CUP): Virginia University of Lynchburg, 2147 and 2460 Campbell Avenue**

I. PETITIONER

Virginia University of Lynchburg, 2058 Garfield Avenue, Lynchburg, Virginia 24501
Representative: Mr. Dave Evans, Virginia University of Lynchburg, 2058 Garfield Avenue, Lynchburg, Virginia 24501

II. LOCATION

The subject properties at 2147 and 2460 Campbell Avenue are one hundred forty-eight thousandths (0.148) of an acre and two hundred ninety-two thousandths (0.292) of an acre respectively.

Property Owner: Virginia University of Lynchburg, 2058 Garfield Avenue, Lynchburg, Virginia 24501

III. PURPOSE

The purpose of this petition is to allow the conversion of two residential dwellings to an office use. At 2147 Campbell Avenue, the existing dwelling is one thousand, forty eight (1,048) square feet. The existing dwelling located at 2460 Campbell Avenue is two thousand, seven hundred forty (2,740) square feet.

IV. SUMMARY

- The *Comprehensive Plan* which recommends a Traditional Residential use for the property.
- Petition agrees with the *Zoning Ordinance* in that school uses are permitted in an R-3, Medium Density Two-Family Residential District with approval of a conditional use permit (CUP) by City Council.

The Planning Division recommends approval of the conditional use permit petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan 2002-2020* recommends a Traditional Residential use for both properties. Traditional Residential areas are those generally constructed prior to World War II. "Large new or expanded public and institutional uses are not appropriate for these areas unless they can be designed to blend into the existing urban fabric through landscaping or architectural treatments" (pg. 5.5). These properties also fall within a Neighborhood Conservation Area as identified by the Plan Framework Map. When reviewing conditional use permits for churches, institutions, and other conditional uses, the City should ensure that proposed buildings, parking lots, and other features are designed to fit into the fabric and character of these older neighborhoods (pg. 4.18).

2. **Zoning.** The subject properties were annexed from Campbell County in 1926. The existing R-3, Medium Density Two-Family Residential District was established in 1978 with the adoption of the current *Zoning Ordinance*.
3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances are needed for the development of the property as proposed.
4. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:
 - On January 8, 1980, Lynchburg City Council approved Fairview Christian Church's CUP petition to use a portion of the existing church for a child care facility in an R-3, Medium Density Two-Family Residential District at 2314 Mosby Avenue.
 - On March 13, 1984, Lynchburg City Council approved Fairview Christian Church's CUP petition to allow for the construction of a parking lot in an R-3, Medium Density Two-Family Residential District at 2205 Mosby Avenue.
 - On November 12, 1985, Lynchburg City Council approved Christian Chapel's CUP petition to construct an addition to the existing church and parking lot in an R-3, Medium Density Two-Family Residential District at 2347 Holliday Street.
 - On November 14, 1989, Lynchburg City Council approved Virginia Seminary and College's CUP petition to allow the conversion of an existing building into a college bookstore and retail snack bar in an R-3, Medium Density Two-Family Residential District at 2202 Garfield Avenue.
 - On February 9, 1993, Lynchburg City Council approved New Life Gospel Assembly's CUP petition to allow an expansion of the existing church building for restrooms, office space, and a nursery in an R-3, Medium Density Two-Family Residential District at 2261 Campbell Avenue.
 - On October 12, 1993, Lynchburg City Council approved The Church of God of Prophecy's CUP petition to allow for the construction of five (5) classrooms, two (2) restrooms, a multi-use facility and five (5) additional parking spaces in an R-3, Medium Density Two-Family Residential District at 2600 Garfield Avenue.
 - On October 25, 1994, Lynchburg City Council approved Christian Chapel's CUP petition to construct an addition to the existing church and a pavilion in an R-3, Medium Density Two-Family Residential District at 2347 Holliday Street.
 - On December 9, 1997, Lynchburg City Council approved New Life Church's CUP petition to construct a new sanctuary with associated parking in an R-3, Medium Density Two-Family Residential District at 2261 Campbell Avenue.
 - On May 9, 2000, Lynchburg City Council approved The Church of God of Prophecy's CUP petition to construct a fellowship hall with associated parking in an I-2, Light Industrial District at the intersection of Otey Street and Cobbs Street.
 - On April 9, 2002, Lynchburg City Council approved Christian Chapel's CUP petition to construct an addition to the existing church in an R-3, Medium Density Two-Family Residential District at 2347 Holliday Street.

- On June 14, 2011, Lynchburg City Council approved Virginia University of Lynchburg's CUP petition to convert an existing building into university offices in an R-3, Medium Density Two-Family Residential District at 2054 Garfield Avenue.
 - On June 14, 2011, Lynchburg City Council approved Virginia University of Lynchburg's CUP petition to construct a four-story student dormitory in an R-3, Medium Density Two-Family Residential District at 2057 Garfield Avenue.
5. **Site Description.** Currently, both dwellings are vacant and are not being used for residential purposes. Both properties contain minimal parking to the rear of the dwellings. Adjoining the property at 2147 Campbell Avenue are institutional and residential uses. Adjoining the property located at 2460 Campbell Avenue are several vacant parcels. Currently, First Baptist Church of South Lynchburg is in the process of receiving approval to construct a new church and associated parking, which would adjoin the subject property at 2460 Campbell Avenue. The petition of First Baptist Church was considered by the Planning Commission on September 14, 2011.
6. **Proposed Use of Property.** The purpose of this petition is to allow the petitioner to convert the existing dwellings for office use related to the university. The dwelling located at 2147 Campbell Avenue is proposed to be used as a coach's office building. The dwelling located at 2460 Campbell Avenue would be used for administrative offices.
7. **Traffic, Parking and Public Transit.** A traffic study was not required as part of the application for the CUP. The property falls within the Campbell Avenue Corridor Study Area. Planning in this area should include strategies to channel traffic properly (**page 4.13**). With the newly planned First Baptist Church of South Lynchburg adjacent to the subject property at 2460 Campbell Avenue, parking and traffic movement are planned to improve in this area.
- Section 35.1-25, Off-street parking and loading (e) of the *Zoning Ordinance* states that "for colleges exceeding one hundred (100) on campus and commuting students the parking need shall be determined by the petitioner and approved as part of a conditional use permit as required by Section 35.1-15". A total of three (3) new parking spaces will be constructed at 2460 Campbell Avenue, with any overflow parking moving into the adjacent church parking lot. There will be six (6) parking spaces constructed at the 2147 Campbell Avenue office.
- The properties are served by Route 2 of the Greater Lynchburg Transit Company. The closest bus stop to 2460 Campbell Avenue is less than one hundred (100) feet to the east. The closest bus stop for 2147 Campbell Avenue is located at Campbell Avenue/Dewitt Street and Campbell Avenue/Price Street.
8. **Stormwater Management.** A stormwater management and erosion sediment control plan will not be required as any disturbed areas will not exceed one thousand (1,000) square feet.
9. **Emergency Services.** The City Fire Marshal and Police Department had no comments of concern with the project as proposed.
10. **Impact.** Virginia University of Lynchburg is anticipating a sixty percent (60%) growth rate in the next five (5) years. The need for increased administration facilities has become a prominent concern. Knowing the projected growth of the university, the City has encouraged the University to submit a master plan that accounts for future land use development, which would ensure coordinated growth of the school.

The proposed offices will have limited impact upon the surrounding area. Traffic and stormwater management concerns have all been addressed to the satisfaction of City staff. The use of vacant buildings for office uses helps promote the revitalization of this area of the City. The use of the property encourages the growth of this institutional use. Institutional uses have

historically continued to grow in this area of the City, as indicated by the past actions of City Council.

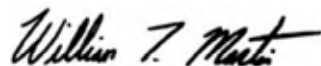
11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the concept plan on September 20, 2011. Comments related to the proposal were minor in nature and have or will be addressed by the petitioner.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the conditional use permit petition of Virginia University of Lynchburg, to allow for the conversion of residential dwellings into office uses located at 2147 and 2460 Campbell Avenue, in accordance with the following conditions:

1. **The property shall be used and developed in substantial compliance with the concept plan dated October 6, 2011, by Virginia University of Lynchburg.**
2. **All lighting shall be glare shielded and non-directional.**

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozcrow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Douglas Saunders, Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Mr. Jacob Dorman, Environmental Reviewer
Mr. Dave Evans, Virginia University of Lynchburg

VII. ATTACHMENTS

1. **Vicinity Zoning Pattern**
2. **Vicinity Proposed Land Use**
3. **Watershed Location Map**
4. **Concept Plan**
5. **Narrative**
6. **Photo**

MINUTES FROM THE OCTOBER 12, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

- a. Petition of Virginia University of Lynchburg, Inc. for a conditional use permit at 2147 Campbell Avenue and 2460 Campbell Avenue to allow the use of existing dwellings as university offices in an R-3, Medium Density, Two-Family Residential District.**

Mr. Henry had the following comments for the commissioners. The conditional use permit petition would allow for the conversion of residential dwellings into offices. Currently, both dwellings are vacant. Both properties contain minimal parking to the rear of the dwellings. The *Comprehensive Plan* recommends a Traditional Residential use for both properties. Large, new or expanded public and institutional uses are not appropriate for these areas unless they can be designed to blend into the existing urban fabric through landscaping or architectural treatments. These properties also fall within the Neighborhood Conservation area as identified by the plan framework map. When receiving conditional use permits for churches, institutions and other conditional uses, the City should ensure that the proposed buildings, parking lots and other features are designed to fit into the fabric and character of these older neighborhoods.

A total of three new parking spaces will be constructed at 2460 Campbell Avenue, with any overflow parking moving into the adjacent church parking lot. There will be six parking spaces constructed at the 2147 Campbell Avenue office. Virginia University of Lynchburg is anticipating a sixty percent growth rate in the next five years. The need for increased administration facilities has become a prominent concern. Knowing the projected growth of the university, the City has encouraged the university to submit a master plan for future land use development, which would ensure coordinated growth of the school. The proposed offices will have limited impact upon the surrounding area. Traffic and stormwater management concerns have all been addressed to the satisfaction of City staff. The use of vacant buildings for offices helps promote the revitalization of this area of the city. The use of the property encourages the growth of the institutional use and institutional uses have historically continued to grow in this area of the city as indicated by the past actions of City Council. Therefore, staff would recommend approval of the conditional use permit.

Mr. Dave Evans was available to represent the petition. There were no others to speak in favor of the petition. There was no one present to speak in opposition of the petition. Chair Hamilton closed the public hearing portion of the petition.

Chair Hamilton asked when the university will be bringing them a master plan. Mr. Evans explained that the university had been waiting to see the outcome of the institutional zoning ordinance process. Since it appears to have hit a snag, the university wanted to move forward with this conditional use permit petition. Chair Hamilton explained that it was not necessary for the institutional zoning to be in place before bringing them a master plan. She thinks that if the City had a better concept of where the university is going, it would make their decisions less haphazard. Mr. Evans thought that with the recent influx and some of the issues they are facing now, it would be beneficial for the university to visit the master plan with a little bit more deliberate method. They should be able to bring it by the end of this year or early next year.

Commissioner Coleman agreed that it would be beneficial for both the university and the City to bring its master plan forward as soon as possible.

Commissioner Sale asked how long the houses have been unoccupied. Mr. Evans said that 2147 Campbell Avenue has been unoccupied for three or four years. 2460 Campbell Avenue has been unoccupied for eight or nine years. Mr. Evans said that they will occupy the offices as soon as the conditional use permit is granted by the City Council.

Commissioner Barnes asked if there has been discussion with the neighbors. Mr. Evans said he has had dialogue with everyone on Garfield Avenue. There have been no objections. In fact, the neighbors are happy that the university is expanding its presence in the neighborhood and fixing up these and other houses.

Commissioner Sale made the following motion, which was seconded by Commissioner Swienton:

"That the Planning Commission recommends to City Council approval of the conditional use permit petition of Virginia University of Lynchburg, to allow for the conversion of residential dwellings into office uses located at 2147 and 2460 Campbell Avenue, in accordance with the following conditions:

- 1. The property shall be used and developed in substantial compliance with the concept plan dated October 6, 2011, by Virginia University of Lynchburg.**
- 2. All lighting shall be glare shielded and non-directional."**

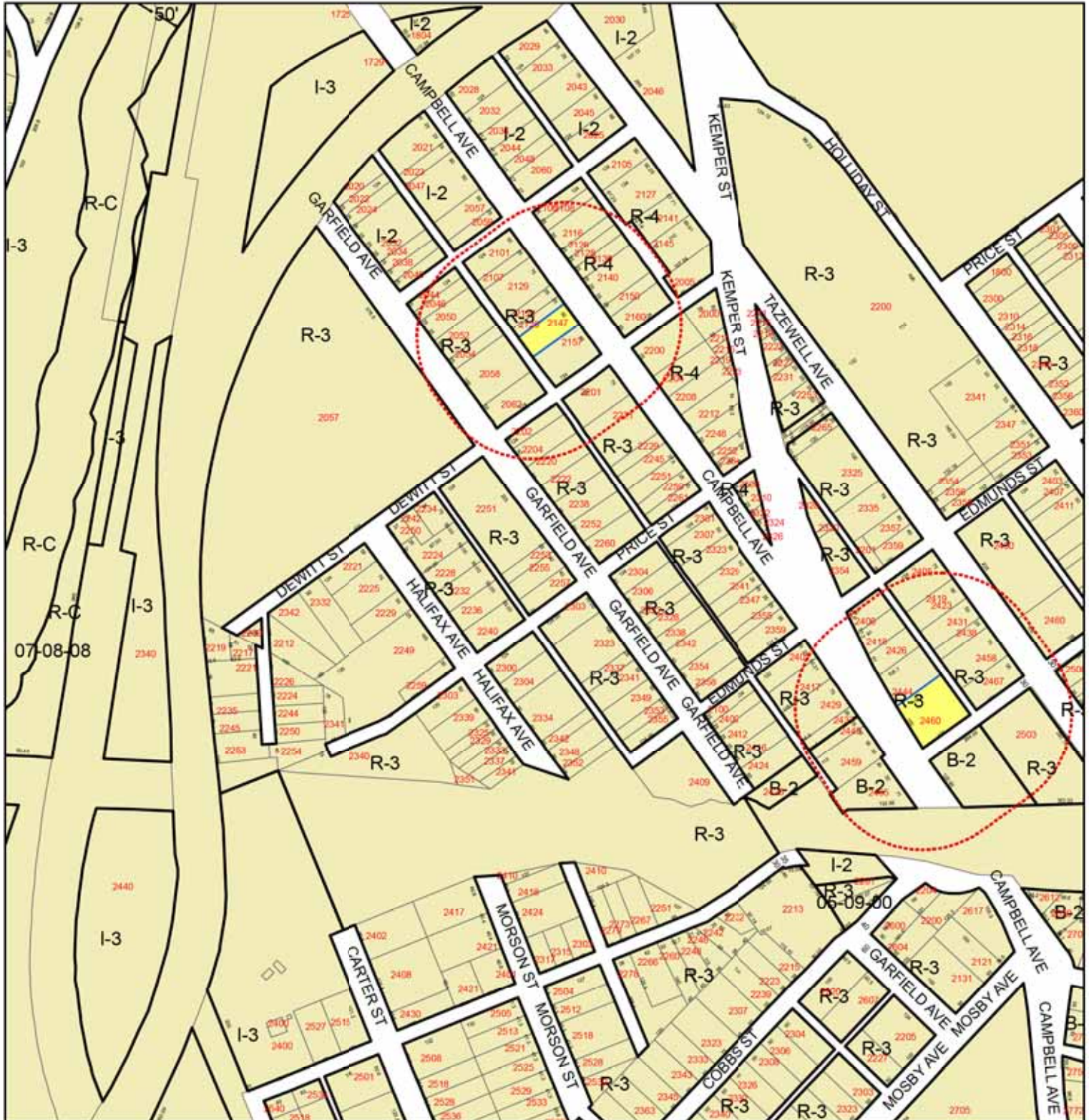
Commissioner Barnes commented that the traffic patterns in the area awkward. If the university expands as quickly and dramatically as it thinks it is, traffic can become a problem. Mr. Evans said they have an idea of how to address that and it will be another entrance just across from DeWitt Avenue. They are looking at purchasing the necessary properties they need to make this entrance.

The motion passed by the following vote:

AYES:	Barnes, Hamilton, Hannon, Hooper, Sale and Swienton	6
NOES:		0
ABSTENTIONS:	Coleman	1
ABSENT:		0

**VIRGINIA UNIVERSITY OF LYNCHBURG
CONDITIONAL USE PERMIT
2147 AND 2460 CAMPBELL AVENUE
Vicinity Zoning Pattern Map**

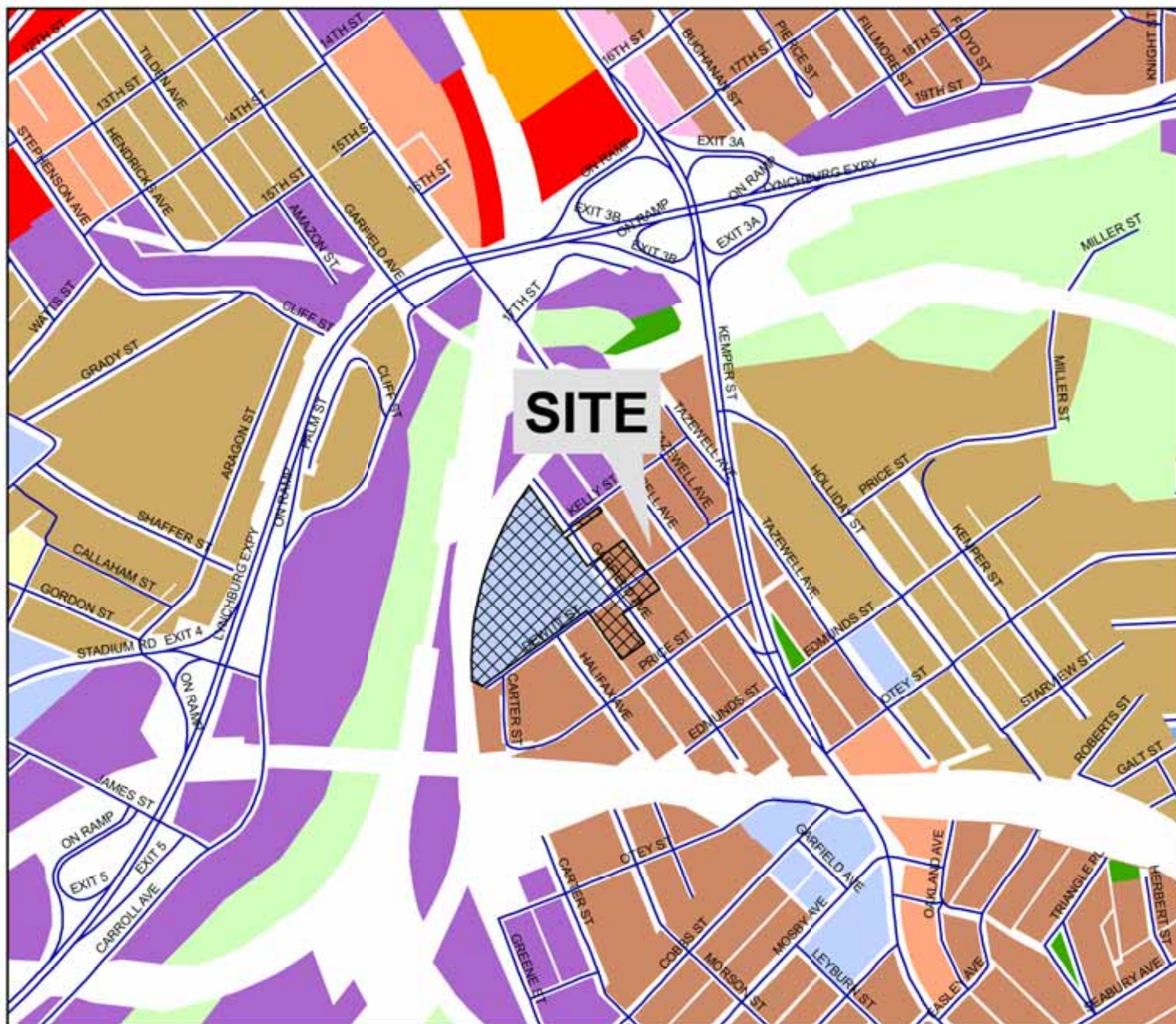
-  Subject Properties
 200 Foot Buffer



PIN	Owner	Local Address
05010004	ANNETTE & LLOYD DIXON	2121 CAMPBELL AVENUE
05010003	ANNETTE & LLOYD DIXON	2129 CAMPBELL AVENUE
05004009	BERTHA D WOODSON	2426 CAMPBELL AVENUE
05010012	BETTIE L JONES	2050 GARFIELD AVENUE
05010014	CHARLES M L MANGUM	2046 GARFIELD AVENUE
05010007	CHARLIE A & VELMA P ELLIOTT C/O JAEQUELINE EARLY	2157 CAMPBELL AVENUE
05004013	CITY OF LYNCHBURG C/O STEVE LAWSON	2406 CAMPBELL AVENUE
05007011	CONSTANCE L KEITH	2160 CAMPBELL AVENUE
05007004	DEBORAH T PHELPS	2127 TAZEWELL AVENUE
05010001	EDMONIA C C/O M B FRAZIER CARTER	2101 CAMPBELL AVENUE
05013003	FAY J COOPER	2417 CAMPBELL AVENUE
05003008	FIRST BAPTIST CHURCH OF SOUTH LYNCHBURG TRUSTEES	2460 TAZEWELL AVENUE
05004006	FIRST BAPTIST CHURCH OF SOUTH LYNCHBURG TRUSTEES	2467 TAZEWELL AVENUE
05004004	FIRST BAPTIST CHURCH OF SOUTH LYNCHBURG TRUSTEES	2438 TAZEWELL AVENUE
05003009	FIRST BAPTIST CHURCH OF SOUTH LYNCHBURG TRUSTEES	2400 TAZEWELL AVENUE
08308001	FIRST BAPTIST CHURCH OF SOUTH LYNCHBURG TRUSTEES	2503 TAZEWELL AVENUE
05004005	FIRST BAPTIST CHURCH TRUSTEES	2458 TAZEWELL AVENUE
05004003	FIRST BAPTIST CHURCH TRUSTEES	2431 TAZEWELL AVENUE
05007014	GARRY R DAVIS	2130 CAMPBELL AVENUE
05007015	GARRY R DAVIS	2128 CAMPBELL AVENUE
05004008	GEORGE & BERTHA WOODSON	2444 CAMPBELL AVENUE
05013004	GRACIE M JONES	2429 CAMPBELL AVENUE
05006016	IRVIN & MARION JONES	2200 CAMPBELL AVENUE
05004011	J R MCKINLEY TANNER	2418 CAMPBELL AVENUE
05006015	JAMES & LUDIE GOODE	2204 CAMPBELL AVENUE
05013001	JAMES C & A C WHITEHEAD	2401 CAMPBELL AVENUE
05007010	JOHN H & WILLIAM S SEMPER	2005 DEWITT STREET
05007017	KATIE J B & CAROLINE STREETONE C/O M BRADLEY	2116 CAMPBELL AVENUE
05007016	KATIE J STREETONE C/O M BRADLEY	2126 CAMPBELL AVENUE
05011001	MABEL E SAUNDERS	2201 CAMPBELL AVENUE
08301021	MARY MCCOY REID	2514 TAZEWELL AVENUE
05004002	NATHANIEL CHILES	2419 TAZEWELL AVENUE
05026006	NORFOLK & WESTERN RAILWAY DIRECTOR OF PROPERTY TAXATION	2400 GREENE STREET
05004001	PAULINE H JACKSON	2405 TAZEWELL AVENUE
05013007	PEQUIT REALTY TRUST	2459 CAMPBELL AVENUE
05013006	PEQUIT REALTY TRUST	2445 CAMPBELL AVENUE
05013005	PEQUIT REALTY TRUST	2437 CAMPBELL AVENUE
05013010	PEQUIT REALTY TRUST	2465 CAMPBELL AVENUE
05011012	RONALD L & DEIRDRE H BANKS	2220 GARFIELD AVENUE
05007018	SANDRA D SCOTT	2108 CAMPBELL AVENUE
05007021	SANDRA D SCOTT	2106 CAMPBELL AVENUE
05010011	SHIRLEY M LUTHER & ROY LEE JR	2052 GARFIELD AVENUE
08301022	SOUTH LYNCHBURG COLORED CHURCH	2500 TAZEWELL AVENUE
05007013	TERRENCE E DOWNES	2140 CAMPBELL AVENUE
05010008	VIRGINIA SEMINARY	2062 GARFIELD AVENUE
05011014	VIRGINIA SEMINARY	2202 GARFIELD AVENUE
05010009	VIRGINIA SEMINARY	2058 GARFIELD AVENUE
05010015	VIRGINIA SEMINARY	2044 GARFIELD AVENUE
05017001	VIRGINIA SEMINARY	2057 GARFIELD AVENUE
05011013	VIRGINIA SEMINARY & COLLEGE	2204 GARFIELD AVENUE
05004007	VIRGINIA UNIVERSITY OF LYNCHBURG	2460 CAMPBELL AVENUE
05010006	VIRGINIA UNIVERSITY OF LYNCHBURG	2147 CAMPBELL AVENUE
05011002	VIRGINIA UNIVERSITY OF LYNCHBURG INC	2221 CAMPBELL AVENUE
05010010	VIRGINIA UNIVERSITY OF LYNCHBURG INC	2054 GARFIELD AVENUE
05010005	VIRGINIA UNIVERSITY OF LYNCHBURG INC	2125 CAMPBELL AVENUE

05007012 WILLIAM C & WINIFRED M JONES
05010002 WILLIAM C CARTER ESTATE C/O M B FRAZIER
Petitioner VIRGINIA UNIVERSITY OF LYNCHBURG

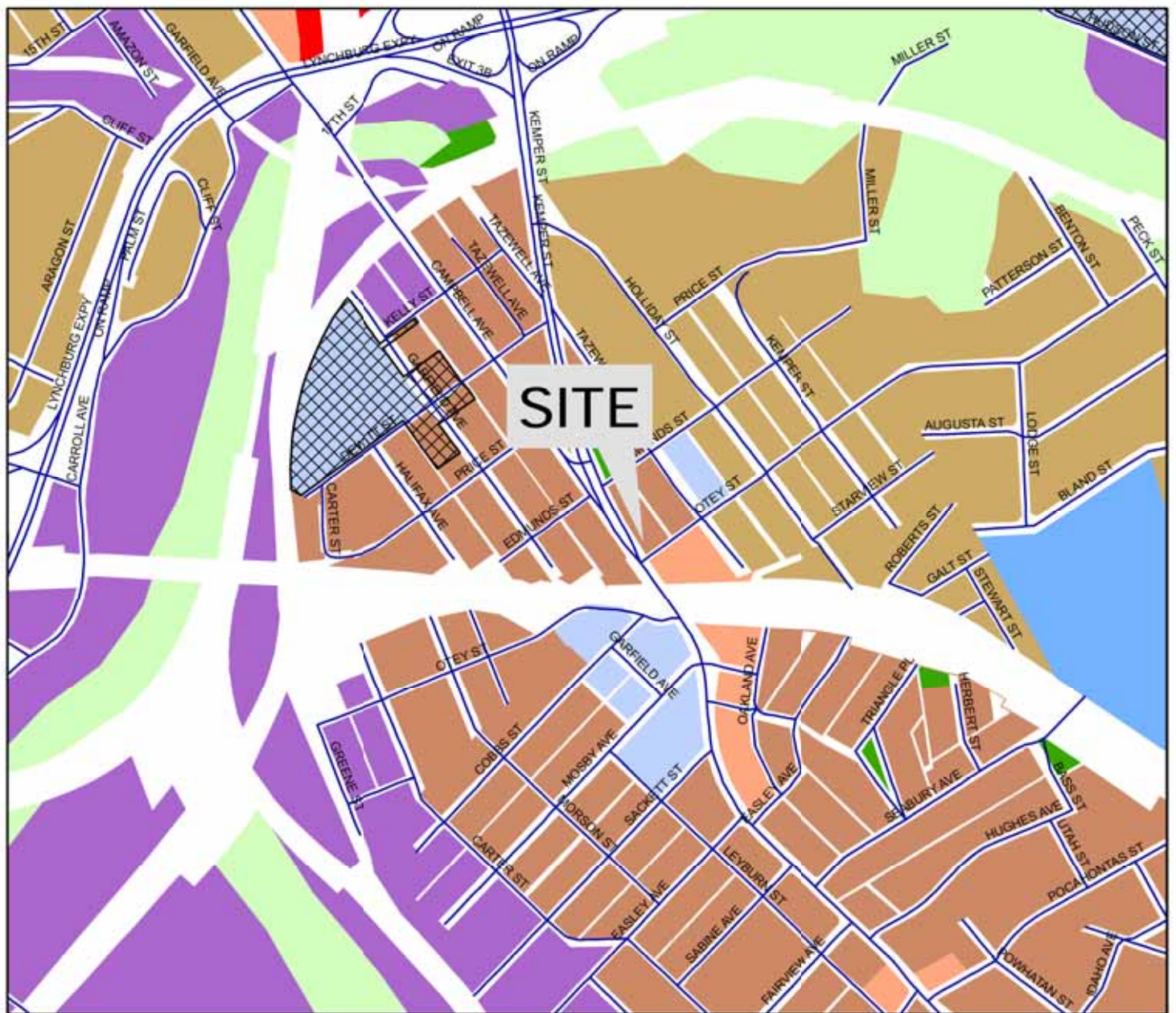
2150 CAMPBELL AVENUE
2107 CAMPBELL AVENUE
2058 GARFIELD AVENUE



-  LocalHistoricDistrict
-  Traditional Residential
-  Low Density Residential
-  Medium Density Residential
-  High Density Residential
-  Neighborhood Commercial
-  Community Commercial
-  Regional Commercial
-  Employment 1
-  Employment 2
-  Office
-  Institution
-  Downtown
-  Public Use
-  Public Parks
-  Resource Conservation
-  Residential Mixed Use
-  General Mixed Use
-  Employment Mixed Use

**LAND USE MAP
VIRGINIA UNIVERSITY OF LYNCHBURG
2147 CAMPBELL AVENUE
CONDITIONAL USE PERMIT**





SITE

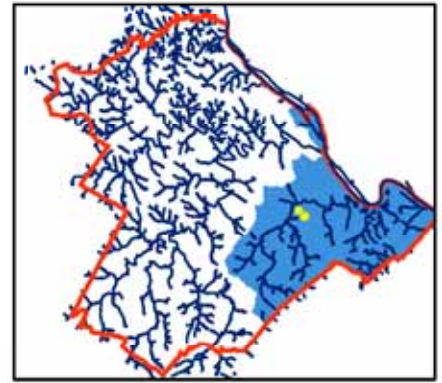
-  Local Historic District
-  Traditional Residential
-  Low Density Residential
-  Medium Density Residential
-  High Density Residential
-  Neighborhood Commercial
-  Community Commercial
-  Regional Commercial
-  Employment 1
-  Employment 2
-  Office
-  Institution
-  Downtown
-  Public Use
-  Public Parks
-  Resource Conservation
-  Residential Mixed Use
-  General Mixed Use
-  Employment Mixed Use

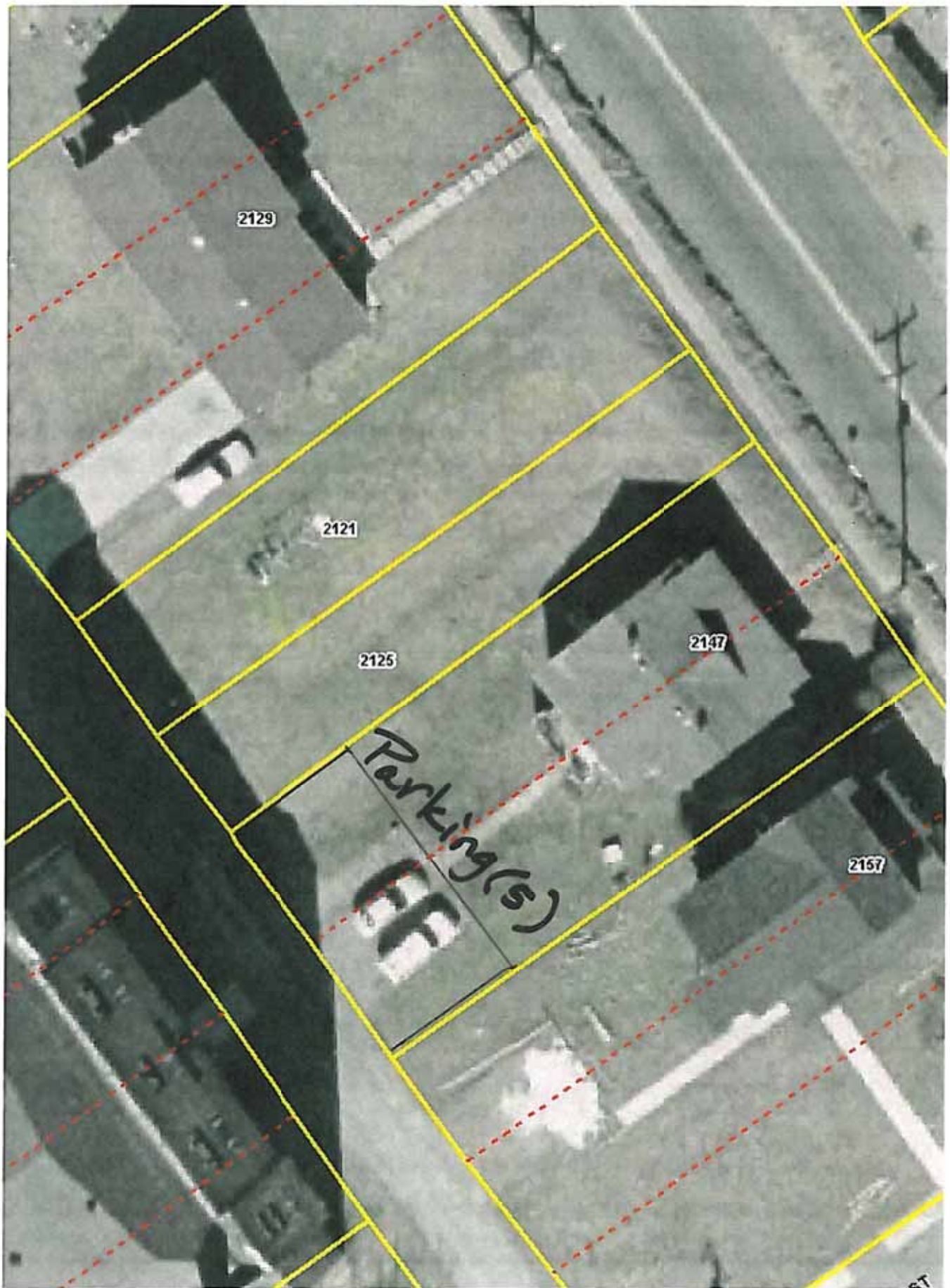
LAND USE MAP
 VIRGINIA UNIVERSITY OF LYNCHBURG
 2460 CAMPBELL AVENUE
 CONDITIONAL USE PERMIT



Virginia University of Lynchburg 2147 and 2460 Cambell Avenue

Watershed Location Map





RECEIVED
OCT 06 2011
COMMUNITY
DEVELOPMENT

RECEIVED
OCT 06 2011
COMMUNITY
DEVELOPMENT

Church
Property

RECEIVED
OCT 06 2011
COMMUNITY
DEVELOPMENT

Parking

side walk
+ curb

2460



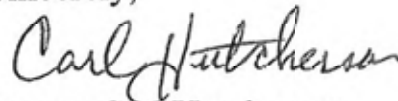
First Baptist Church of South Lynchburg
2500 Tazewell Avenue
Lynchburg, Virginia 24501
Phone: (434) 846-4064

President Ralph and
Mr. Dave Evans
Virginia University of Lynchburg
2058 Garfield Avenue
Lynchburg, Virginia 24501

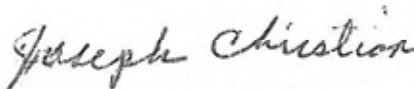
Dear Gentlemen,

First Baptist Church of South Lynchburg is pleased to honor your request that you be able to use a portion of our parking lot spaces for your Department of Religion office use. It is our understanding that your offices will be housed in the Humbles House located on the corner of Campbell Avenue and Otey Streets. We are aware that the property site does not have enough space for a significant number of cars. We are happy to offer you the use of our lot when you find it necessary to use it, especially during the week. The only time we might need to make some adjustments is when we have a funeral that requires the use of all of our lot. This is something that we can work out on an at need basis. We look forward to sharing with you.

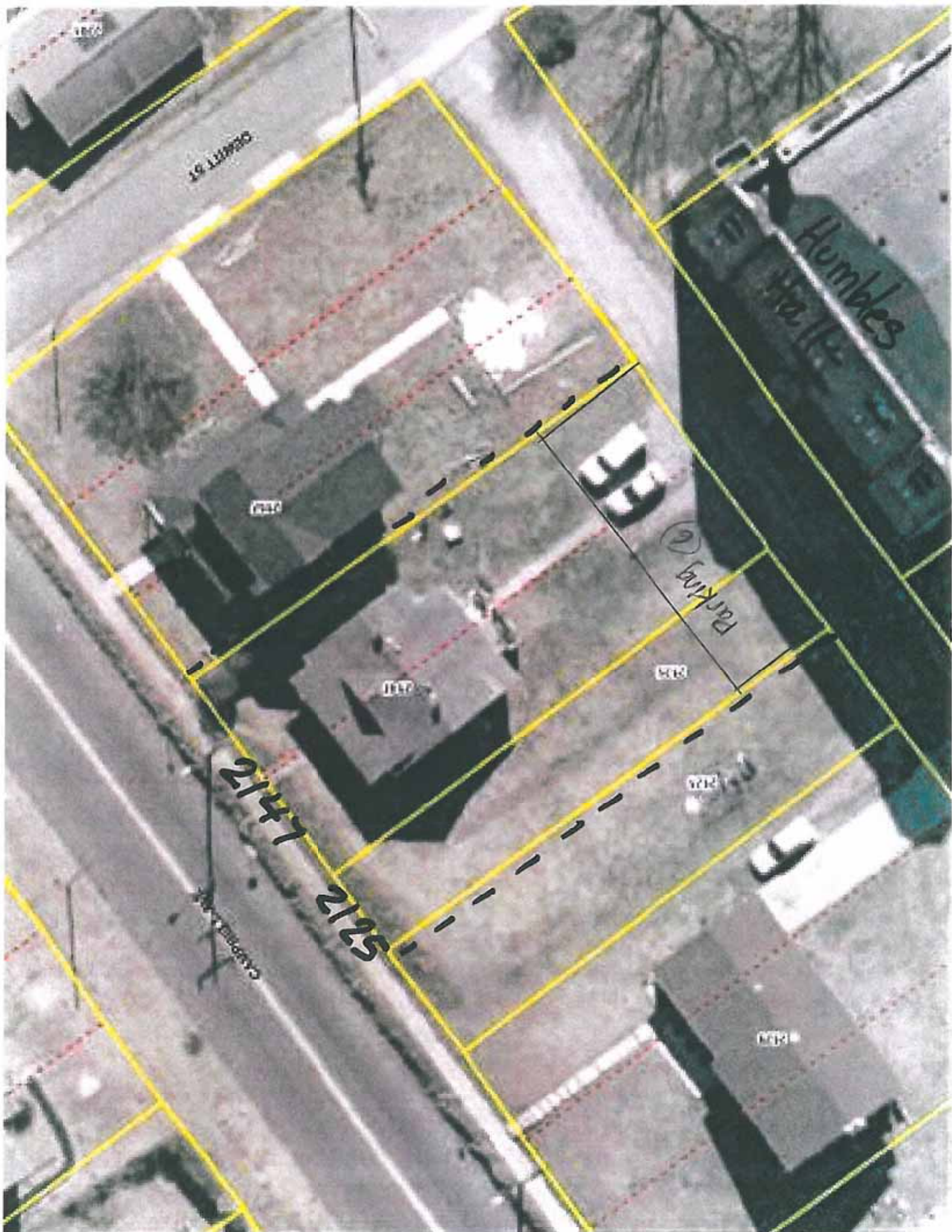
Sincerely,



Pastor Carl Hutcherson



Deacon Joseph Christian
Chairman of Deacon Ministry



Plans for 2147 Campbell Avenue, zoned R-3

The one story, one bathroom house has 5 rooms. These rooms are being converted to offices. The intent is to place our coaching staff in this house, until such time as the school develops a sports administration building. It is anticipated that up to 6 coaches will occupy these offices, generally not all at once. Due to the various sports, and different times for these activities, some of the office space will go unoccupied during a given week. Coaches will be directed to park in such manner as to not block the small access road behind the school. They will be further instructed to park along Garfield and walk the half-block to work from there. It is not anticipated to have more than 4 vehicles parked behind the house at any given time; there is space for six cars.

The access road behind 2147 Campbell and Humbles Hall is not used extensively, but because there are other residences along the road, we will assure that access will be maintained at all times. Currently there are two active residential homes along this road between Dewitt Street and the dead end. Another abandoned home is also located along the gravel road. The road is rarely plowed during snows, so access is difficult during snow days or icy conditions. School is generally closed during these conditions, so the few extra cars will not be present to contribute to access issues.

Other than a full time clerical coaching assistant, there should not be any other full time staff in the building half of the time. Coaches gather for strategy meetings and preparation prior to games. Some of the sports staff is engaged in recruiting meetings all over the country and consequently are not in Lynchburg much of the time. At season's end for each sport, the coaches engage in recruiting and training camps and are generally absent from the campus.

The lot next door to the house at 2125 Campbell will be considered part and parcel to the house. There are no concerns for curb and gutter issues on Campbell Avenue as the house is on an embankment many feet above the sidewalk, which is again, many feet above the street level.

The adjacent zoning is R-3.

Plans for 2460 Campbell Avenue, zoned R-3

The building at 2460 Campbell Avenue is very old and represents a copy of the Victorian era homes seen around Lynchburg. The house is two-story on a raised foundation with crawl space. There are 8 large rooms in the home with raised ceilings, some fireplaces, elegant wooden stairway and crown molding. The outside is painted white side boards, with slate roof, on a high pitch peaked roof. The home is approximately 102 years old and is in excellent shape. The house features 2740 finished square feet with over 800 square feet in open frame porches.

VUL salvaged this house from being demolished when it was listed by the city to be condemned. By working on the original architectural features, VUL was able to restore the house to at least some symbol of its former self. The school now wishes to continue to preserve the use and the honor of this building by using it as the School of Religion administration building. In order to do so, the rooms are being converted to office space. The school anticipates that about 5 to 7 people will work in the building over most of the school year. These persons will occasionally hold one-on-one sessions with doctoral students as they sit for papers.

The house is located at the corner of Otey and Campbell Avenue to the Southwest of the First Baptist Church of Lynchburg, about a block away. The Church has generously agreed to handle our parking needs during the week when the need is the greatest. Again, it is anticipated that no more than 7 or 8 cars will be parked in the area across from the house. There is enough parking for about 3 cars at the residence itself.

VUL has, in its plans, agreed with TRC that sidewalks, curb/gutter improvements must be installed along Dewitt Street. The efforts will be underway to design, with the City, the curbs and gutters needed to bring the property into compliance. The school agrees to conform to the street standards as set by the City of Lynchburg.

Nearby zoning is B-2.

Parking permission has been granted by First Baptist Church of Lynchburg by its Board of Trustees.

2147 Campbell Avenue



2460 Campbell Avenue



October 12, 2011

[illegible]

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: **7**

CONSENT:

REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Conditional Use Permit (CUP) – Harris Corporation, Extension of an existing communications tower in an I-1, Restricted Industrial District – 221 Jefferson Ridge Parkway

RECOMMENDATION: Approval of the conditional use permit petition.

SUMMARY: Harris Corporation is petitioning for a conditional use permit at 221 Jefferson Ridge Parkway to allow the construction of a thirty (30)-foot extension to the existing one hundred fifty (150)-foot communications tower. The tower extension is being requested to establish a "line of sight" connection to an antenna array on Candler's Mountain. The Planning Commission recommended approval of the petition because:

- The petition agrees with the *Comprehensive Plan 2002-2020* which recommends an Employment 2 use for the property.
- The petition agrees with the *Zoning Ordinance* which allows communications towers in excess of one hundred fifty (150) feet in industrial districts upon approval of a conditional use permit by Council.

PRIOR ACTION(S):

September 28, 2011: Planning Division recommended approval of the CUP petition.

Planning Commission recommended approval (5-0, with 2 members absent, Hamilton, Hooper) of the CUP petition with the following conditions:

1. The maximum height of the tower shall be one hundred eighty (180) feet.
2. The tower shall be constructed in substantial compliance with the site plan entitled "CUP Plan- 30' Tower Extension for Harris Corporation" as prepared by Hurt & Proffitt Inc., dated September 14, 2011.

FISCAL IMPACT: None

CONTACT(S): Tom Martin, City Planner - 455-3900
Kent White, Director of Community Development – 455-3900

ATTACHMENT(S):

- Resolution
- Planning Commission Report – September 28, 2011
- Planning Commission Minutes – September 28, 2011
- Vicinity Zoning Pattern
- Vicinity Future Land Use
- Watershed Location Map
- Site Plan
- Narrative
- Property Photograph
- Speaker Signup Sheet

REVIEWED BY: lkp

RESOLUTION:

A RESOLUTION GRANTING A CONDITIONAL USE PERMIT TO THE HARRIS CORPORATION TO ALLOW FOR A THIRTY (30)-FOOT EXTENSION OF AN EXISTING COMMUNICATIONS TOWER AT 221 JEFFERSON RIDGE PARKWAY IN AN I-1, RESTRICTED INDUSTRIAL DISTRICT.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the petition of the Harris Corporation for a conditional use permit to allow for a thirty (30)-foot extension of an existing communications tower at 221 Jefferson Ridge Parkway in an I-1, Restricted Industrial District, is hereby approved subject to the following conditions:

1. The maximum height of the tower shall be one hundred eighty (180) feet.
2. The tower shall be constructed in substantial compliance with the site plan entitled "CUP Plan- 30' Tower Extension for Harris Corporation" as prepared by Hurt & Proffitt Inc., dated September 14, 2011.

Adopted:

Certified:

Clerk of Council

171L

The Department of Community Development
City Hall, Lynchburg, VA 24504 **434-455-3900**

To: Planning Commission
From: Planning Division
Date: September 28, 2011
Re: **Conditional Use Permit (CUP) – Harris Corporation Tower Extension –
221 Jefferson Ridge Parkway**

I. PETITIONER

Mr. Greg Strader, Project Manager, Harris Corporation, 221 Jefferson Ridge Parkway,
Lynchburg, VA 24501

Representative: Mr. Scott Beasley, PE, Hurt & Proffitt, Inc., 2524 Langhorne Road,
Lynchburg, VA 24501

II. LOCATION

The subject property is a tract of twenty-four and one hundred seventy-five thousandths acres
(24.175) located at 221 Jefferson Ridge Parkway

Property Owner: Harris Corporation, 1025 W NASA Boulevard, Melbourne, FL 32919

III. PURPOSE

The purpose of the petition is to allow the construction of a thirty (30)-foot extension to the
existing one hundred fifty (150)-foot communications tower located at 221 Jefferson Ridge
Parkway.

IV. SUMMARY

- The *Comprehensive Plan 2002-2020's Future Land Use Map (FLUM)* recommends an
Employment 2 use for the area.
- Petition agrees with the *Zoning Ordinance* which allows communications towers in excess of
one hundred (150) feet in industrial districts upon approval of a conditional use permit by
Council.
- Tower extension is being requested to establish a "line of sight" connection to an antenna
array located on Candler's Mountain.

The Planning Division recommends approval of the CUP petition.

V. FINDINGS OF FACT

1. **Comprehensive Plan.** The *Comprehensive Plan 2002-2020* recommends an Employment 2 use
for the property. Employment 2 uses are intended to include "light and heavy manufacturing,
research and development, flex space and large-scale office uses". (pg 5.4) The property is
also located in the "Lynchpin Center Business/Technology Area" as designated on the *Plan
Framework Map*. "Lynchpin Center is planned for manufacturing, research and development
and technology businesses". (pg 4.25)
2. **Zoning.** The subject property was annexed into the City in 1976. The existing I-1, Restricted
Industrial District was established on November 13, 2001.

3. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances are needed for the development of the property as proposed.
4. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:
 - On October 14, 1986, Lynchburg City Council approved the rezoning petition of Elizabeth T. Hammersley to rezone nine (9) acres at 2643 Lakeside Drive from I-2, Light Industrial District and R-3, Medium Density, Two-Family Residential District to B-5, General Business District (Conditional) to allow the construction of an automobile dealership.
 - On June 9, 1992, Lynchburg City Council approved the Graves Mill Road/US 221 Land Use Study which established much of the underlying zoning for the area.
 - On October 13, 1998, Lynchburg City Council approved the conditional use permit petition of Pavilion Development to construct a single bay car wash at 2625 Lakeside Drive.
 - On November 13, 2001, Lynchburg City Council approved the rezoning petition of Lynchburg Industrial Authority (now Economic Development Authority), to rezone sixty-four (64) acres in the 200 block of Jefferson Ridge Parkway from I-3, Heavy Industrial District to I-1, Restricted Industrial District to provide for higher design standards at the entrance to the industrial park.
 - On September 13, 2005, Lynchburg City Council approved the rezoning petition of Clarion Investments, LLC to rezone five and three tenths (5.3) acres at 2639 Lakeside Drive from B-3, Community Business District and R-4, Medium-High Density, Multi-Family Residential District to B-5, General Business District (Conditional) to allow the construction of an automobile dealership.
 - On March 11, 2011, Lynchburg City Council approved the rezoning petition of Chief Investments, LLC to rezone four (4) acres located at 101 Breezewood Drive from B-3, Community Business District to B-5, General Business District.
5. **Site Description.** The subject property is a tract of twenty-four and one hundred seventy-five thousandths acres (24.175) located at 221 Jefferson Ridge Parkway. The property contains the research and development offices and parking of Harris Corporation constructed in 2002.
6. **Proposed Use of Property.** The purpose of this petition is to allow the extension of the existing communications tower by thirty (30) feet. The total height of the tower after extension is proposed to be one hundred eighty (180) feet.
7. **Traffic, Parking and Public Transit.** N/A.
8. **Stormwater Management.** N/A.
9. **Emergency Services:** N/A.
10. **Impact.** The City's *Telecommunications Towers and Facilities Ordinance* was adopted on December 9, 1997 and revised January 11, 2000. Communications towers are permitted by right to a height of one hundred fifty (150) feet in commercial and industrial districts. Towers with a height greater than one hundred fifty (150) feet may be permitted upon approval of a CUP by Council. The petition proposes to extend the height of the existing tower located on the property by thirty (30) feet for a total tower height of one hundred eighty (180) feet.

According to the petitioner, the extension is necessary to test Long Term Evolution (LTE) technology by providing a “line of sight” to an antenna array located on Candler’s Mountain. LTE or 4th Generation (4G) technology is being tested to provide a portion of the 700 MHz frequency for use by public safety agencies. The new technology would allow the transmission of large amounts of data, such as voice and video for public safety operations.

The City of Lynchburg’s Department of Parks & Recreation recently opened the Ivy Creek Park adjacent to the subject property. The park is an amenity to the entire city and a refuge for people who work in the Lynchpin Industrial Park to enjoy during lunch or after work. The Director of Parks & Recreation, Kay Frazier, had no comments of concern with the proposed tower extension.

The submitted site plan indicates that the “fall zone” of the one hundred eighty (180) foot tower would encroach approximately twelve (12) feet onto 201 Jefferson Ridge Parkway located southeast of the tower. Section 35.1-85, Setbacks and fall zones requires that towers be designed to fall within the boundaries of the parcel on which the tower is located or have documentation submitted from a structural engineer stating that the tower is incapable of failure. The property located at 201 Jefferson Ridge Parkway is currently owned by the petitioner and documentation satisfying the requirements of the *Zoning Ordinance* will be submitted prior to final site plan approval.

The proposed thirty (30) foot extension should have little to no impact on the surrounding area and will support the technology testing operations of Harris Corporation.

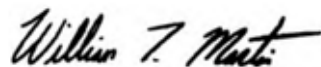
11. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on August 30, 2011. Comments related to the proposed use have or will be addressed prior to final site plan approval.

VI. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of the petition of Harris Corporation for a conditional use permit at 211 Jefferson Ridge Parkway to allow the construction of a one hundred eighty (180)-foot communications tower.

1. The maximum height of the tower shall be one hundred eighty (180) feet.
2. The tower will be constructed in substantial compliance with the site plan entitled “CUP Plan – 30’ Tower Extension for Harris Corporation” as prepared by Hurt & Proffitt Inc., dated September 14, 2011.

This matter is respectfully offered for your consideration.



William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Ms. Bonnie M. Svrcek, Deputy City Manager
Mr. Walter C. Erwin, City Attorney
Mr. Kent L. White, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Doug Saunders, Building Commissioner
Mr. Robert Fowler, Zoning Administrator
Ms. Erin Hawkins, Environmental Reviewer
Mr. Greg Strader, Harris Corporation
Mr. Scott Beasley, Hurt & Proffitt, Inc.

VII. ATTACHMENTS

- 1. Vicinity Zoning Pattern**
- 2. Vicinity Proposed Land Use**
- 3. Watershed Location Map**
- 4. Site Plan**
- 5. Narrative**

MINUTES FROM THE SEPTEMBER 28, 2011 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

a. Petition of Harris Corporation for a conditional use permit at 221 Jefferson Ridge Parkway to extend an existing telecommunications tower from one hundred fifty (150) feet to one hundred eighty feet (180) feet in an I-1, Restricted Industrial District.

Mr. Henry had the following comments for the commissioners. The conditional use permit petition would allow for the extension of an existing cell tower. The *Comprehensive Plan* recommends an Employment 2 use in the area. According to the *Comprehensive Plan*, Employment 2 uses are intended to include light and heavy manufacturing, research and development, flex space and large scale office uses. The Lynchpin Center is also planned for similar uses such as manufacturing, research and development and technology businesses.

Communication towers are permitted by right to a height of 150 feet in commercial and industrial districts. Towers with a height greater than 150 feet may be permitted upon approval of a conditional use permit by City Council. The petition proposes to extend the height of the existing tower by thirty feet to a total height of 180 feet. According to the petitioner, the extension is necessary to test long-term evolution (LTE) technology by providing a line of sight to an antenna already located on Candler's Mountain. LTE or 4th Generation technology is being tested to provide a portion of the 700 mhz frequency for use by public safety agencies. The new technology would allow the transmission of large amounts of data such as voice and video for public safety operations.

The City of Lynchburg's Department of Parks and Recreation recently opened the Ivy Creek Park adjacent to the subject property. This park is an amenity to the entire City and a refuge for people that work in the Lynchpin Center. The Director of Parks and Recreation, Kay Frazier, had no comments of concern with the proposed tower extension. The proposed thirty-foot extension should have little to no impact on the surrounding area and will support the technology testing operations of the Harris Corporation. Staff recommends approval of the conditional use permit petition.

Mr. Mike Smith of Harris Corporation was present to represent the petition. Mr. Smith commented that they contacted their neighbor across the street, Nova Tech. The company had no objection to the extension. Harris Corporation believes this will be a big benefit to Region 2000 and also to public safety everywhere.

Vice-Chair Sale asked if there was anyone else to speak in favor of the petition. Mr. Scott Beasley of Hurt and Proffitt said he was present to answer any questions the commission might have. Vice-Chair Sale asked for anyone who wished to speak in opposition to the petition. No one came forward. He closed the public hearing portion of the petition.

Commissioner Swienton asked if there was any other purpose for the tower extension aside from the public safety mentioned. Mr. Smith said that the purpose is to have two cell sites to do testing. Commissioner Hannon asked him what their timetable is for the extension. Mr. Smith said they would start immediately after getting approval from City Council. Commissioner Hannon asked if this is their only location for this type of work. Mr. Smith said it is the only one in Lynchburg. Commissioner Hannon asked if they see any additional construction being done in the next five years. Mr. Smith said he did not think so.

Commissioner Barnes asked about the fall zone, which goes into the adjoining property. The report states that they are required to have a structural engineer submit documentation that the tower is incapable of failure. Mr. Beasley stated that they either have to provide that documentation or they have to provide some type of easement or property line adjustment. Harris Corporation owns the property adjacent to this property and can provide an easement that would notify the other property owner in

case it was ever sold. Mr. Beasley commented that the structural engineer provided a letter that did not say that it was incapable of failure but it did say that in the unlikely event that it were fail it would fail about fifty (50) feet up. It would hinge upon itself, so the effective fall zone is fifty away from the base of the tower, which is well within their property line. Commissioner Sale asked what the tolerance level for wind speed that might cause the tower's failure. Mr. Beasley said he was not sure.

Commissioner Sale thinks that putting the tower up is a great idea. He asked for clarification that the tower covers a much more extensive area of Region 2000. Mr. Smith said he did not want to confuse them. The tower is for Harris Research and Development. Commissioner Sale said he understood. The tower does cover a good bit of Lynchburg. It will give them the ability to test in the building and also between the two sites.

Commissioner Coleman made the following motion, which was seconded by Commissioner Swienton:

"That the Planning Commission recommends to City Council approval of the petition of Harris Corporation for a conditional use permit at 211 Jefferson Ridge Parkway to allow the construction of a one hundred eighty (180)-foot communications tower.

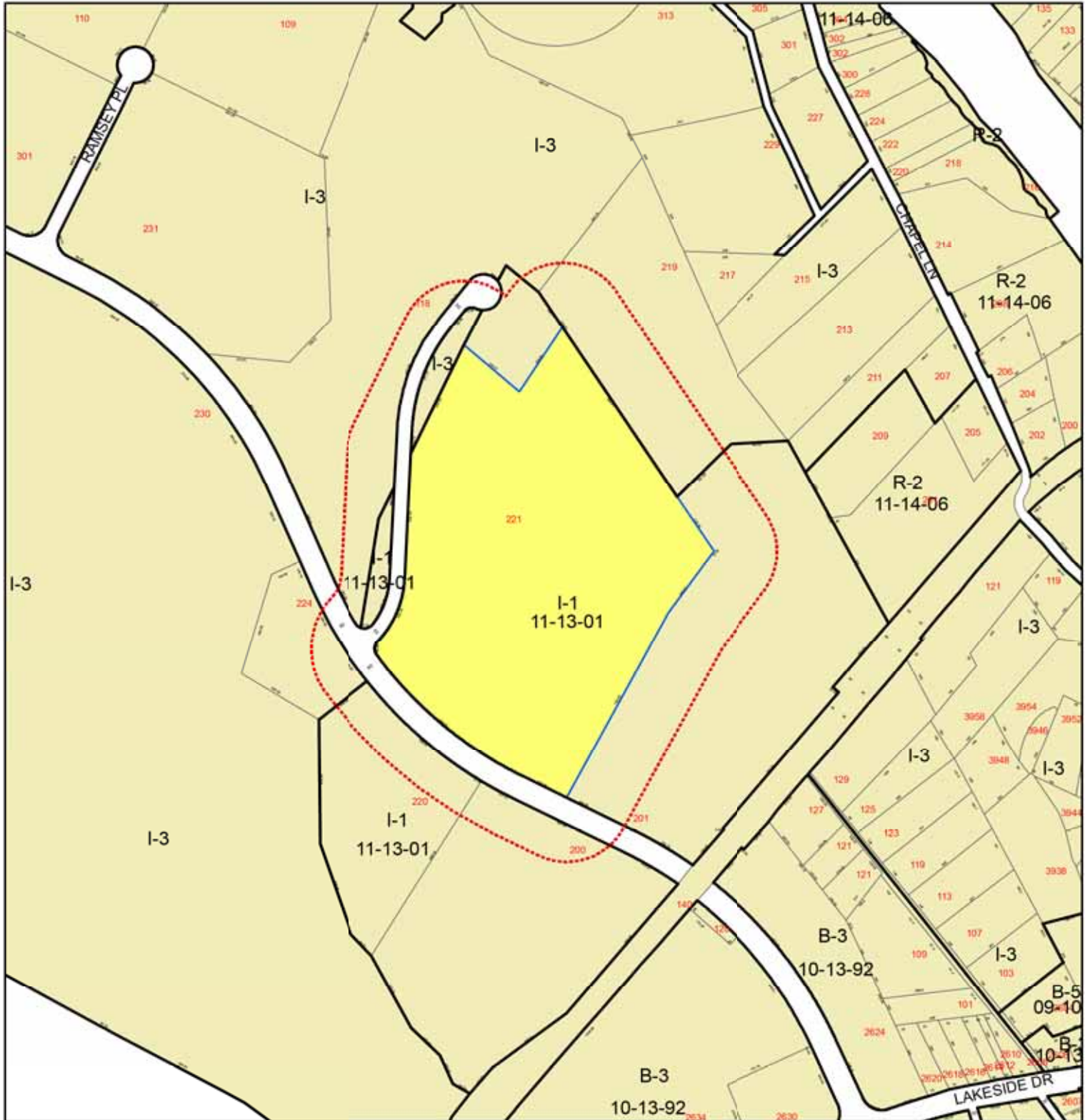
- 1. The maximum height of the tower shall be one hundred eighty (180) feet.**
- 2. The tower will be constructed in substantial compliance with the site plan entitled "CUP Plan – 30' Tower Extension for Harris Corporation" as prepared by Hurt & Proffitt Inc., dated September 14, 2011.**

The motion passed by the following vote:

AYES:	Barnes, Coleman, Hamilton, Hannon, Hooper, Sale and Swienton	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

**HARRIS CORPORATION
CONDITIONAL USE PERMIT
221 JEFFERSON RIDGE PARKWAY
Vicinity Zoning Pattern Map**

-  Subject Property
 200 Foot Buffer



Harris Corporation Adjoining Property Owners

PIN	Owner	Local Address
22501004	CITY OF LYNCHBURG C/O STEVE LAWSON	118 CLEMMONS LAKE PLACE
22502003	ECONOMIC DEVELOPMENT AUTHORITY	224 JEFFERSON RIDGE PARKWAY
23201002	ECONOMIC DEVELOPMENT AUTHORITY	200 JEFFERSON RIDGE PARKWAY
22616002	HARRIS CORPORATION	221 JEFFERSON RIDGE PARKWAY
22502004	HARRIS CORPORATION	201 JEFFERSON RIDGE PARKWAY
22616001	PERNELL S BRICE, JR	219 CHAPEL LANE
23201001	SAGE INVESTMENTS LLC	220 JEFFERSON RIDGE PARKWAY



-  Local Historic District
-  Traditional Residential
-  Low Density Residential
-  Medium Density Residential
-  High Density Residential
-  Neighborhood Commercial
-  Community Commercial
-  Regional Commercial
-  Employment 1
-  Employment 2
-  Office
-  Institution
-  Downtown
-  Public Use
-  Public Parks
-  Resource Conservation
-  Residential Mixed Use
-  General Mixed Use
-  Employment Mixed Use

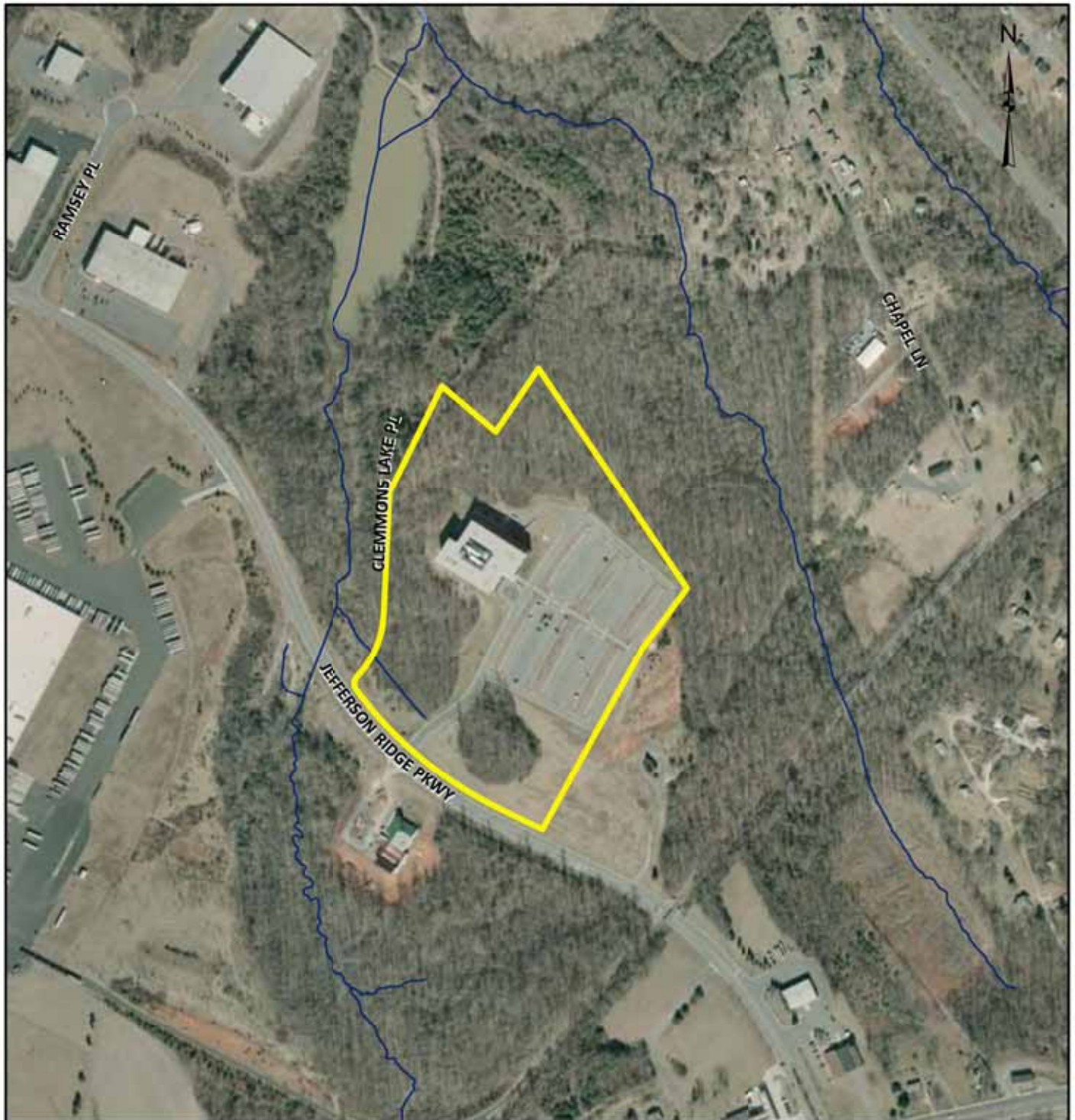
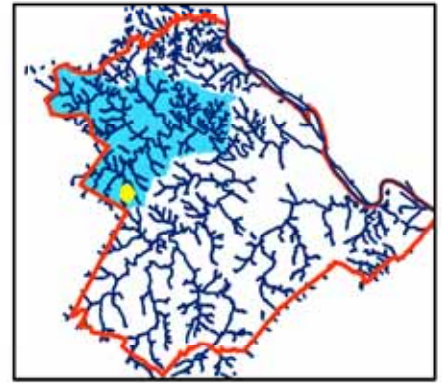
LAND USE MAP
LYNCHBURG MUNICIPAL EMPLOYEES FEDERAL CREDIT UNION
3176 FORT AVENUE
CONDITIONAL USE PERMIT

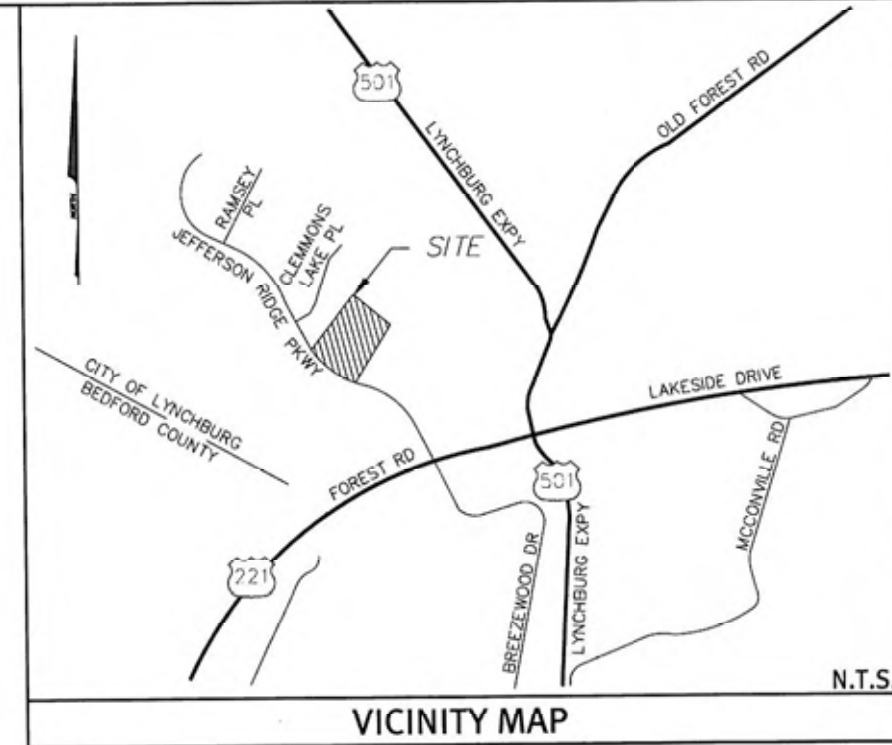
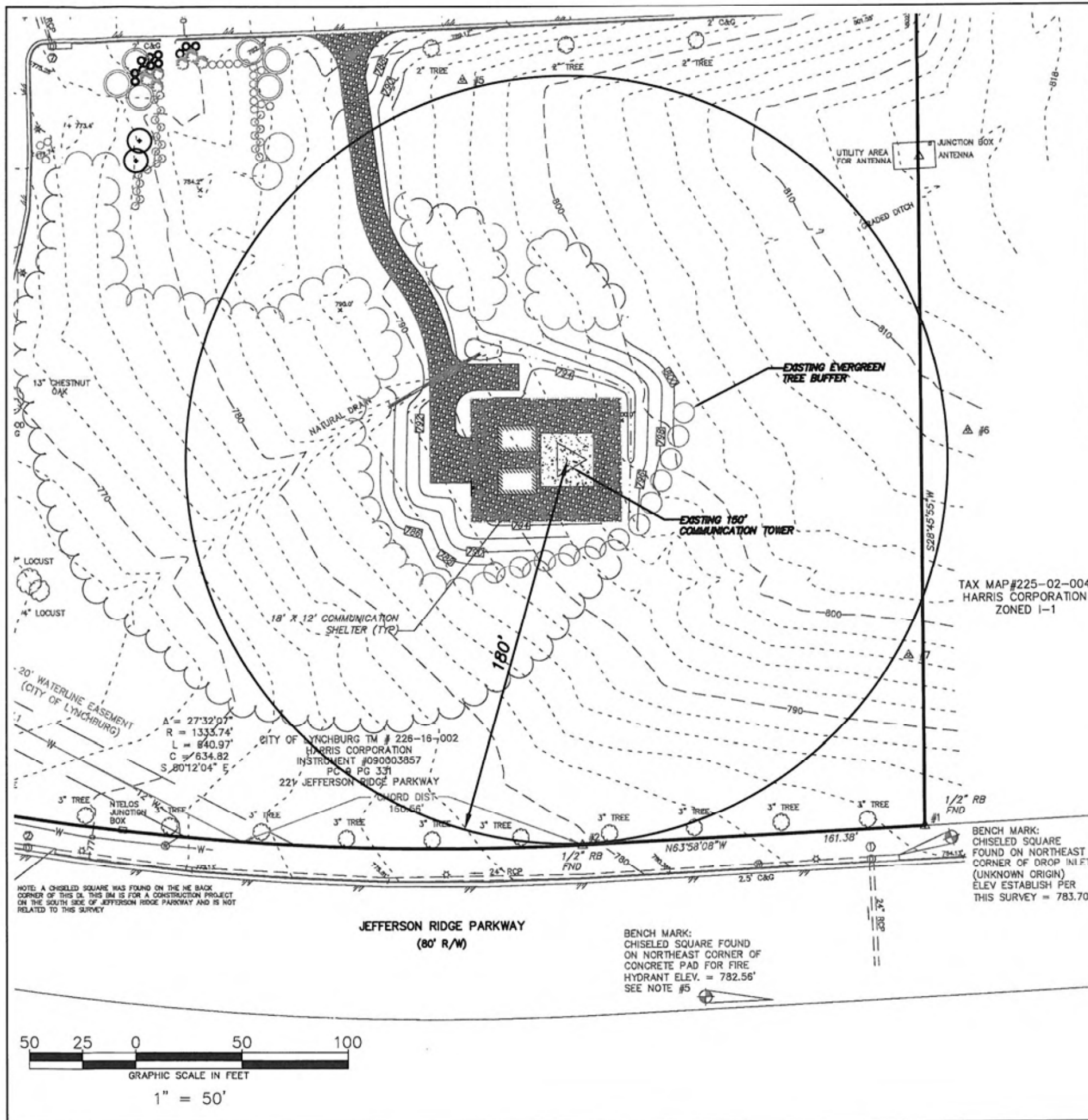


Harris Corporation

Watershed Location Map

-  Project Site
-  Ivy Creek
-  Corporate Limit





NOTES:

1. SITE TM#: 226-16-002
SITE OWNER: HARRIS CORPORATION
ADDRESS: 1025 W. NASA BLVD, MELBOURNE, FL 32919
2. SITE PROPOSED USE: 30' EXTENSION OF EXISTING COMMUNICATION TOWER
3. SITE ZONING: I-1
4. TOWER SCREENING HAS BEEN PROVIDED ACCORDING TO CITY OF LYNCHBURG CODE
5. THE AREA SHOWN HEREON IS LOCATED IN FLOOD ZONE 'X' AND IS NOT LOCATED WITHIN FLOOD HAZARD ZONE 'A' FOR A 100 YEAR FLOOD AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
6. TOPOGRAPHIC DATA OBTAINED FROM A FIELD SURVEY PREPARED BY HURT & PROFFITT TITLED "TOPOGRAPHIC SURVEY FOR PART OF THE PROPERTY OF HARRIS CORPORATION" DATED 11-05-09
7. ADDITIONAL FEATURES SHOWN AS EXISTING ARE FROM A SITE PLAN PREPARED BY HURT & PROFFITT TITLED "HARRIS CORPORATION COMMUNICATION BUILDING AND TOWER" DATED 1/4/2010 WITH A REVISION DATE OF 6/22/2010.

RECEIVED

SEP 14 2011

COMMUNITY
DEVELOPMENT

CUP PLAN - 30' TOWER EXTENSION FOR HARRIS CORPORATION CITY OF LYNCHBURG, VIRGINIA

HURT & PROFFITT
INCORPORATED
2524 LAMORNE ROAD
LYNCHBURG VA 24501
800.242.4906 TOLL FREE
434.847.7796 MAIN
434.847.8047 FAX

PROJECT NO. 20090480
G.L. NO. 229-13-A3.B
FILE NO. G-12779
DATE: 9/14/2011
DRAWN BY: ASK
CHECKED BY: PSB

SHEET NO.
1 OF 1

ATTACHMENT #2 – TESTING NEW LTE EQUIPMENT FOR THE PUBLIC SAFETY SECTOR (Project Narrative)

Harris Corporation Tower Extension, CUP1108-0002
221 Jefferson Ridge Pkwy

The recent move from analog to digital TV channels has opened up frequencies in the 700 MHz band for public safety and first responder radio use. The FCC is now specifically looking to establish a portion of the 700 MHz band for Public Safety Broadband communications using LTE (Long Term Evolution) or 4th Generation (4G) technology. Up till now, the Public Safety radio communications sector has made exclusive use of narrowband technology communications that work well for transmitting voice communications but does limit the amount of data or non-voice information that can be squeezed through the narrowband technology bandwidths or “transmission pipes”.

Users of smart cell phones know that accessing the Internet over their cell phone broadband networks allows the transmission of large amounts of data and information. Public Safety communication requirements have significantly increased and the need to transmit large volumes of data has become an absolute necessity especially when critical incidents occur (i.e. 9-11). One of the most popular applications being targeted for this new LTE service is video transmissions; a police officer on the scene of an incident with the ability to send both voice and video back to the dispatch center will be able to provide more complete information allowing better command decisions to be made on how to respond to a critical incident.

To take advantage of this LTE revolution, Harris Corporation is requesting a thirty foot extension of the radio tower located on its Jefferson Ridge Parkway property from 150’ to 180’ in height. This extension will allow the installation of equipment and antennas to do field testing here in Lynchburg of new LTE broadband Public Safety equipment and services being developed by Harris. As a manufacturer of radio equipment, Harris is able to operate with an Experimental FCC license to test new equipment as long as we do not interfere with other licensees. Harris has successfully completed a technical intermodulation frequency study and does not anticipate any problems to occur with other frequency users in the local area.

Harris Corporation has been located in Lynchburg for over 50 years and has always received tremendous support from the City of Lynchburg. Harris built and installed, and has serviced the Region 2000 radio communications system for the past 12 years. Harris now believes the new LTE technology will provide benefits to both the Harris Corporation and to all of the citizens in the Lynchburg area and Region 2000 communities. The requested tower extension is a small but very important part of developing new LTE technology equipment and Harris appreciates the City of Lynchburg’s support.

September 28, 2011

[illegible]

10/28/11

AGENDA ITEM #

8

RECEIVED

OCT 28 2011

Council/Manager
Offices

Dear Mrs. Valarie Chambers:

My name is Consuela Mooley. I am a born native of Lynchburg, Va. I have two concerns as an American Citizen. My first concern deals with the Lynchburg Va. Police Department. First I do think everyone who allowed me to obtain my permit for October 22nd event. The concern is in 2009 I was bruised and tazed by their rookie police officers. I am disable and because you can't see my disability they thought I was lying and disobeying their command. The lady at the CVS store called them and alleged that I ~~was double~~ ^{came to double} dip them. The caucasian female falsified her position and then this put police officers at greater position. As a ~~citiz~~ American Citizen the officers should ask us what happen or what's going on, or just acting

on I am going to treat this person in a way without even identifying the problem or gathering the details. Many times if police officers get calls of someone acting as criminal then they will treat that citizen as a criminal. I am speaking for a lot of disabled American citizens. The police officers need more education and should train their new employees on the different disabilities upon employment. They should also have the Mandat training updated every two-years with certification which causes less fear to citizen. Not only that I had a clean record all of my life. Never been any criminal activity at all. A lot of times I will never forget that day June 14, 2009. I was sick and when you are sick you are not going to dress your best. There are some good police officers are too. As an American Disabled Citizen I would like my concern to be heard on this matter. to better increase police + community concerns to come together on one accord.

10/28/11

Dear Mrs. Valerie Chambers:

My name is Consuela Mosley. My second

Concern is with Lynchburg Social Services, Lynchburg S & D, Lynchburg S & D Court Service unit, and the Spare House. The number one concern with Lynchburg Social Services is they are too lazy or ~~pu~~ want out money to due criminal background checks or trainees or hired ~~emp~~ unlicensed employees. They are too lazy to do ~~inte~~ proper + full investigations on child abuse cases. People who come and have legitimate interest in children. The laws are not being enforced nor followed. ~~He~~ I am labeled as the mother who beat police officers and has felony. Not as Consuela Mosley who I am. Consuela Mosley who have worked with the alzheimers and nursing for 13-15 yrs. Now that she's disable she's not capable of managing a 13 year-old. My daughter had lesion jaw, & right arm messed up. Lynchburg Social Services still has my daughter in the ex-girlfriend abuser. Not only that she has two grown sons. I am also a Court-Appointed Special Advocate. As a citizen I am speaking out for all parents and children who are going through where one parent doesn't want take responsibility so they lie on the other parent. It's a law called Parental Alienation. As an American citizen I would like to help get this organization started between the Lynchburg / Amherst. ~~Amherst~~ I didn't see any names when I looked it up in Lynchburg / Amherst. I did see numbers in Amherst area.

As an mother and American citizen I would like my concern to be heard. The courts have been ignoring my concern and not even let me nor my daughter speak. And at the time she was 13 years old.

She was in all advance classes. and we don't want her to left behind. Can som I want Someone answers to tell me why, + how my child end up an alternative school and basic classic. Then the at Anderson Counseling doesn't know who or how my child gets to her destination after school is let out. Also the hynchburg City Schools need the to know the Constitution and laws. They also have counselors and security resource officers not having child's best interest at heart. As American citizen some of the teachers couldn't get involved in the risk of losing their job I would like As an American citizen I am told I cannot take my daughter and to and from counseling because I ride a bus. I don't drive a car. I have spoken with Mr. Payne about the hynchburg Social Service issue. Thank you for your cooperation and have a blessed day!

P.S. The G.A.L. Guardian At Lictm they do not have the children's best interest at heart. They treated me and this woman like we were a divorce couple. And this is the way many of their custody cases are treated. I ~~have~~ had filed for a Childs. A Child in Need In Service. Instead it went to a custody battle. CPS was called on me on Amherst County unfounded. The hynchburg is keeping wants to get taxpayers money.

Sincerely,
Cmsch hf
Consuela Mosley

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 9

CONSENT:

REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Consideration of Adopting a Resolution Supporting the Designation of Route 60 as an Extension of the Midland Trail and as a National Scenic Byway

RECOMMENDATION: Adopt the attached resolution.

SUMMARY: Beckie Nix, Director of the Lynchburg Regional CVB will be in attendance during Council's meeting to present this item. She has provided the following as background:

discoverLynchburg has been working as a partner in the 'Midland Trail' effort for some time. This is an effort to have Virginia's Rt 60 designated as a Virginia By-way and as a National Scenic By-way which will help attract visitors and support economic development through tourism. The project is supported by the Virginia Department of Transportation (VDOT), the Virginia Tourism Corporation (VTC), the Virginia Department of Conservation and Recreation (DCR) and the Commonwealth Transportation Board (CTB), who encourage local governments to nominate roads that meet the program criteria for Virginia Byway designation. The Midland Trail committee is now ready for resolutions from individual localities in support of this worthy scenic by-way project. I have attached the proposed resolution of support, together with a map of the proposed scenic by-way following Rt 60 through the state of Virginia. Would Lynchburg council consider signing such a resolution in support to strengthen the nomination of the Midland Trail?

Here is the reasoning for Lynchburg to support this effort, and why the CVB has been working on this project...Scenic drives are one of the top activities for travelers to any area. Rt 60 is indeed a beautiful drive and will no doubt attract more visitors after designation as more and more travelers are looking for the 'off-interstate' experience. Although Rt 60 does not pass through Lynchburg, it's proximity creates a natural 'feed' into our city. Travelers arriving at the intersection of Rt 60 and US 29 looking for specific activities, a meal or for lodging have only one logical choice and that is a short 20 minute drive south to Lynchburg. discoverLynchburg feels strongly that Lynchburg will indeed benefit from this by-way designation, and thus have had a representative on this committee. We are asking for the City to join with the other communities along the way in signing a resolution of support for this effort.

PRIOR ACTION(S): None

FISCAL IMPACT: Potential increase in tourist visitation to the City.

CONTACT(S): Beckie Nix, 845-5966

ATTACHMENT(S): Proposed resolution.

REVIEWED BY: lkp

Resolution in support of an extension of the Midland Trail, as a National Scenic Byway, into Virginia

WHEREAS, the West Virginia Byways Program strives to recognize, interpret, enhance, and preserve the intrinsic qualities of West Virginia byway corridors, with eleven State-designated Byways, ten State-designated Backways and four nationally -designated Byways, in place within the State of West Virginia.

WHEREAS, the State of West Virginia, West Virginia Department of Transportation and the West Virginia Division of Tourism recognizes that Byway designated funding has provided millions of dollars to enhance and promote significant historical, cultural, and visitor service sites along West Virginia roadways, attracting multitudes of visitors and making a significant economic impact through tourism.

WHEREAS, 119 miles of West Virginia roadway was designated as Midland Trail National Scenic Byway on June 15, 2000, resulting in a significant economic impact specifically to the communities along the Midland Trail.

WHEREAS, the Midland Trail Association of West Virginia – National Scenic Byway organization recognizes that the Midland Trail historical route (Route 60) extends into Virginia, and furthermore identifies a goal of having the route in Virginia designated as a National Scenic Byway within its Corridor Management Plan.

WHEREAS, there are more than 3,400 miles of roads designated as Virginia Byways, and to recognize and preserve Virginia's scenic, cultural, and historic resources, and help attract visitors and support economic development through tourism, the Virginia Department of Transportation (VDOT), the Virginia Tourism Corporation (VTC), the Virginia Department of Conservation and Recreation (DCR) and the Commonwealth Transportation Board (CTB), encourage local governments to nominate roads that meet the program criteria for Virginia Byway designation.

WHEREAS, there is an active effort to nominate the Virginia Midland Trail as a National Scenic Byway – extension of the West Virginia Midland Trail, by various Virginia localities and organizations, facilitated by and with guidance from the Virginia Tourism Corporation, Virginia Department of Transportation, and Virginia Department of Conservation and Recreation.

WHEREAS, the United States Secretary of Transportation recognizes certain roads (including multi-state) as All-American Roads or National Scenic Byways based on one or more archeological, cultural, historic, natural, scenic and recreational qualities.

WHEREAS, The National Scenic Byways Program is part of the U.S. Department of Transportation, Federal Highway Administration, and the program is a grass-roots collaborative effort established to help recognize, preserve and enhance selected roads throughout the United States.

WHEREAS, since 1992, the National Scenic Byways Program has provided funding for over 2,900 projects in 50 states and 1,500 state and nationally designated byway projects in 48 states.

WHEREAS, the Blue Ridge Parkway is designated as an All-American Road, providing visitors with the opportunity to learn the history and experience the culture of the entire multi-state region in which the Parkway meanders, while making a significant economic impact on the State of North Carolina and Commonwealth of Virginia, and serving as an example of a multi-state byway initiative by which the Midland Trail may follow.

THEREFORE BE IT RESOLVED that the City of Lynchburg expresses its support for the Midland Trail (Route 60) of Virginia, which passes just north of Lynchburg, to be designated as a Virginia Byway, and formally recognized as the Midland Trail throughout the Commonwealth.

BE IT FURTHER RESOLVED that the City of Lynchburg expresses its support for Midland Trail (Route 60) to be designated as a National Scenic Byway and extension of the already designated Midland Trail– National Scenic Byway.

FINALLY, BE IT RESOLVED that the City of Lynchburg fully supports the effort to have the Midland Trail (Route 60) of Virginia designated as a Virginia Byway and National Scenic Byway, and extension of the already designated Midland Trail– National Scenic Byway in West Virginia, resulting in a multi-state National Scenic Byway.

Adopted:

Certified:

Clerk of Council

173L



Virginia's Midland Trail



 State Owned Conservation Lands

 US Route 60

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 10

CONSENT:

REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Consideration of Adopting a Resolution Authorizing Central Virginia Community Services to Borrow Funds**

RECOMMENDATION: Adopt the attached resolution.

SUMMARY: Central Virginia Community Services (CVCS) is seeking approval of the attached Resolution 3 authorizing CVCS to borrow funds in the amounts determined necessary provided that at no time the total amounts borrowed exceed \$7,000,000.00. CVCS is seeking this approval as it is often inconvenient, if not logistically impossible to obtain authorization from each of its six localities when the immediate borrowing needs arise.

This Resolution in effect establishes a borrowing limit of \$7,000,000.00 which would include all existing outstanding loans, as well as the recently approved resolutions (see below):

Proposed Borrowing Limitation	\$7,000,000
Less:	
Current outstanding borrowing	(3,444,937)
Recently approved resolution- Intermediate Care Facility home	(800,000)
Recently approved resolution- Electronic Health Record	<u>(1,000,000)</u>
 Borrowing Capacity not committed	 \$1,755,063

In summary, this resolution is not a resolution to borrow funds for a specific project, but rather a request for a borrowing ceiling that we will be able to operate under without having to make a specific request for future borrowing.

PRIOR ACTION(S): None

FISCAL IMPACT: None

CONTACT(S): Kimball Payne, 455-3990

ATTACHMENT(S): Resolution 3 ("Resolution Authorizing Borrowing by Central Virginia Community Services Not to Exceed Seven Million Dollars"); Copy of Resolution 3 including approvals of CVCS Board members

REVIEWED BY: lkp

**RESOLUTION AUTHORIZING BORROWING
BY CENTRAL VIRGINIA COMMUNITY SERVICES
NOT TO EXCEED \$ 7,000,000.00 (Seven Million Dollars)**

WHEREAS, Central Virginia Community Services Board is a governmental entity of the Commonwealth of Virginia created pursuant to provisions of Chapter 5 of Title 37.2 of the Code of Virginia pursuant to a joint agreement between the Counties of Amherst, Appomattox, Bedford and Campbell, and the Cities of Bedford and Lynchburg (the "Member Jurisdictions"), in order to provide those jurisdictions with mental health, intellectual disability, and substance abuse services; and,

WHEREAS, Section 37.2-504.A.11. of the Code of Virginia, 1950, as amended, provides that Community Services Boards shall "apply for and accept loans as authorized by the governing body of each city or county that established it"; and,

WHEREAS, it is often inconvenient if not logistically impossible to obtain such authorization from each and every Member Jurisdiction when immediate borrowing needs arise for Central Virginia Community Services; and,

WHEREAS, it is necessary and prudent to adopt a general borrowing resolution to ensure that the operating expenses and capital needs of Central Virginia Community Services are met in a timely fashion.

NOW, THEREFORE, BE IT RESOLVED By the Lynchburg City Council that Central Virginia Community Services Board is hereby authorized to borrow funds in amounts determined necessary by Central Virginia Community Services Board and to incur debt obligations from time to time with lending institutions or lenders on such terms on such terms and conditions as the Central Virginia Community Services Board shall from time to time determine; provided, however, that at no time shall all such borrowings and incurred debt under this resolution exceed collectively the principal sum of \$ 7,000,000.00 (Seven Million Dollars).

BE IT FURTHER RESOLVED, that this is an authorizing resolution only in accordance with the provisions of Section 37.2-504.11 of the Code of Virginia and shall not be construed to impose any liability or obligation upon the City of Lynchburg or that said City pledges its faith and credit, or to levy any taxes for the payment of the principal of or premium, if any, and interest on any obligations for borrowed funds of Central Virginia Community Services.

BE IT FURTHER RESOLVED, that this resolution shall become effective upon adoption by all of the Member Jurisdictions, namely, the Counties of Amherst, Appomattox, Bedford and Campbell, and the Cities of Bedford and Lynchburg, and shall remain in full force and effect until any of said Member Jurisdictions shall by further duly adopted resolution, withdraw its authorization to this borrowing resolution, but such withdrawal of authorization shall be prospective only, and shall not disturb or effect any obligations incurred in accordance with the resolution prior to the date of adoption of such resolution.

This resolution may be executed in counterparts by the Member Jurisdictions and such counterparts shall collectively constitute authorization for Central Virginia Community Services to apply for and accept loans not exceeding, collectively at any one time under this authorization, the principal sum of \$ 7,000,000.00 (Seven Million Dollars) in accordance with the provisions of Section 37.2-504.11 of the Code of Virginia, 1950, as amended.

Adopted:

Certified:

Clerk of Council

I hereby certify that the foregoing is a true and exact copy of a Resolution adopted at an meeting of the or City Council of Lynchburg, Virginia, held on November 8, 2011 at which said meeting a quorum was present and voted.

Title: Clerk of Council

**RESOLUTION AUTHORIZING BORROWING
BY CENTRAL VIRGINIA COMMUNITY SERVICES
NOT TO EXCEED \$7,000,000.00 (Seven Million Dollars)**

WHEREAS, Central Virginia Community Services Board is a governmental entity of the Commonwealth of Virginia created pursuant to provisions of Chapter 5 of Title 37.2 of the Code of Virginia pursuant to a joint agreement between the Counties of Amherst, Appomattox, Bedford and Campbell, and the Cities of Bedford and Lynchburg (the "Member Jurisdictions"), in order to provide those jurisdictions with mental health, intellectual disability, and substance abuse services; and,

WHEREAS, Section 37.2-504.A.11. of the Code of Virginia, 1950, as amended, provides that Community Services Boards shall "apply for and accept loans as authorized by the governing body of each city or county that established it"; and,

WHEREAS, it is often inconvenient if not logistically impossible to obtain such authorization from each and every Member Jurisdiction when immediate borrowing needs arise for Central Virginia Community Services; and,

WHEREAS, it is necessary and prudent to adopt a general borrowing resolution to ensure that the operating expenses and capital needs of Central Virginia Community Services are met in a timely fashion.

NOW, THEREFORE, BE IT RESOLVED that Central Virginia Community Services Board is hereby authorized by County/City to borrow funds in amounts determined necessary by Central Virginia Community Services Board and to incur debt obligations from time to time with lending institutions or lenders on such terms on such terms and conditions as the Central Virginia Community Services Board shall from time to time determine; provided, however, that at no time shall all such borrowings and incurred debt under this resolution exceed collectively the principal sum of \$7,000,000.00 (Seven Million Dollars).

BE IT FURTHER RESOLVED, that this resolution shall become effective upon adoption by all of the Member Jurisdictions, namely, the Counties of Amherst, Appomattox, Bedford and Campbell, and the Cities of Bedford and Lynchburg, and shall remain in full force and effect until any of said Member Jurisdictions shall by further duly adopted resolution, withdraw its authorization to this borrowing resolution, but such withdrawal of authorization shall be prospective only, and shall not disturb or effect any obligations incurred in accordance with the resolution prior to the date of adoption of such resolution.

[Remainder of Page Intentionally Left Blank]

The undersigned Chairman of the Board of the Central Virginia Community Services Board of Central Virginia, hereby certifies that the foregoing is a true, correct and a complete copy of a resolution adopted by a majority of the Board of Directors of the Board present and voting at a meeting duly called and held on April 27, 2011, and that such resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof. A summary of the members present or absent at such meeting, and the recorded vote with respect to the foregoing resolution, is set forth below:

Director Name	Present	Absent	Voting		
			Yes	No	Abstaining
CLARK, Clyde	<u>X</u>		<u>X</u>		
CRAFT, William	<u>X</u>		<u>X</u>		
DRAKE, Debbie		<u>X</u>			
GOLDSMITH, Stan	<u>X</u>		<u>X</u>		
HELGESON, Jeff	<u>X</u>		<u>X</u>		
HULLETTE, Krystal	<u>X</u>		<u>X</u>		
KOENIG, Dana	<u>X</u>		<u>X</u>		
MARPLE, Gary	<u>X</u>		<u>X</u>		
PARRISH, Leon		<u>X</u>			
ROSE, Marsha	<u>X</u>		<u>X</u>		
SNEAD, Parks	<u>X</u>		<u>X</u>		
SPIGGLE, Mary Lou	<u>X</u>		<u>X</u>		
SCHNEIDER, William	<u>X</u>		<u>X</u>		
STELLE, Terry	<u>X</u>		<u>X</u>		
THEISEN, Phil	<u>X</u>		<u>X</u>		


 Gary Marple, Chairman of the Board of Directors
 Central Virginia Community services

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 11

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Ntelos Cable Television Franchise Request**

RECOMMENDATION: Adopt an ordinance authorizing the City Manager to sign an amendment to the cable television franchise agreement with Ntelos which will expand Ntelos' franchise area to the entire city.

SUMMARY: Ntelos has requested that its cable television franchise be amended to expand its franchise area in order to provide cable television services to areas in the city beyond the Cornerstone neighborhood. The purpose of this item is to adopt an ordinance to amend the franchise to expand the franchise area.

If Council approves this request to amend the Ntelos franchise without a buildout requirement, it is anticipated that Council will expected to also remove the buildout requirement from the Comcast franchise.

PRIOR ACTION(S):

November, 2007 - Ntelos was granted a cable television franchise agreement which specified a franchise area limited to the Cornerstone neighborhood development area.

May 13, 2008 – Ntelos franchise was amended to change certain provisions to be consistent with the Comcast cable television franchise agreement.

August 9, 2011 - Council was briefed on the proposed change to the franchise (Council report attached).

October 25, 2011 – A public hearing was conducted regarding the proposed amendment.

FISCAL IMPACT: None

CONTACT(S): Mike Goetz, 455-6002

ATTACHMENT(S): Ordinance to Amend Ntelos Cable Television Franchise; current franchise plus 1st amendment, August 9, 2011 Council report.

REVIEWED BY: lkp

AN ORDINANCE FOR A SECOND AMENDMENT TO THE CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF LYNCHBURG, VIRGINIA AND NTELOS MEDIA INC. (NOW DOING BUSINESS AS LUMOS NETWORKS CORP.) APPROVED BY LYNCHBURG CITY COUNCIL ON OCTOBER 9, 2007 AND FIRST AMENDED ON MAY 13, 2008

WHEREAS, on October 9, 2007, the City and NTELOS Media, Inc., d/b/a as NTELOS (now doing business as Lumos Networks Corp. hereinafter referred to as NTELOS for the sake of convenience) entered into a Franchise Agreement to construct and operate a cable television system within the Cornerstone Traditional Neighborhood Development, which Franchise Agreement was later amended by a First Amendment dated May 13, 2008; and,

WHEREAS, the City and NTELOS desire to expand the scope of the original Franchise Agreement and the First Amendment dated May 13, 2008, in order to allow NTELOS to construct and operate a cable television system anywhere within the boundaries of the City of Lynchburg;

NOW, THEREFORE, the City and NTELOS do hereby mutually agree to and do hereby amend the October 9, 2007 Franchise Agreement and the May 13, 2008 First Amendment as follows:

A. Section 1.13 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is deleted and replaced with the following:

1.13 "Original Franchise Area" means the Cornerstone Traditional Neighborhood Development as described in the Lynchburg City Council resolution R-06-75 adopted on June 27, 2006, as set forth in Exhibit 1.

B. Section 1.25 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is added:

1.25 "Extended Franchise Area" means the present legal boundaries of the City of Lynchburg, Virginia, as of the Effective Date, outside of the Original Franchise Area, and shall also include any additions thereto, by annexation or other legal means.

C. Section 4.1.1 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is deleted and replaced with the following:

4.1.1 The Franchisee shall make Cable Service available to every residential dwelling unit within the "Original Franchise Area" where the minimum density is at least thirty (30) dwelling units per mile when measured from the existing Cable System. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes within the Original Franchise Area located within 150 feet of the Franchisee's distribution cable.

D. Section 4.1.3 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is added:

4.1.3 The Franchisee may, in its sole discretion, make Cable Service available within the Extended Franchise Area without an obligation to satisfy a build-out requirement. Where the Franchisee chooses to make Cable Service available within the Extended Franchise Area, Sections 1, 2, 3, 4.2 through 4.8, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of this Franchise Agreement shall apply. If any citizen, business, or the City requests that Cable Service be provided to an unserved location within the Extended Franchise Area, the Franchisee shall provide a response within 45 days to as to the feasibility, in the Franchisee's sole determination, of satisfying the request. If the Franchisee determines that the request is not feasible, the Franchisee shall have no obligation to satisfy the request.

E. Section 11.6 of the October 9, 2007 Franchise Agreement, and as amended May 13, 2008, is deleted

and replaced with the following:

11.6 Service to School and Government Buildings. Franchisee shall provide, without charge, one Cable Service outlet activated for basic service to each fire station, public school, police station, public library, court house, jail and any other building used for government purposes (which includes buildings leased by the City for governmental purposes as well as buildings owned by the City) located within the Original Franchise Area. The Franchisee also agrees to use reasonable best efforts to provide one Cable Service outlet activated for basic service, if requested by the City and if already served by the Franchisee's broadband infrastructure at the time of the City's request, to any municipal facility located outside of the Franchise Area.

Except as modified herein, all the terms and conditions set forth in the October 9, 2007 Franchise Agreement and the May 13, 2008 First Amendment to the Franchise Agreement between the City and NTELOS shall remain in full force and effect throughout the remaining term of the Franchise.

This Second Amendment to Franchise shall be and become effective and shall constitute a contract of Franchise between the City and NTELOS upon its execution by the City Manager and by a duly authorized official of NTELOS.

Adopted:

Certified:

Clerk of Council

172L

EXECUTION AND ACCEPTANCE

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

City of Lynchburg, Virginia

By: _____

L. Kimball Payne, City Manager

Attest:

NTELOS Media Inc. (now doing business as Lumos Networks Corp.)

By: _____

Its: _____

Title

**CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN
THE CITY OF LYNCHBURG, VIRGINIA
AND
NTELOS MEDIA, INC.
D/B/A NTELOS**

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CABLE FRANCHISE AGREEMENT

This Cable Franchise Agreement (hereinafter, the “Agreement” or “Franchise Agreement”) is made between the City of Lynchburg, VA, a political subdivision of the Commonwealth of Virginia (hereinafter, “City”) and NTELOS Media Inc. d.b.a NTELOS (hereinafter, “Franchisee” or “NTELOS”).

The City, having determined that the financial, legal and technical ability of the Franchisee is reasonably sufficient to provide the services, facilities and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Franchisee for the construction, operation and maintenance of a Cable System on the terms and conditions set forth herein.

SECTION 1 - Definition of Terms

For the purpose of this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Code of Virginia, Article 1.2, § 15.2-2108.19, and the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521 et seq. (the “Cable Act”), unless otherwise defined herein.

1.1 “Act” means the Communications Act of 1934.

1.2 “Affiliate”, in relation to any Person, means another Person who owns or controls, is owned or controlled by, or is under common ownership or control with, such Person.

1.3 “Basic service tier” means the service tier that includes (i) the retransmission of local television broadcast channels and (ii) public, educational, and governmental channels required to be carried in the basic tier.

1.4 “Cable Operator” means any Person or group of Persons that (A) provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or (B) otherwise controls or is responsible for, through any arrangement, the management and operation of a Cable System. Cable Operator does not include a provider of wireless or direct-to-home satellite transmission service.

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

1.6 “Cable System” or “System” means any facility consisting of a set of closed transmission paths and associated signal generation, reception and control

equipment that is designed to provide Cable Service that includes video programming and that is provided to multiple Subscribers within a community, except that such definition shall not include (i) a system that serves fewer than 20 Subscribers; (ii) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (iii) a facility that serves only Subscribers without using any public right-of-way; (iv) a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 USC § 201 et seq., except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (v) any facilities of any electric utility used solely for operating its electric systems; (vi) or any portion of a System that serves fewer than 50 Subscribers in any locality, where such portion is part of a larger System franchised in an adjacent locality; or (vii) an open video system that complies with § 653 of Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 573.

1.7 “Customer” or “Subscriber” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Franchisee’s express permission.

1.8 “Effective Date” means the date on which this Cable Franchise Agreement, with any necessary executed signatures, is enacted into law.

1.9 “FCC” means the Federal Communications Commission or successor governmental entity thereto.

1.10 “Force majeure” means an event or events reasonably beyond the ability of Franchisee to anticipate and control. "Force majeure" includes, but is not limited to, acts of God, incidences of terrorism, war or riots, labor strikes or civil disturbances, floods, earthquakes, fire, explosions, epidemics, hurricanes, tornadoes, governmental actions and restrictions, work delays caused by waiting for utility providers to service or monitor or provide access to utility poles to which Franchisee’s facilities are attached or to be attached or conduits in which Franchisee's facilities are located or to be located, and unavailability of materials or qualified labor to perform the work necessary.

1.11 “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System in the public rights-of-way.

1.12 “Franchise Agreement” or “Agreement” shall mean this Cable Franchise Agreement and any amendments or modifications hereto.

1.13 “Franchise Area” means the Cornerstone Traditional Neighborhood Development as described in the Lynchburg City Council resolution R-06-075 adopted on June 27, 2006, as set forth in Exhibit 1.

1.14 "Franchising Authority" means the City or the lawful successor, transferee, designee, or assignee thereof.

1.15 "Franchisee" shall mean NTELOS Media Inc. d.b.a. NTELOS.

1.16 "Gross revenue" means all revenue, as determined in accordance with generally accepted accounting principles, that is actually received by the cable operator and derived from the operation of the cable system to provide cable services in the franchise area; however, "gross revenue" shall not include: (i) refunds or rebates made to subscribers or other third parties; (ii) any revenue which is received from the sale of merchandise over home shopping channels carried on the cable system, but not including revenue received from home shopping channels for the use of the cable service to sell merchandise; (iii) any tax, fee, or charge collected by the cable operator and remitted to a governmental entity or its agent or designee, including without limitation a local public access or education group; (iv) program launch fees; (v) directory or Internet advertising revenue including, but not limited to, yellow page, white page, banner advertisement, and electronic publishing; (vi) a sale of cable service for resale or for use as a component part of or for the integration into cable services to be resold in the ordinary course of business, when the reseller is required to pay or collect franchise fees or similar fees on the resale of the cable service; (vii) revenues received by any affiliate or any other person in exchange for supplying goods or services used by the cable operator to provide cable service; and (viii) revenue derived from services classified as noncable services under federal law, including, without limitation, revenue derived from telecommunications services and information services, and any other revenues attributed by the cable operator to noncable services in accordance with rules, regulations, standards, or orders of the Federal Communications Commission.

1.17 "Ordinance" includes a resolution.

1.18 "Person" means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not mean the Franchising Authority.

1.19 "Public rights-of-way" (PROW or Public Way) means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which the City or the Commonwealth of Virginia now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein, or in any franchise, to a "public rights-of-way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Franchisee shall be deemed to gain only those rights to use as are properly in the city and as the City may have the undisputed right and power to give. For purposes of this Franchise, the term

“public right-of-way” shall also include any other parcels of property that are owned by the City.

1.20 “Interactive on-demand services” means a service providing video programming to Subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider.

1.21 “Service Interruption” means a service outage affecting less than five subscribers, or a loss or degradation of either video or audio for one or more channels for one or more subscribers.

1.22 “Service Outage” means the complete loss of cable service to five or more subscribers served by the same trunk, node, or feeder line for a period of 15 minutes or more.

1.23 “Transfer” means any transaction in which (i) an ownership or other interest in the Franchisee is transferred, directly or indirectly, from one Person or group of Persons to another Person or group of Persons, so that majority control of the Franchisee is transferred; or (ii) the rights and obligations held by the Franchisee under the Franchise granted under this Franchise Agreement are transferred or assigned to another Person or group of Persons. However, notwithstanding clauses (i) and (ii) of the preceding sentence, a transfer of the Franchise shall not include (a) transfer of an ownership or other interest in the Franchisee to the parent of the Franchisee or to another Affiliate of the Franchisee; (b) transfer of an interest in the Franchise granted under this Franchise Agreement or the rights held by the Franchisee under the Franchise granted under this Franchise Agreement to the parent of the Franchisee or to another Affiliate of the Franchisee; (c) any action that is the result of a merger of the parent of the Franchisee; (d) any action that is the result of a merger of another Affiliate of the Franchisee; or (e) a transfer in trust, by mortgage, or by assignment of any rights, title, or interest of the Franchisee in the Franchise or the System used to provide Cable Service in order to secure indebtedness.

1.24 “Video programming” means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

All terms used herein, unless otherwise defined, shall have the same meaning as set forth in Sections 15.2-2108.19 *et seq.* of the Code of Virginia, and if not defined therein, then as set forth in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 *et seq.*, and if not defined therein, their common and ordinary meaning. In addition, references in this Ordinance to any federal or state law shall include amendments thereto as are enacted from time-to-time.

SECTION 2 - Grant of Authority

2.1 The Franchising Authority hereby grants to the Franchisee under the Code of Virginia and the Cable Act a nonexclusive Franchise authorizing the Franchisee to construct and operate a Cable System in the Public Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in any Public Way such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System and to provide such Cable Services over the Cable System as may be lawfully allowed. This agreement neither authorizes the Franchisee to use the PROW for purposes of providing any service other than Cable Service, nor prohibits the Franchisee from doing so. The Franchisee's authority to provide non-Cable Services shall be subject to applicable law and Section 35-24 of the City Code.

2.2 Term of Franchise. The term of the Franchise granted hereunder shall be Fifteen (15) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement and the Code of Virginia and the Cable Act.

2.3 Renewal. Any renewal of this Franchise shall be governed by and comply with the provisions of Article 1.2 of Chapter 21 of Title 15.2 of the Code of Virginia and Section 626 of the Cable Act, as amended.

2.4 Reservation of Authority. Nothing in this Franchise Agreement shall be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority.

2.5 Competitive Equity.

2.5.1 If the City grants a competitive franchise which, in the reasonable opinion of the Franchisee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchisee may notify the City that it wishes to renegotiate certain specified provisions of the Franchise Agreement. Within 30 days after the Franchisee provides such notice, both parties must begin to negotiate in good faith, and either party to this Franchise Agreement may request changes to amend this Agreement so that neither the Franchisee's Franchise Agreement nor that of the competitor contains terms that are more favorable or less burdensome than the other. For purposes of this section, the franchises must be viewed as a whole, not on a provision-by-provision basis, and the franchises must be compared with due regard for the circumstances existing at the time each franchise was granted.

2.5.2 In the event an application for a new cable television franchise is filed with the Franchising Authority proposing to serve the Franchising Area, in whole or in part, the Franchising Authority shall serve or require to be served a copy of such

application upon the Franchisee by registered or certified mail or via nationally recognized overnight courier service.

2.5.3 In the event that a cable provider provides Cable Service to the residents of the city under a federal franchise that is unavailable to the Franchisee, the Franchisee shall have a right to request amendments to this Franchise Agreement that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the Franchise Agreement. Such petition shall: (1) indicate the presence of a competitor that has a federal franchise; (2) identify the basis for Franchisee's belief that certain provisions of the Franchise Agreement place Franchisee at a competitive disadvantage; and (3) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. City Council shall hold a public hearing to evaluate the petition and hear views of interested parties. The Franchising Authority shall not unreasonably withhold consent to the Franchisee's petition.

SECTION 3 – Construction and Maintenance of the Cable System

3.1 Permits and General Obligations. The Franchisee shall be responsible for obtaining, at its own cost and expense, all generally applicable permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the Cable System, or any part thereof, prior to the commencement of any such activity. Construction, installation, and maintenance of the Cable System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. All transmission and distribution structures, poles, other lines, and equipment installed by the Franchisee for use in the Cable System in accordance with the terms and conditions of this Franchise Agreement shall be located so as to minimize the interference with the proper use of the Public Ways and the rights and reasonable convenience of property owners who own property that adjoins any such Public Way.

3.2 Conditions of Street Occupancy.

3.2.1 New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Franchisee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any other user of the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall notify the Franchisee of the availability of such funding and make such funds available to the Franchisee. It is understood that there is no guarantee by the Franchising Authority that any public funds will be available to help defray the cost of altering or relocating the Cable System to conform to new grades or lines.

3.2.2 Relocation at request of Third Party. The Franchisee shall, upon reasonable prior written request of any Person holding a permit issued by the Franchising Authority to move any structure, temporarily move its wires to permit the moving of such structure; provided (i) the Franchisee may impose a reasonable charge on any Person for the movement of its wires, and such charge may be required to be paid in advance of the movement of its wires; and (ii) the Franchisee is given not less than ten (10) business days advance written notice to arrange for such temporary relocation.

3.2.3 Restoration of Public Ways. If in connection with the construction, operation, maintenance, or repair of the Cable System, the Franchisee disturbs, alters, or damages any Public Way, the Franchisee agrees that it shall at its own cost and expense replace and restore any such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to the disturbance. The City Engineer shall make the final determination as to acceptability of repair and/or replacement of damaged facilities. In performing any excavation work in the public rights-of-way, the Franchisee will comply with all of the requirements of Chapter 35, or any subsequently adopted Chapter, of the City Code.

3.2.4 Safety Requirements. The Franchisee shall, at its own cost and expense, undertake all necessary and appropriate efforts to maintain its work sites in a safe manner in order to prevent failures and accidents that may cause damage, injuries or nuisances. All work undertaken on the Cable System shall be performed in substantial accordance with applicable FCC or other federal and state regulations and with the National Electrical Safety Code (National Bureau of Standards)" and "National Electrical Code (National Bureau of Fire Underwriters). The Cable System shall not unreasonably endanger or interfere with the safety of Persons or property in the Franchise Area.

3.2.5 Trimming of Trees and Shrubbery. The Franchisee shall have the responsibility and authority to trim trees or other natural growth overhanging any of its Cable System in the Franchise Area so as to prevent contact with the Franchisee's wires, cables, or other equipment. All such trimming shall be done at the Franchisee's sole cost and expense. The Franchisee shall be responsible for any damage caused by such trimming. Prior to trimming or pruning of any City of Lynchburg street trees or shrubbery, the City's Public Works Urban Forester shall be contacted.

3.2.6 Aerial and Underground Construction. At the time of Cable System construction, if all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Franchisee shall place its Cable System's transmission and distribution facilities underground; provided that such underground locations are actually capable of accommodating the Franchisee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Franchisee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any

part thereof, aerially or underground. Nothing in this Section shall be construed to require the Franchisee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

3.2.7 All excavation and reconstruction work by a Franchisee in the public rights-of-way must be in compliance with the requirements of chapter 35, article III. excavations, of the City Code, including all of the standards referenced therein, and all applicable VDOT standards. It shall be the responsibility of a Franchisee to obtain any required permits, to review all applicable excavation, reconstruction, restoration, repair and permitting requirements, and to become familiar with such requirements before beginning any excavation, reconstruction, restoration or repair work in the public rights-of-way or private property.

3.2.8 Any equipment or facilities installed by a Franchisee in the public rights-of-way shall be installed, located, erected, constructed, reconstructed, replaced, restored, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not (1) to endanger or interfere in any manner with improvements the City or VDOT may deem appropriate to make; or (2) to interfere with the rights of any private property owner; or (3) to hinder or obstruct pedestrian or vehicular traffic.

3.2.9 Whenever the City or VDOT shall determine that it is necessary in connection with the repair, relocation, or improvement of the public rights-of-way, the City or VDOT may require by written notification that any properties or facilities of the Franchisee be removed or relocated. Within sixty (60) days after receipt of notification, unless the City or VDOT extends such period for good cause shown, the Franchisee shall remove or relocate its facilities to such place and under such terms and conditions as specified by the City or VDOT. The Franchisee shall bear all expenses associated with the removal and relocation except that the City or VDOT will issue, without charge to the Franchisee, whatever local permits are required for the relocation of Franchisee's facilities. If the Franchisee does not complete its removal or relocation within sixty (60) days or such other period as authorized by the City or VDOT, the City or VDOT may take such actions as necessary to effect such removal or relocation at the Franchisee's expense.

3.2.10. Undergrounding and Beautification Projects. In the event all users of the Public Way relocate aerial facilities underground as part of an undergrounding or neighborhood beautification project, Franchisee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. Franchisee's relocation costs shall be included in any computation of necessary project funding by the municipality or private parties. Franchisee shall be entitled to reimbursement of its relocation costs from public or private funds raised for the project and made available to other users of the Public Way. It is understood that there is no guarantee by the Franchising Authority that any public or private funds will be available to help defray the cost of such undergrounding or beautification projects.

SECTION 4 - Service Obligations

4.1 General Service Obligation.

4.1.1 The Franchisee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least thirty (30) dwelling units per mile when measured from the existing Cable System. Subject to the density requirement, Franchisee shall offer Cable Service to all new homes or previously unserved homes located within 150 feet of the Franchisee's distribution cable.

4.1.2 The Franchisee may elect to provide Cable Service to areas not meeting the above density and distance standards. The Franchisee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation that exceeds the standards set forth above. Such additional charge shall be paid by the developer or landowner or customer requesting Cable Service in an area that does not meet the density and distance standards.

4.2 New Developments. Franchisee agrees to use commercially reasonable efforts to inform itself of all newly planned developments within the Franchise Area and to work with developers to cooperate in pre-installation of facilities to support Cable Service. Should, through new construction, an area within the Franchise Area meet the density requirement, the Franchisee shall provide Cable Service to such area within six months of receiving notice from the City that the density requirement has been met.

4.3 Programming. The Franchisee shall offer to all Customers a diversity of video programming services.

4.4 No Discrimination. The Franchisee shall not discriminate or permit discrimination between or among any Persons in the availability of Cable Services or other services provided in connection with the Cable System in the Franchise Area. It shall be the right of all Persons to receive all available services provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied, unless such Person has engaged in theft of Franchisee's cable services, vandalism of its property or harassment of its representatives. Nothing contained herein shall prohibit the Franchisee from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice. A Franchisee shall assure that access to cable services is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

4.5 Subscriber Surveys: Upon the request of the City, but not more than once every three years, the Franchisee shall conduct a Subscriber satisfaction survey pertaining to quality of service, which may be transmitted to Subscribers in the Franchisee's invoice

for Cable Services. The results of such survey shall be provided to the City on a timely basis.

4.6 Performance Evaluation Sessions: The City and the Franchisee may hold scheduled performance evaluation sessions. If the City requests a performance evaluation session, such session shall be scheduled within thirty (30) days of the City's request.

4.6.1. Performance Evaluation sessions may be held no more than once every three years during the Term of the Franchise. All such evaluation sessions shall be publicized in advance and be open to the public.

4.6.2. The Franchisee shall reasonably cooperate with the evaluation and shall, subject to the proprietary information provision of Section 8.7 of this Agreement, supply with the City with all relevant information requested.

4.6.3. If the evaluation indicates a need for modification of the Agreement, the City shall attempt to negotiate the identified changes with the Franchisee. Any changes agreed to by the City and the Franchisee shall be approved by the City Council before they become effective.

4.7 Provisions of Maps to the City: The Franchise shall provide to the City annually updated maps of the Franchise Area which shall clearly delineate the following:

4.7.1. Areas within the Franchise Area where Cable Service will be available to Subscribers.

4.7.2 Areas covered by the Franchise where the Cable System cannot be extended due to lack of present or planned development, with such areas clearly marked.

4.7.3 Additional Maps: Should the City request access to more detailed maps of the Cable System that are too voluminous or for security reasons cannot be copied and moved, then the Franchisee shall permit the City to review such maps and may require that any inspection take place at a specified location in Central Virginia.

4.8 Changes in Service: Franchisee agrees to give the City Manager thirty (30) days prior written notice of changes in the mix, or quality of the Cable Services.

SECTION 5 - Public, Educational and Governmental Access Channels

5.1 Franchisee shall designate capacity on up to three (3) channels for public, educational and/or governmental access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. Use of a channel position for public, educational and governmental ("PEG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and Article 1.2 of the Code of Virginia, and as further set forth

below. “Channel position” means a number designation on the Franchisee’s channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any Access channel is reassigned, the Franchisee shall provide the City with at least 90 days notice before reassigning the channel, and shall pay the reasonable costs of any advertising and promotional materials required due to the reassignment. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Educational and Governmental Access Channel use.

5.2 Public Access. A “Public Access Channel” is a channel position designated for noncommercial use by the public on a first-come, first-served, nondiscriminatory basis. A Public Access Channel may not be used to cablecast programs for profit, or for nonpolitical or commercial fundraising in any fashion.

5.3 Educational Access. An “Educational Access Channel” is a channel position designated for noncommercial use by educational institutions such as public or private schools (but not “home schools”), community colleges, and universities.

5.4 Government Access. A “Governmental Access Channel” is a channel position designated for noncommercial use by the Franchising Authority for the purpose of showing the public local government at work.

5.5 NTELOS shall make all necessary arrangements with other Franchisees located in the City for the purpose of ensuring the carriage of all PEG access channels.

5.5.1 Franchisee shall ensure that all PEG access channel signals carried on its system, regardless of the method used to acquire the PEG channels, comply with all applicable FCC signal quality and technical standards for all classes of signals. The technical and signal quality of all PEG access channel signals shall be preserved.

5.5.2 Franchisee shall install and maintain the equipment required for interconnection at a location with the City (the “Interconnection Point”), and shall regularly test the equipment located at the Interconnection Point to ensure it is in full working order and capable of transmitting the PEG channels in accordance with industry standard specifications for sound and picture quality and signal degradation. The PEG origination locations are as follows:

1. City Hall, 900 Church Street, for the Government channel

2. Lynchburg City Schools Administration, 915 Court Street, for the Education channel
3. A location to-be-determined for the Public Access channel.

5.6 Franchisee shall pay to the City a one-time capital grant to be used for the purposes of upgrading and maintaining the equipment necessary to support PEG operations. However, this one-time capital grant shall only be payable if, and when, the incumbent cable provider reaches agreement on a franchise with the City which contains a provision for a one-time capital grant. The amount due from the Franchisee shall be the equivalent amount as the incumbent's grant on a per-subscriber basis, based on the Franchisee's estimated number of subscribers in the Franchise Area, not to exceed \$6 per subscriber.

5.7 The parties agree that such one-time capital grant neither constitutes nor is part of any Franchise fee, and all such costs fall within one or more of the exceptions listed in 47 U.S.C. § 542.

5.8 The City may, after a public hearing and upon a finding that the existing PEG channels are substantially utilized within the meaning of Section 15.2-2108.22(1) of the Code of Virginia, require by ordinance that the Franchisee provide an additional PEG channel or channels, up to a maximum of three (3) additional PEG channels, provided that the total number of PEG channels, including the additional PEG channels, shall not exceed seven (6).

SECTION 6 - Communications Tax and Franchise Fees

6.1. Communications Tax: Franchisee shall comply with the provisions of Section 58.1-645 et seq. of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax, as amended (the "Communications Tax"), and Sections 6.2 through 6.6 of the Agreement shall not have any effect, for so long as the Communications Tax or a successor state or local tax that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, is imposed on the sale of cable services by the Franchisee to subscribers in the city.

6.2. Payment of Franchise Fee to City: In the event that the Communications Tax is repealed and no successor state or local tax is enacted that would constitute a franchise fee for purposes of 47 U.S.C. § 641, as amended, Franchisee shall pay to the City a Franchise fee of five percent (5%) of annual Gross Revenue, beginning on the effective date of the repeal of such tax (the "Repeal Date"). Beginning on the Repeal Date, the terms of Section 6.2 through 6.6 of this Agreement shall take effect. In accordance with Title VI of the Communications Act, the twelve (12) month period applicable under the Franchise for the computation of the Franchise fee shall be a calendar year. Such payments shall be made no later than thirty (30) days following the end of each calendar quarter. Should Franchisee submit an incorrect amount, Franchisee shall be allowed to add or subtract that amount in a subsequent quarter, but no later than

ninety (90) days following the close of the calendar year for which such amounts were applicable; such correction shall be documented in the supporting information required under Section 6.3 below.

6.3. **Supporting Information:** Each Franchise fee payment shall be accompanied by a brief report prepared by a representative of Franchisee showing the basis for the computation, and a breakdown by major revenue categories (such as Basic Service, premium service, etc.). The City shall have the right to reasonably request further supporting information for each Franchise fee payment, subject to the proprietary information provision of Section 8.7.

6.4. **Limitation on Franchise Fee Actions:** The period of limitation for recovery of any Franchise fee payable hereunder shall be five (5) years from the date on which payment by Franchisee is due.

6.5. **Bundled Services:** This Section 6.5 shall only apply if state or federal law does not otherwise address the computation of franchise fees or gross revenues in connection with the provision of Cable Service as part of a bundle or package with any Non-Cable Service. If the Franchisee bundles Cable Service with Non-Cable Service, the Franchisee agrees that it will not intentionally or unlawfully allocate such revenue for the purpose of evading the Franchise fee payments under this Agreement. In the event that the Franchisee or any Affiliate shall bundle, tie, or combine Cable Services (which are subject to the franchise fee) with non-Cable Services (which are not subject to the franchise fee), so that subscribers pay a single fee for more than one class of service or receive a discount on Cable Services, a *pro rata* share of the revenue received for the bundled, tied, or combined services shall, to the extent reasonable, be allocated to gross revenues for purposes of computing the franchise fee. To the extent there are published charges and it is reasonable, the *pro rata* share shall be computed on the basis of the published charge for each of the bundled, tied, or combined services, when purchased separately. However, the parties agree that tariffed telecommunications services that cannot be discounted under state or federal law or regulations are excluded from the bundled allocation obligations in this section.

SECTION 7 - Customer Service Standards; Customer Bills; and Privacy Protection

7.1 **Customer Service Standards.** The Franchisee shall comply in all respects with the current customer service requirements established by the FCC. To the extent those customer service requirements are altered, modified, or amended by the FCC during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended requirements within a reasonable period after such requirements become effective. Franchisee shall be subject to the following customer service standards consistent with 47 U.S.C. §§ 76.309, 1602, 1603, 1618 and 1619.

7.1.1 Franchisee will maintain a local or toll-free telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

7.1.1.1 Trained representatives will be available to respond to customer telephone inquiries during normal business hours.

7.1.1.2 After normal business hours, the access line may be answered by a service or automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained representative on the next business day.

7.1.2 Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions as measured on a quarterly basis.

7.1.3 Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

7.1.4 Franchisee shall accurately collect and maintain data to measure its compliance with the telephone answering standards in Sections 7.1.2 and 7.1.3.

7.1.5 Installations, Outages, and Service Calls. Under normal operating conditions, each of the following standards will be met no less than ninety five percent (95%) of the time as measured on a quarterly basis.

7.1.5.1 Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are within 150 feet of the existing distribution system.

7.1.5.2 Excluding conditions beyond the control of the Franchisee, the Franchisee will begin repairs on Service Outages promptly and in no event later than twenty-four (24) hours after the outage becomes known.

7.1.5.3 The Franchisee must begin working to correct Service Interruptions within 24 hours, including weekends, of receiving a subscriber call for a Service Interruption.

7.1.6 Franchisee shall accurately collect and maintain data to measure its compliance with subparagraph 7.1.5.

7.1.7 The "appointment window" alternatives for installations, service calls and other installation activities will either be at a specific time or, at maximum, a four-hour time block during normal business hours. Franchisee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.

7.1.8 A Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Franchisee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled as necessary, at a time which is convenient for the customer.

7.1.9 Franchisee shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (i) Products and services offered;
- (ii) Prices and options for programming services and conditions of subscription to programming and other services;
- (iii) Installation and service maintenance policies;
- (iv) Instructions on how to use the cable service;
- (v) Channel positions of programming carried on the system;
- (v) Refund policy; and
- (vii) Billing and complaint procedures, including the Franchisee's office hours, telephone number, and address of the local cable office.

7.1.10 Franchisee shall be required to submit quarterly reports to the Franchising Authority, in accordance with Section 8.8 – Reporting, to allow it to monitor Franchisee's compliance with quarterly customer service standards.

7.2 Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (i) is not misleading and (ii) does not omit material information. Notwithstanding anything to the contrary in Section 7.1, above, the Franchisee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

7.3 Franchisee shall notify subscribers of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Franchisee. In addition, a Franchisee shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by Section 7.1.10.

7.4 In case of a billing dispute, a Franchisee must respond to a written complaint from a subscriber within thirty (30) days.

7.5 Refund checks will be issued promptly, but not later than either:

7.5.1 The customer's next billing cycle following resolution of the request, or thirty (30) days, whichever is earlier, or

7.5.2 The return of the equipment supplied by a Franchisee if service is terminated.

7.6 Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

7.7 Franchisee shall maintain an office in the Lynchburg area for, at minimum, the payment of bills, delivery and return of subscriber equipment, requests for installation, disconnection, and reinstatement of cable service, addressing of subscriber inquiries, and receipt of subscriber complaints, and shall be open during normal business hours.

7.8 A Franchisee shall provide parental control devices to all subscribers who wish to be able to block out any objectionable channel(s) of programming from the cable service entering the subscriber's home.

7.9 Privacy Protection. The Franchisee shall comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 8 - Oversight and Regulation by Franchising Authority

8.1 Oversight of Franchise. In accordance with applicable law, the Franchising Authority shall have the right to oversee, regulate and, on reasonable prior written notice and in the presence of Franchisee's employee, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Franchisee's compliance with the provisions of this Franchise Agreement.

8.2 Technical Standards. The Franchisee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Franchisee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

8.3 Books and Records. Subject to the confidentiality requirements of Section 8.7 of this Agreement, the City, or such Person or Persons designated by the City, shall have the right to inspect and copy records and the right to audit and to recomputed any amounts determined to be payable under this Franchise, without regard to by whom they are held. If an audit discloses an overpayment or underpayment of franchise fees, the City shall notify the Franchisee of such overpayment or underpayment within ninety (90) days of the date the audit was completed. The City, in its sole discretion, shall determine the completion date for any audit conducted hereunder. Audit completion is not to be unreasonably delayed by either party. Subject to the confidentiality requirements of Section 8.7 of this Franchise, the Franchisee shall be responsible for providing to the City all records necessary to confirm the accurate payment of franchise fees. The Franchisee shall maintain such records for five (5) years. The City's audit expenses shall be borne by the City unless the audit determines the payment to the City should be increased by more than five percent (5%) in the audited period, in which case the costs of the audit shall be

paid by the Franchisee to the City within thirty (30) days following written notice to the Franchisee by the City of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid by Franchisee to the City, such amount shall be subject to an interest charge in accordance with the City's standard rate for computing interest charges on late payments.

8.4 Records Required: Franchisee shall at all times maintain:

8.4.1. Records of all written complaints for a period of three years after receipt by Franchisee. The term "complaint" as used herein refers to complaints about any aspect of the Cable System or Franchisee's cable operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call;

8.4.2. Records of outages for a period of three years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause;

8.4.3. Records of service calls for repair and maintenance for a period of three years after resolution by Franchisee, indicating the date and time service was required, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was resolved;

8.4.4. Records of installation/reconnection and requests for service extension for a period of three years after the request was fulfilled by Franchisee, indicating the date of request, date of acknowledgment, and the date and time service was extended; and

8.4.5. A public file showing the area of coverage for the provisioning of Cable Services and estimated timetable to commence providing Cable Service in areas not currently served.

8.5 Federal Communications (FCC) Testing: Within fourteen (14) days of a written request by the City, a written report of test results of FCC performance testing will be provided to the City Manager / Designee.

8.6 File for Public Inspection. Throughout the term of this Franchise Agreement, the Franchisee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations. Upon reasonable written notice to the Franchisee and with no less than thirty (30) business days' written notice to the Franchisee, the City shall have the right to inspect Franchisee's books and records pertaining to Franchisee's provision of Cable Service in the franchise area at any time during normal business hours and on a nondisruptive basis, as are reasonably necessary to ensure compliance with the terms of

this franchise. Such notice shall specifically reference the section or subsection of the franchise which is under review, so that Franchisee may organize the necessary books and records for appropriate access by the City. Franchisee shall not be required to maintain any books and records for franchise compliance purposes longer than five (5) years.

8.7 Proprietary Information:

8.7.1 Notwithstanding anything to the contrary set forth herein, Franchisee shall not be required to submit information to the City that it reasonably deems to be proprietary or confidential in nature, nor submit to the City any of its or an affiliate's books and records not relating to the provision of Cable Service in the franchise area, except as provided herein. Such confidential information shall be subject to the following, to be applied as is most practicable for the purposes of this Agreement:

8.7.1.1 To the extent an exemption under the Virginia Freedom of Information Act permits the City to maintain the confidentiality of submitted information and the Franchisee submits such information to the City, the City shall maintain the confidentiality of such information and not disclose it to any public request;

8.7.1.1 To the extent the information provided to an accountant, attorney, consultant, or any other agent of the City ("City Consultant") would not be subject to public disclosure under the Virginia Freedom of Information Act and the City instructs the Franchisee to provide such information to the City Consultant as may be required by this Agreement, the Franchisee shall provide such information to the City Consultant and the City shall not take possession of the information nor engage in any act that would jeopardize the confidentiality of such information; or,

8.7.1.3 Franchisee must provide the following documentation to the City:

- (i) specific identification of the information;
- (ii) statement attesting to the reason(s) the Franchisee believes the information is confidential; and
- (iii) statement that the documents are available at the Franchisee's designated offices for inspection by the City.

8.7.2 At all times, the City shall take reasonable steps to protect the proprietary and confidential nature of any books, records, maps, plans, or other City-requested documents that are provided pursuant to the Agreement to the extent they are designated as such by the Franchisee. Nothing in this Section shall be read to require the Franchisee to violate federal or state law protecting Subscriber privacy.

8.8 Reporting. The Franchisee shall submit the following reports regarding annual financial information and quarterly customer service information:

8.8.1 Annual Reports. No later than ninety (90) days after the end of its fiscal year, a Franchisee shall submit a written report to the City, which shall include:

8.8.1.1 A summary of the number of complaints received, summarized by type of complaint (e.g. billing, installation, construction, front counter or telephone answering problems, programming, repair, and other complaints) and the nature of the remedial efforts, if any, undertaken by the Franchisee to address recurring complaints that are not resolved individually on a case-by-case basis;

8.8.1.2 A report from the previous calendar year showing Franchisee's total operating revenues from each type of cable service, its gross revenue, and the amount of the Franchisee fees paid to the State and any PEG surcharge fees paid to the City. The report shall include a report from an independent auditor or a duly authorized officer of the Franchisee who has reviewed the financial statements of Franchisee for the year, and found that Franchisee's gross revenue, as defined in this ordinance, are as reported in the annual report;

8.8.1.3 A list of major cable-related projects undertaken in the past year and planned for the current year, including construction and upgrade schedules for any new, relocated, or upgraded aerial or underground facilities;

8.8.2 Quarterly Reports. Unless this requirement is waived in whole or in part by the City, no later than thirty (30) days after the end of each calendar quarter, the Franchisee shall submit a written report to the City, in a form reasonably satisfactory to the City, which shall include:

8.8.2.1 A report showing the number of service calls received by type during that quarter, including any property damage to the extent such information is available to the Franchisee, and any line extension requests received during that quarter;

8.8.2.2 A report showing the number of outages for that quarter, identifying separately each outage of one or more nodes for more than one hour at a time, the date and time it occurred, the date and time when repairs began, its duration, the map area, and, when available to the Franchisee, number of homes affected.

8.8.2.3 A report showing the Franchisee's performance with respect to Section 7.1 of this Agreement and all applicable customer service standards established in 47 C.F.R. §76.309(c), signed by an officer or employee certifying its performance with these customer service standards. Included in this report will be the following information:

- i) Percentage of telephone calls that were answered within 30 seconds
- ii) Percentage of telephone calls received that were abandoned before being answered by a live operator

- iii) Average hold time for telephone calls received
- iv) Percentage of time when all incoming trunk lines were in a busy condition
- v) Percentage of standard installations performed within seven business days
- vi) Percentage of repair calls for Service Interruptions responded to within 24 hours.

8.8.3 If the Franchisee is unable to certify full compliance for any calendar quarter, it must indicate in its filing each standard with which it is in compliance and in noncompliance, the dates of noncompliance, the reason for the noncompliance and a remedial plan. The Franchisee's failure to file a compliance certificate or noncompliance statement as required herein shall subject the Franchisee to the liquidated damages established in this ordinance. The Franchisee shall keep such records as are reasonably required to enable the City to determine whether the Franchisee is substantially complying with all such customer service standards, and shall maintain adequate procedures to demonstrate substantial compliance.

8.8.4 The Franchisee shall submit to the City copies of each petition, application, report, and communication that directly and materially affects the provision of Cable Service within the Franchise Area that are transmitted by the Franchisee to any federal, state, or other regulatory commissions, agencies or courts.

SECTION 9 – Transfer or Change of Control of Cable System or Franchise

9.1 No transfer of this Franchise shall occur without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld, delayed or conditioned. No transfer shall be made to a Person, group of Persons or Affiliate that is not legally, technically and financially qualified to operate the Cable System and satisfy the obligations hereunder.

SECTION 10 - Insurance and Indemnity

10.1 The Franchisee shall indemnify, hold harmless and defend the City, its officers, employees, and agents (hereinafter referred to as "indemnities"), from and against:

10.1.1 Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed

upon, incurred by or asserted against the indemnitees by reason of any act or omission of the Franchisee, its personnel, employees, agents, contractors or subcontractors, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, libel, slander, invasion of privacy and unauthorized use of any trademark, trade name, copyright, patent, service mark or any other right of any person, firm or corporation, which may arise out of or be in any way connected with the construction, installation, operation, maintenance, use or condition of the Franchisee's cable system caused by Franchisee, its contractors, subcontractors or agents or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation.

10.1.2 Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which are imposed upon, incurred by or asserted against the indemnitees by reason of any claim or, lien arising out of work, labor, materials or supplies provided or supplied to the Franchisee, its contractors or subcontractors, for the installation, construction, operation or maintenance of the Franchisee's cable system in the city.

10.1.3 Any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or asserted against the indemnitees by reason of any financing or securities offering by Franchisee or its affiliates for violations of the common law or any laws, statutes or regulations of the Commonwealth of Virginia or of the United States, including those of the Federal Securities and Exchange Commission, whether by the Franchisee or otherwise.

10.2 Damages shall include, but not be limited to, penalties arising out of copyright infringements and damages arising out of any failure by the Franchisee to secure consents from the owners, authorized distributors or licensees, or programs to be delivered by the Franchisee's cable system.

10.3 The Franchisee undertakes and assumes for its officers, agents, contractors and subcontractors and employees all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including streets and public rights-of-ways, and the Franchisee hereby agrees to indemnify and hold harmless the indemnitees against and from any claim asserted or liability imposed upon the indemnitees for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Franchisee's cable system or the Franchisee's failure to comply with any federal, state or local statute, ordinance or regulation, except for any claim asserted or liability imposed upon the indemnitees that arises or is related to wanton or willful negligence by the indemnitees.

10.4 In the event any action or proceeding shall be brought against the indemnitees by reason of any matter for which the indemnitees are indemnified hereunder, the Franchisee shall, upon notice from any of the indemnitees, and at the

Franchisee's sole cost and expense, resist and defend the same, provided further, however, that the Franchisee shall not admit liability in any such matter on behalf of the indemnitees without the written consent of the City Attorney or his or her designee.

10.5 The City shall give the Franchisee prompt notice of the making of any written claim or the commencement of any action, suit or other proceeding covered by the provisions of this section.

10.6 Nothing in this ordinance or in a franchise is intended to, or shall be construed or applied to, express or imply a waiver by the City of statutory provisions, privileges or immunities of any kind or nature as set forth in the Code of Virginia, including the limits of liability of the City as exists presently or as may be increased from time to time by the legislature. Nothing in a franchise or this ordinance shall constitute a waiver of the City's statutory provisions, privileges or immunities, including the City's sovereign immunity, of any kind or nature.

10.7 The Franchisee shall maintain, and by its acceptance of a franchise hereunder specifically agrees that it will maintain throughout the term of the franchise, general comprehensive liability insurance insuring the Franchisee. All liability insurance shall include an endorsement in a specific form which names as joint and several insured's the City and the City's officials, employees and agents, with respect to all claims arising out of the operation and maintenance of the Franchisee's cable system in the city. Liability insurance mentioned herein below shall be in the minimum amounts of:

10.7.1 \$5,000,000.00 for bodily injury or death to anyone person, within the limit of ten million dollars (\$10,000,000) for bodily injury or death resulting from any one accident;

10.7.2 \$5,000,000.00 for property damage, including damage to the City's property, from any one accident;

10.7.3 \$5,000,000.00 for all other types of liability resulting from any one occurrence;

10.7.4 Workers Compensation Insurance as required by the Commonwealth of Virginia;

10.7.5 A Franchisee shall carry and maintain in its own name automobile liability insurance with a limit of \$5,000,000 for each person and \$5,000,000 for each accident for property damage with respect to owned and non-owned automobiles for the operation of which the Franchisee is responsible;

10.7.6 Throughout the term of this franchise, at intervals of no more than once every five years, the City may hire an independent insurance consultant to review the amounts of the insurance policies and if the consultant determines the amounts of the insurance coverage are inadequate, the insurance coverage shall be increased in accordance with the consultant's recommendations; and

10.7.7 Coverage for copyright infringement.

10.8 The inclusion of more than one (1) insured shall not operate to increase the limit of the Franchisee's liability, and that insurer waives any right on contribution with insurance which may be available to the City.

10.9 All policies of insurance required by this section shall be placed with companies which are qualified to write insurance in the Commonwealth of Virginia and which maintain throughout the policy term a General Rating of "A-" and a Financial Size Category of "A:X" as determined by Best Insurance Rating Services.

10.10 Certificates of insurance obtained by the Franchisee in compliance with this section must be approved by the City Attorney, and such insurance policy certificate of insurance shall be filed and maintained with the City's Risk Manager during the term of the franchise. The Franchisee shall immediately advise the City Attorney of any litigation that may develop that would affect this insurance.

10.11 Should the City find an insurance document to be in non-compliance, then it shall notify the Franchisee, and the Franchisee shall be obligated to cure the defect.

10.12 Neither the provisions of this section, nor any damages recovered by the City thereunder, shall be construed to nor limit the liability of the Franchisee under any franchise issued hereunder or for damages.

10.13 The insurance policies provided for herein shall name the City, its officers, employees and agents as additional insured's, and shall be primary to any insurance or self-insurance carried by the City. The insurance policies required by this section shall be carried and maintained by the Franchisee throughout the term of the franchise and such other period of time during which the Franchisee operates or is engaged in the removal of its cable system. Each policy shall contain a provision providing that the insurance policy may not be canceled by the surety, nor the intention not to renew be stated by the surety, until thirty (30) days after receipt by the City, by registered mail, of written notice of such intention to cancel or not to renew.

10.14 Nothing in this section shall require a Franchisee to indemnify, hold harmless or defend the City, its officials, employees or agents, from any claims or lawsuits arising out of the City's award of a franchise to another person.

SECTION 11 - System Description and Service

11.1 System Characteristics: Franchisee's Cable System, which is a fiber to the premises architecture using Internet Protocol technology, shall meet or exceed the following requirements:

11.1.1. Within twenty four (24) months of the granting of this franchise, the System shall provide a minimum of 860 MHz in bandwidth capacity capable of carrying one hundred (100) channels of video programming.

11.1.2. The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for selection or use of Cable Service. The digital offerings shall include some high definition Cable Service.

11.1.3. The Cable Service shall be operated in a manner such that it is in compliance with FCC standards and requirements with respect to interference. The Cable System shall be operated in such a manner as to minimize interference with the reception of off-the-air signals by a Subscriber. The Franchisee shall insure that signals carried by the Cable System, or originating outside the Cable System wires, cable, fibers, electronics and facilities, do not ingress, or egress into or out of the Cable System in excess of FCC standards. In particular, the Franchise shall not operate the Cable System in such a manner as to pose unwarranted interference with emergency radio services, aeronautical navigational frequencies or an airborne navigational reception in normal flight patterns, or any other type of wireless communications, pursuant to FCC regulations.

11.2. Interconnection: The Franchise may design its Cable System so that it will interconnect with other cable systems and open video systems in the Franchise Area. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

11.3. Standby Power: The Franchisee shall provide standby power generating capacity at the headend and at all hubs. The Franchisee shall maintain motorized standby power generators capable of at least twenty-four (24) hours duration at the headend and all hubs, with automatic response systems to alert the local management center when commercial power is interrupted. The power supplies serving the distribution plant shall be capable of providing power to the Cable System for not less than two (2) hours in the event of an electrical outage.

11.4. Technical Standards: The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. § 76.601.

11.5. Leased Access Channels: The Franchisee shall provide Leased Access Channels as required by federal law.

11.6 Service to School and Government Buildings. Franchisee shall provide, without charge, one Cable Service outlet activated for basic service to each fire station, public school, police station, public library, court house, jail and any other building used for government purposes (which includes buildings leased by the City for governmental purposes as well as buildings owned by the City) located within the Franchise Area. The Franchisee also agrees to use reasonable best efforts to provide one Cable Service outlet activated for basic service, if requested by the City and if already served by the

Franchisee's broadband infrastructure at the time of the City's request, to any municipal facility located outside of the Franchise Area.

11.7 Emergency Powers. In the event of an emergency, or where a Franchisee's cable system creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Franchisee shall remove or relocate any or all parts of Franchisee's cable system at the request of the City. If the Franchisee fails to comply with the City's request, the City may remove or relocate any or all parts of the Franchisee's cable system upon reasonable notice to the Franchisee.

11.8 Emergency Alert System.

11.8.1 A Franchisee shall install and thereafter maintain for use by the City, an Emergency Alert System (EAS).

11.8.2 The EAS shall at all times be operated in accordance with FCC rules and the Virginia EAS Plan. If the City determines that it is in the public interest to implement franchise emergency override capabilities in addition to those required by federal and state law, and provided that the additional franchise emergency override capabilities are technically feasible and can be deployed at a reasonable cost, Grantee shall deploy such additional capabilities at its sole cost within twelve (12) months of a request by the City.

11.8.3 The City or other designated body responsible under any approved state or local EAS plan shall provide reasonable notice to the Franchisee prior to any test of the EAS. The Franchisee shall cooperate with the City or other designated body responsible under any approved state or local EAS plan in any such test.

11.8.4 Franchisee shall maintain the EAS and shall periodically upgrade the EAS at the Franchisee's sole expense to ensure that the EAS technology remains consistent and compatible with prevailing technology and applicable law.

SECTION 12 - Enforcement of Franchise

12.1 If, pursuant to any required public hearing, the City determines that the Franchisee has failed to materially comply with this franchise, Article 1.2 (§§ 15.2-2108 *et seq.*) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulation promulgated thereunder, the City may impose any penalty for a violation of the terms of an ordinance franchise that it may impose for a comparable violation under the terms of a negotiated franchise or applicable Virginia or City law, including, without limitation, revocation of the franchise.

12.2 Within thirty (30) days after the award of a franchise, the Franchisee shall deposit with the City a performance bond or an irrevocable letter of credit from a financial institution running to the City in the amount of fifty thousand dollars (\$50,000.00.). The bond or letter of credit shall be used to insure the faithful performance by the Franchisee of all of the provisions of its franchise and this ordinance, Sections 15.2-2108.19 *et seq.* of the Code of Virginia, and the mandatory requirements of 47 U.S.C. §§ 521-573 and any rules promulgated thereunder, and compliance with all lawful orders, permits, and directions of any agency, commission, board, department, division, or office of the City or VDOT having jurisdiction over the acts of the Franchisee, or defaults under a franchise or the payment by a Franchisee of any penalties, liquidated damages, claims, liens, and taxes due the City which arise by reason of the construction, operation, or maintenance of Franchisee's cable system in the city, including , including restoration of the public rights-of-way and the cost of removal or abandonment of any property of a cable operator.

12.3 Any bond obtained by a Franchisee must be placed with a company which is qualified to write bonds in the Commonwealth of Virginia, such bond shall be subject to the approval of the City Attorney and shall contain the following endorsement (or the substantive equivalent of such language as agreed upon by the City):

“It is hereby understood and agreed that this bond may not be cancelled without the consent of the City until sixty (60) days after receipt by the City by registered mail, return receipt requested, of a written notice of intent to cancel or not renew.”

12.4 Any letter of credit must be issued by a federally insured commercial lending institution and shall be subject to the approval of the City Attorney.

12.4.1 The letter of credit may be drawn upon by the City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Manager or his designee, certifying that the Franchisee has failed to comply with this ordinance after having been given due notice and opportunity to cure the failure to comply. Such certificate shall also state the specific reasons for the failure of compliance, and stating the basis of the amount being drawn.

12.4.1.1 The City may withdraw money from the letter of credit in accordance with the procedures set forth in this section.

12.4.1.2 The City shall provide the Franchisee with written notice informing the Franchisee that such amounts are due to the City. The written notice shall describe, in reasonable detail, the reasons for the assessment. In accordance with Section 12.7, the Franchisee shall cure every failure cited by the City or notify the City that there is a dispute as to whether Franchisee believes such amounts are due the City. Such notice by the Franchisee to the City shall specify with particularity the basis of Franchisee's belief that such monies are not due the City.

12.4.1.3 Upon the delivery of the necessary documents to the lending institution, the City has the right to immediate payment from the issuer bank of the amount from the letter of credit necessary to cure the default.

12.4.1.4 Any letter of credit shall contain the following endorsement: "It is hereby understood and agreed that this letter of credit may not be canceled by the issuer bank nor the intention not to renew be stated by the issuer bank until sixty (60) days after receipt by the City, by registered mail, return receipt requested, of a written notice of such intention to cancel or not to renew."

12.5 Any bond or letter of credit shall be recoverable by the City for all damages and costs, whether direct or indirect, resulting from the failure of a Franchisee to well and faithfully observe and perform any provision of this ordinance.

12.6 The bond or letter of credit shall be maintained at the amount established herein for the entire term of the franchise, even if amounts have to be withdrawn pursuant to this ordinance. The Franchisee shall promptly replace any amounts withdrawn from the bond or letter of credit.

12.7 Non-compliance procedures.

12.7.1 Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee and (ii) notify the Franchisee in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The Franchisee shall have fifteen (15) days from receipt of this written notice to: (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 15-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within thirty (30) days of the date projected above if the Franchising Authority intends to continue its investigation into the default. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose.

12.7.2 In the event the Franchisee fails to cure the default within fifteen (15) days, fails to file a timely written response, or fails to timely complete the remediation, the City, if it wishes to continue its investigation into the default, shall schedule a public hearing. The Franchisee shall be notified in writing at least thirty (30) business days prior to the public hearing and shall be provided an opportunity to be heard at the public hearing. The notice shall specify the time, place, and purpose of the public hearing. The City shall: (1) provide public notice of the hearing in compliance with Virginia law; (2) hear any person interested in the violation under review; and (3) provide the Franchisee with an opportunity to be heard.

12.7.3 The City shall, within a reasonable time after the closure of the public hearing, issue findings and conclusions in writing, setting forth the basis for the findings, the proposed cure plan and time line for curing the violation, if the violation can be cured, and the penalties, damages and applicable interest, if any, owed.

12.7.4 Subject to applicable federal and Virginia law and the provisions of this ordinance, if the City determines pursuant to a public hearing that a Franchisee is in violation of any provision of this ordinance, Article 1.2 (§§ 15.2-2108 *et seq.*) of Chapter 121 of Title 15.2 of the Code of Virginia, or the applicable mandatory requirements of 47 U.S.C. §§ 521-573 or any regulation promulgated thereunder, the City may apply one or a combination of the following remedies: (i) seek specific performance or other equitable relief; (ii) commence an action at law; (iii) apply penalties in accordance with Section 12.8, if applicable; or (iv) apply liquidated damages in accordance with Section 12.8, if applicable.

12.7.5 The City may designate the cable administrator or other designee to conduct the hearings and issue findings and conclusions under this subsection. If the City does so, the Franchisee may appeal the determination of the cable administrator or other City designee to the City Council. Such an appeal shall be heard at a lawfully noticed public hearing.

12.7.6 In the event a Franchisee submits notification of unwillingness to comply with any additional service availability requirements as contained in Section 12.2-8 of this Ordinance, or fails to comply with these additional service requirements, the Franchisee's franchise may be terminated after written notice and a public hearing.

12.8 Penalties and Liquidated Damages. Because it may be difficult to calculate the harm to the Franchising Authority in the event of a breach of this Franchise Agreement by Franchisee, the parties agree to liquidated damages as a reasonable estimation of the actual damages. To the extent that the Franchising Authority elects to assess liquidated damages as provided in this Agreement and such liquidated damages have been paid, such damages shall be the Franchising Authority's sole and exclusive remedy. Nothing in this Section is intended to preclude the Franchising Authority from exercising any other right or remedy with respect to a breach that continues past the time the Franchising Authority stops assessing liquidated damages for such breach. Liquidated damages shall not be assessed until the Franchising Authority has completed the procedures set forth in Section 12.7 hereof, including holding a public hearing, and has notified the Franchisee, by certified or registered mail, of the proposed liquidated damage, specifying the violation at issue. The Franchisee shall have thirty (30) days from the date of receipt of the written notice to submit payment. If the Franchisee does not make payment within that period, the Franchising Authority may obtain the amount assessed from the Franchisee's performance bond.

12.8.1 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day after the end of the applicable cure period, including any extension of the cure period granted by the Franchising Authority.

12.8.2 Franchisee may appeal (by pursuing judicial relief or other relief afforded by the Franchising Authority) any assessment of liquidated damages within thirty (30) days of receiving written notice of the assessment. Franchisee's obligation to pay the liquidated damages assessed shall be stayed pending resolution of the appeal.

12.8.3 Liquidated damages may be assessed for the following violations of this Franchise Agreement, in the following amounts:

12.8.3.1 Failure to comply with PEG access requirements: \$400, for each violation for each day the violations continues;

12.8.3.2 Failure to render payments due to the Franchising Authority: Three-tenths of one percent (0.3%) of the unpaid amount for each day the violation continues, in addition to any monetary payment due and interest, in accordance with the City's standard rate for computing interest charges on late payments.

12.8.3.3 Failure to supply information, reports, or filings lawfully required: \$400, for each violation for each day the violation continues.

12.8.3.4 Failure to comply with customer service standards: \$400, for each violation for each day the violation continues, except where compliance is measured quarterly, in which case damages shall be as specified in Section 12.8.3.5.

12.8.3.5 Failure to comply with customer service standards with which compliance is measured on a quarterly basis: \$500 for the first violation in which such standards were not met; \$1,000 for any violation within 18 months after the first; and \$2,500 for any violation within 18 months after the second or any subsequent violation.

12.8.3.6 For failure to comply with any other requirement of this ordinance, applicable Virginia law or the Cable Act: \$400 a day for each violation for each day the violation continues.

12.8.3.7 The Franchisee shall not be charged with multiple violations for a single act or event affecting a single subscriber or for a single act or event affecting multiple subscribers on the same day.

12.8.3.8 The City may reduce or waive any of the above liquidated damages if it determines, in its discretion, that such waiver is in the public interest.

12.8.3.9 If a court of competent and binding jurisdiction determines that liquidated damages cannot be imposed by this ordinance rather than by contract, the foregoing liquidated damages shall be construed to be penalties to the full extent allowed and contemplated by Section 15.2-2108.22(6) of the Code of Virginia

12.9 Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Franchisee to penalties, fines, forfeitures or revocation of

the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

12.9.1 in instances or for matters where a violation or a breach of the Franchise by the Franchisee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

12.9.2 where there existed circumstances reasonably beyond the control of the Franchisee and which precipitated a violation by the Franchisee of the Franchise, or which were deemed to have prevented the Franchisee from complying with a term or condition of the Franchise.

SECTION 13 - Inspection of facilities

13.1 Franchisee shall comply with all applicable federal, state and local construction and engineering codes and regulations, currently in force or hereafter applicable, to the construction, operation or maintenance of its cable system within the city. The City shall have the right to review a Franchisee’s construction plans and specifications to assure compliance with the required standards. After construction has been completed, the City shall have the right to inspect all construction or installation work performed pursuant to the franchise and to conduct any tests it deems necessary to ensure compliance with the terms of this ordinance and all applicable federal, state and local building and engineering codes. However, the City shall not be required to review or approve construction plans and specifications or to make any inspections. The Franchisee shall be solely responsible for taking all steps necessary to assure compliance with applicable standards and to ensure that its cable system is installed in a safe manner and pursuant to the terms of the franchise and applicable law.

SECTION 14 - Miscellaneous Provisions

14.1 Force Majeure. The Franchisee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by events which constitute a Force Majeure, as defined in the Agreement.

14.2 Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

To the Franchising Authority:

City Manager
City of Lynchburg
900 Church Street
Lynchburg, VA 24504

To the Franchisee:

NTELOS
VP Legal & Regulatory
401 Spring Lane
Waynesboro, VA 22980

with a copy to:

NTELOS
Manager-Regulatory
1154 Shenandoah Village Drive
Waynesboro, VA 22980

14.3 Entire Agreement. This Franchise Agreement, including all Exhibits, embodies the entire understanding and agreement of the Franchising Authority and the Franchisee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with or otherwise impose obligations different from the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

14.4 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

14.5 Governing Law. This Franchise Agreement shall be deemed to be executed in the Commonwealth of Virginia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the Commonwealth of Virginia, as applicable to contracts entered into and performed entirely within the Commonwealth.

14.6 Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Franchisee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an

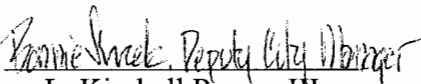
appropriate resolution or order by the Franchising Authority, as required by applicable law.

14.7 No Third-Party Beneficiaries. Nothing in this Franchise Agreement is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise Agreement.

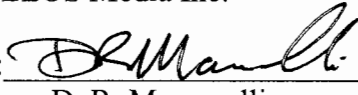
14.8 No Waiver of Rights. Nothing in this Franchise Agreement shall be construed as a waiver of any rights, substantive or procedural, Franchisee may have under federal or state law unless such waiver is expressly stated herein.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

City of Lynchburg, Virginia:

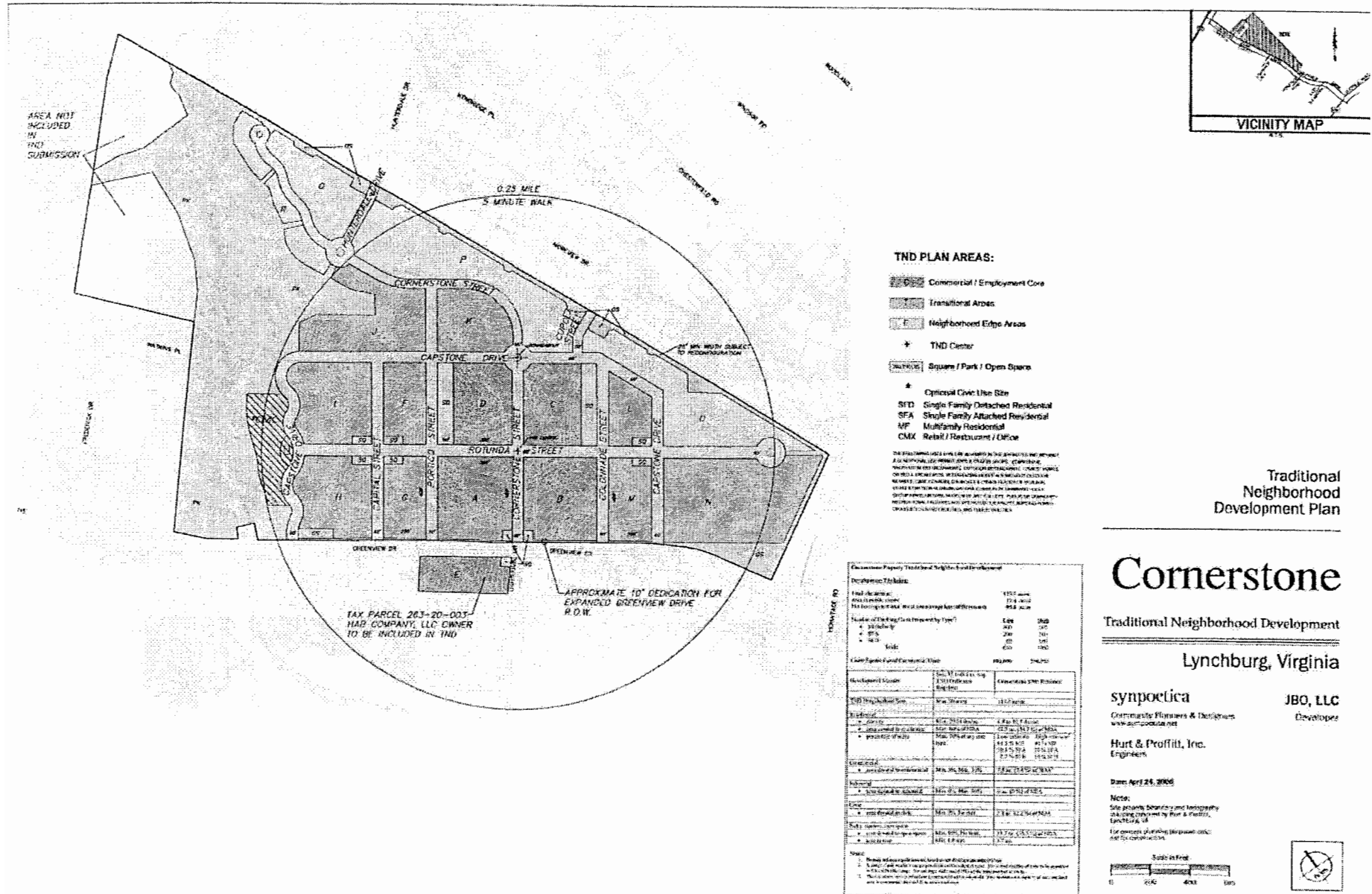
By: 
Name: L. Kimball Payne, III
Title: City Manager

NTELOS Media Inc.

By: 
Name: D. R. Maccarelli
Title: President

EXHIBITS

Exhibit One: Franchise Area



**FIRST AMENDMENT TO CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF
LYNCHBURG, VIRGINIA AND NTELOS MEDIA INC. APPROVED BY LYNCHBURG CITY
COUNCIL ON OCTOBER 9, 2007.**

WHEREAS, on October 9, 2007, the City and NTELOS Media, Inc., d/b/a as NTELOS entered into a Franchise Agreement to construct and operate a cable television system within the Cornerstone Traditional Neighborhood Development; and,

WHEREAS, on February 12, 2008, the City and Comcast of Georgia/Virginia, Inc, d/b/a Comcast entered into a Franchise Agreement to construct and operate a cable television system within the City of Lynchburg; and,

WHEREAS, there are some slight differences in the terms and conditions contained in the October 9, 2007 Franchise between the City and NTELOS and the February 12, 2008 Franchise Agreement between the City and Comcast and,

WHEREAS, the provisions of Article 1.2 of Title 15.2 of the Code of Virginia provide that all cable television companies must be treated the same under local Franchise Agreements, so the City and NTELOS wish to amend the October 9, 2007 Franchise Agreement between the City and NTELOS so the terms and conditions of such Franchise Agreement are consistent with the terms and conditions of the February 12, 2008 Franchise Agreement between the City and Comcast.

NOW, THEREFORE, the City and NTELOS do hereby mutually agree to and do hereby amend the October 9, 2007 Franchise Agreement as follows:

A. Section 5.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

- 5.1 Franchisee shall designate capacity on up to three (3) channels for public, educational and/or governmental access video programming provided by the Franchising Authority or its designee, such as a public access organization or educational institution. Use of a channel position for public, educational and governmental ("PEG") access shall be provided on the most basic tier of service offered by Franchisee in accordance with the Cable Act, Section 611, and Article 1.2 of the Code of Virginia, and as further set forth below. "Channel position" means a number designation on the Franchisee's channel lineup regardless of the transmission format (analog or digital). Franchisee does not relinquish its ownership of or ultimate right of control over a channel by designating it for PEG use. In the event any Access channel is reassigned, the Franchisee shall provide the City with at least 30 days notice before reassigning the channel, and shall pay the reasonable costs of any advertising and promotional materials required due to the reassignment. A PEG access user – whether an individual, educational or governmental user – acquires no property or other interest by virtue of the use of a channel so designated, and may not rely on the continued use of particular channel number, no matter how long the same channel may have been designated for such use. Franchisee shall not exercise editorial control over any public, educational, or governmental use of a channel position, except Franchisee may refuse to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity. The Franchising Authority shall be responsible for developing, implementing, interpreting and enforcing rules for Educational and Governmental Access Channel use. On the Effective Date, Franchisee shall provide two (2) PEG access channels for the purposes of providing governmental and educational channels. On the Effective Date, a public access channel will be required only if a public access organization is

operational, producing programming content for cablecast, and is providing all communications facilities needed for delivering a public access signal to Franchisee's headend. If such a public access organization is not meeting such requirements as of the Effective Date, within ninety (90) days after a public access organization meets such requirements and requests use of the third PEG channel, Franchisee shall make available one (1) additional channel for PEG access programming.

B. Section 5.6 of the October 9, 2007 Franchise Agreement is deleted.

C. Section 5.7 of the October 9, 2007 Franchise Agreement is deleted.

D. Section 11.1.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

11.1.1 Within twenty-four (24) months of the granting of this franchise, the System shall provide bandwidth capacity capable of carrying one hundred (100) channels of video programming.

E. Section 12.7.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.7.1 Should the Franchising Authority believe that the Franchisee has not complied with any of the provisions of this Franchise Agreement, it shall: (i) informally discuss the matter with the Franchisee and (ii) notify the Franchisee in writing of the exact nature of the alleged noncompliance if the discussions described in the foregoing clause (i) do not lead to resolution of the alleged noncompliance. The Franchisee shall have thirty (30) days from receipt of this written notice to: (a) respond to the Franchising Authority, if the Franchisee contests, in whole or in part, the assertion of noncompliance; (b) cure such default; or (c) in the event that, by the nature of default, such default cannot be cured within the 30-day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. The Franchising Authority shall schedule a public hearing in the event that the Franchisee fails to respond to the written notice pursuant to these procedures or in the event that the alleged default is not remedied within thirty (30) days of the date projected above if the Franchising Authority intends to continue its investigation into the default. The Franchising Authority shall provide the Franchisee at least thirty (30) business days prior written notice of such hearing, which will specify the time, place, and purpose.

F. Section 12.7.2 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.7.2 In the event the Franchisee fails to cure the default within thirty (30) days, fails to file a timely written response, or fails to timely complete the remediation, the City, if it wishes to continue its investigation into the default, shall schedule a public hearing. The Franchisee shall be notified in writing at least thirty (30) business days prior to the public hearing and shall be provided an opportunity to be heard at the public hearing. The notice shall specify the time, place, and purpose of the public hearing. The City shall: (1) provide public notice of the hearing in compliance with Virginia law; (2) hear any person interested in the violation under review; and (3) provide the Franchisee with an opportunity to be heard.

G. Section 12.8.3.1 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.8.3.1 Failure to comply with PEG access requirements: \$200, for each violation for each day the violations continues;

H. Section 12.8.3.4 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.8.3.4 Failure to comply with customer service standards: \$200, for each violation for each day the violation continues, except where compliance is measured quarterly, in which case damages shall be specified in Section 12.8.3.5.

I. Section 12.8.3.6 of the October 9, 2007 Franchise Agreement is deleted and replaced with the following:

12.8.3.6 For failure to comply with any other requirement of this ordinance, applicable Virginia law or the Cable Act: \$100 a day for each violation for each day the violation continues.

Except as modified herein, all the terms and conditions set forth in the October 9, 2007 Franchise Agreement between the City and NTELOS shall remain in full force and effect throughout the remaining term of the Franchise.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

Attest:

City of Lynchburg, Virginia:

By: _____
Name: L. Kimball Payne, III
Title: City Manager

Attest:

NTELOS Media Inc.

By: _____
Name: D.R. Maccarelli
Title: President

AN ORDINANCE AMENDING THE OCTOBER 9, 2007 CABLE TELEVISION
FRANCHISE BETWEEN NTELOS Media, INC., D/B/A AS NTELOS, AND
THE CITY OF LYNCHBURG

WHEREAS, on October 9, 2007, the City and NTELOS Media, Inc., d/b/a as NTELOS entered into a Franchise Agreement allowing NTELOS to construct and operate a cable television system within the Cornerstone Traditional Neighborhood Development; and,

WHEREAS, on February 12, 2008, the City and Comcast of Georgia/Virginia, Inc, d/b/a Comcast entered into a Franchise Agreement to construct and operate a cable television system within the City of Lynchburg; and,

WHEREAS, there are some slight differences in the terms and conditions contained in the October 9, 2007 Franchise between the City and NTELOS and the February 12, 2008 Franchise Agreement between the City and Comcast and,

WHEREAS, the provisions of Article 1.2 of Title 15.2 of the Code of Virginia provide that all cable television companies must be treated the same under local Franchise Agreements, so the City and NTELOS wish to amend the October 9, 2007 Franchise Agreement between the City and NTELOS so the terms and conditions of such Franchise Agreement are consistent with the terms and conditions of the February 12, 2008 Franchise Agreement between the City and Comcast.

NOW, THEREFORE, BE IT ORDAINED, that the Lynchburg City Council, does hereby find that the public welfare will be enhanced by the amendment of the October 9, 2007 Franchise Agreement between the City and NTELOS and the Lynchburg City Manager is hereby authorized to sign the amendment to the Cable Television Franchise Agreement between the City and NTELOS.

Adopted:

Certified:

Clerk of Council

055L

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **August 9, 2011**

AGENDA ITEM NO.: 4

CONSENT:

REGULAR:

WORK SESSION: **X**

CLOSED SESSION:

(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **nTelos Cable Television Franchise Request**

RECOMMENDATION: No action required.

SUMMARY: Director of Information Technology Mike Goetz will brief City Council on a request from nTelos to expand their cable television franchise area to allow them to provide cable television services to areas in the city beyond the Cornerstone neighborhood. Staff wants Council to be aware of this interest by nTelos as it is prepared to enter into negotiations regarding an expanded franchise which would be brought to Council for consideration at a later date. Any provisions in an nTelos franchise that were less restrictive than Comcast's franchise would have to be granted to Comcast as well.

Attached is a background document prepared by Mr. Goetz that provides additional information.

PRIOR ACTION(S): In November, 2007, nTelos was granted a cable television franchise agreement which specified a franchise area limited to the Cornerstone neighborhood development area.

FISCAL IMPACT: None.

CONTACT(S): Mike Goetz, 455-6002

ATTACHMENT(S): Background document.

REVIEWED BY: lkp

nTelos Request to Amend Cable TV Franchise Agreement

Background

In November, 2007, nTelos was granted a cable television franchise agreement which specified a franchise area limited to the Cornerstone neighborhood development area. This was done to facilitate the desires of nTelos and the developer of Cornerstone to provide fiber-to-the-premises (FTTP) services to the residences and businesses located there. FTTP services typically include video/cable TV, Internet, and telephone services delivered at very high speeds over a fiberoptic cable that is installed directly to the home or business. Since nTelos' desired service offering included cable TV service, a cable TV franchise was required.

At the time the nTelos franchise was negotiated, the incumbent cable TV provider (Adelphia) was in bankruptcy, and the company was in the process of being acquired by Comcast. Adelphia's franchise agreement had expired, but the franchise was considered to be in a holdover-tenant status – meaning that the terms and conditions of the franchise would continue, until and unless the City took action to terminate the franchise. Adelphia/Comcast's franchise contained a build-out provision based upon a "density requirement." In essence, this provision requires the franchisee to provide cable TV service wherever there are at least 30 homes per street-mile (i.e., the "density requirement") within their authorized franchise area. (Adelphia/Comcast's franchise area was defined in their franchise as the entire city.) Under federal law, the City is obligated to facilitate a level playing field between multiple cable TV franchise holders, ensuring that one franchisee is not granted more favorable provisions over another. Since Adelphia/Comcast's franchise contained a build-out provision and a density requirement, nTelos' franchise had to contain the same.

It was nTelos' position that it could only provide FTTP services in a cost-effective manner to the Cornerstone area (a greenfield development), and that it could not commit to providing service beyond that area, due to the additional costs required to build out to existing homes or neighborhoods. In the negotiations of nTelos' franchise, it was determined that the level playing field obligation could be met, incorporating the same build-out and density requirement provision in the nTelos franchise as existed in the Adelphia/Comcast franchise, by limiting the franchise area to just Cornerstone. This allowed nTelos to meet the franchise requirements and still provide FTTP services in a cost-effective manner.

It should be noted that FTTP services typically require a fiberoptic-based backbone infrastructure, with a fiberoptic cable connecting to each home or business being served. As such, FTTP services typically can only be provided in a cost-effective manner if: (a) the desired home/business to be served is located close to the fiberoptic-based backbone infrastructure, and (b) the cost or difficulty to construct a fiberoptic cable connection to the home/residence is not prohibitive.

nTelos' Request

Since 2000, nTelos has invested significantly in Lynchburg to expand its fiberoptic backbone infrastructure. They purchased the fiberoptic network that was owned by the City, added onto it, and enhanced its capabilities. They are now a significant provider of broadband services to much of Lynchburg. Increasingly, nTelos has been asked by its customers outside of Cornerstone, primarily businesses and high-density residential locations, to provide cable TV service in addition to the Internet and telephone services they currently receive. However, nTelos' cable TV franchise agreement currently prevents them from offering cable TV service outside of Cornerstone.

nTelos and City staff have had informal discussions for over a year exploring ways in which nTelos might be granted the authority to provide the cable TV services being requested by their customers. One concept that appears to be mutually acceptable between nTelos and City staff is to amend nTelos' franchise to expand their franchise area to the entire city, but remove the build-out provision. nTelos formally contacted the City in May, 2011, expressing their desire to amend their franchise in this way.

It is recognized that, due to federal level playing field requirements, if this amendment is granted to nTelos, the City must be willing to amend Comcast's franchise in the same way, if Comcast desires.

Issues and Considerations

1. If the build-out provision is dropped from nTelos' and Comcast's franchise agreements, the City will no longer have the authority to require either company to provide cable TV service to an unserved area if it is developed to the point where it meets the density requirement. However, this risk is tempered by: (a) practically speaking, there are few areas in Lynchburg which are not currently served and envisioned to be built out to the 30-homes-per-street-mile standard, and (b) if such developments were to occur, it is highly likely that at least one of the cable companies would find it profitable to serve them.
2. There would be nothing in Comcast's cable franchise agreement that would prevent them from stopping service to a location they currently serve. However, this seems highly unlikely. Having incurred the cost to build out to a residence or business, it would be a poor business decision to walk away from a revenue-generating location.
3. It is highly unlikely that Lynchburg will ever see a second cable TV provider willing to over-build and provide cable TV service to all of Lynchburg. The City has formerly contacted all the major cable TV providers in the past and requested that they serve Lynchburg, but these requests have been ignored. Given the relatively small market size of the city, it is probably not reasonable to expect that our customer base could support the cost to build and operate two cable TV systems that cover the entire city.
4. Competitive video services are growing. Satellite TV service is an option in many parts of the city, and video services delivered via broadband are also expanding. Allowing nTelos' request will expand the availability of high-speed fiberoptic-

based broadband services and, therefore, expand access to broadband-delivered video services to more businesses and residences.

5. In order to try to ensure an acceptable level of responsiveness on the part of the cable companies in evaluating requests to serve unserved areas, City staff recommends including a provision in the franchise agreements requiring the cable companies to evaluate and respond to all requests for service to unserved areas within a specific, reasonable time frame.

July 27, 2011

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **November 8, 2011**

AGENDA ITEM NO.: 12

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Amendment to the City Code Section 5-6 Relating to Ambulance Rates**

RECOMMENDATION: Adopt an ordinance to amend and reenact Section 5-6 of the Code of the City of Lynchburg, 1981, relating to the rates charged for ambulance services within the City.

SUMMARY: A review of the City Code in relation to Ambulance Service charges has resulted in several recommendations for change.

In a comparison of the City's ambulance rates and the surrounding counties' rates, it was determined the City's current charge for Advanced Life Support (ALS) emergency transport services is less than that of Amherst, Bedford, and Campbell; and, for Basic Life Support (BLS) emergency transport services, the City's rate is the same as Amherst and below Bedford and Campbell. It is recommended the rates be changed to more closely align with the region.

In addition to this change, it is also recommended the section of Code which allows for a reduction in rates for multiple patients transported in one ambulance be removed in order to charge all patients the same rate for the same service. A final suggested change is to charge patients treated on-site by EMS personnel, but not transported a fee for this service.

It is anticipated the combined changes will result in an additional \$136,000 annually in revenue to help offset the cost of providing these services. The FY 2012 Adopted budget projected this revenue to be \$2.4 million prior to the proposed changes. This amount is approximately one-half of the cost of providing EMS services. Since this change would go into effect January 1, 2012, the impact on the FY 2012 Adopted budget would be an additional \$68,000 in revenue.

The proposed rates are set at approximately 125% of the Medicaid reimbursement amount as recommended by the City's ambulance billing services provider.

PRIOR ACTION(S): Finance Committee, October 25, 2011

FISCAL IMPACT: An estimated increase in ambulance services revenue of approximately \$136,000 annually.

CONTACT(S):

Fire Chief Steven B. Ferguson, 455-6340

Ellen Davidson-Martin, Fire Administrative Manager, 455-6368

Battalion Chief Jason Campbell, 455-6363

ATTACHMENT(S): Proposed ordinance

REVIEWED BY: lkp

ORDINANCE:

AN ORDINANCE TO AMEND AND REENACT SECTION 5-6 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTION RELATING TO THE RATES THAT ARE CHARGED BY THE FIRE DEPARTMENT FOR AMBULANCE SERVICES WITHIN THE CITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Section 5-6 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 5-6. Rates—Generally.

Effective on ~~July 1, 2004~~ January 1, 2012, and for each year thereafter, unless otherwise changed by city council, the following rates for ambulance services shall apply.

(a) The rates to be charged for the transportation of a patient from one (1) point within the city to another point within the city on a non-emergency basis shall be at a base rate of three hundred twenty-five dollars (\$325.00) per trip, and ~~three hundred fifty~~ four hundred twenty-five dollars (~~\$350.00~~ \$425.00) per trip when such transportation is conducted on an emergency basis; provided, however, that:

(1) In addition to the base charges provided in subsections (a), ~~and (b) and (c)~~, of this section there shall also be a charge of ~~eight~~ nine dollars (~~\$8.00~~ \$9.00) for each mile the patient is transported.

~~(b) If multiple patients are transported in the same ambulance at the same time, the rate to be charged for each patient shall not be in excess of one-half (1/2) times the base rate prescribed herein for single patient transportation.~~

~~(c)~~ (b) Whenever a patient receives advanced life support procedure performed by the emergency medical services personnel, the rate shall be four hundred twenty-five dollars (\$425.00) per patient, if provided on a non-emergency basis; ~~four hundred fifty~~ five hundred dollars (~~\$450.00~~ \$500.00) if provided on an emergency basis, and ~~five hundred seventy-five~~ seven hundred dollars (~~\$575.00~~ \$700.00) if provided on an emergency basis and three (3) or more different medications combined with at least one (1) specialized ALS procedure are administered.

(c) Whenever an ambulance responds to a call for ambulance service, if the patient is evaluated by emergency medical services personnel and receives treatment but no transport occurs, the rate shall be one hundred dollars (\$100.00) per patient.

2. That this ordinance shall become effective upon January 1, 2012.

Adopted:

Certified:

Clerk of Council