

// A regular meeting of the Council of the City of Lynchburg was held on the 8th day of August, 2017, at 7:30 P.M. in the Council Chamber, City Hall, Joan Foster, President, presiding. Council Member Wilder gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

Present: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Absent: 0

// Mayor Foster and Vice Mayor Tweedy received a plaque of recognition for sponsorship of the Virginia Commonwealth Games.

// Mayor Foster and Vice Mayor Tweedy presented a Certificate in Recognition of the New Historic Marker Commemorating the Birthplace of the Virginia Teachers Association.

// Mayor Foster and Vice Mayor Tweedy presented a Certificate in Recognition of the Downtown 2040 – Downtown Lynchburg Master Plan.

// Copies of the minutes of the April 25, 2017 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote approved the minutes as presented:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// Copies of the minutes of the May 9, 2017 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote approved the minutes as presented:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// Copies of the minutes of the July 11, 2017 meeting, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote approved the minutes as presented:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// In the matter of Police Department, Resolution #R-17-062 to amend the FY 2018 General Fund Police Department budget and appropriate \$139,091 carryforward from the FY 2017 General Fund Police Department budget to adjust salaries of Police Officer II, Police Officer III, Sergeant, and Lieutenant as presented to City Council on July 11, 2017, was again presented and read, and on motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote adopted the Resolution:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// In the matter of Community Development, a public hearing was held regarding City Council Report #5 to receive comments on the FY 2018 Community Development Block Grant and HOME Program FY 2018 Annual Action Plan and adopt a Resolution approving the FY 2018 Annual Action Plan. Grants Manager Melva Walker provided a summary of the request. The U.S. Department of Housing and Urban Development (HUD) requires the City as a recipient of

Community Development Block Grant program funds to prepare and submit an Annual Action Plan for the 2015-2020 Five Year Consolidated Plan. This plan outlines the needs, goals, and development, including housing and non-housing areas. The grant administrative team has prepared the 2018 Fiscal Year Plan and it includes all of the required components. Only one written comment was submitted. Ms. Walker went on to say any comments submitted tonight will be included in the package sent to HUD. Two speakers asked Council to continue supporting (Denise Crews with Lynchburg Community Action Group and Jeff Smith with Rush Homes) low-income housing and organizations supporting this population in the City. There was no one else present who wished to speak to this item, and the public hearing was closed. On motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote adopted Resolution #R-17-063, as presented, approving the FY 2018 Community Development Block Grant and HOME Program and the FY 2018 Annual Action Plan:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster

7

Noes:

0

// In the matter of Community Development - Zoning Amendments, a public hearing was held regarding City Council Report #6 outlining the petition of Hotel Acquisitions 3 TPS, LLC, to rezone approximately one and fifty-six hundredths (1.56) acres from I-3, Heavy Industrial District to B-5, General Business District to allow the construction of a mixed-use building containing a hotel and apartment units at 4634 Murray Place. City Planner Tom Martin provided a brief summary of the petition. The subject property is Employment II uses on the City's Future Land Use Map. Employment II uses are intended for light and heavy manufacturing, research and development, and large-scale offices. However, restaurant, hotel, and business service uses are also appropriate. The property currently contains a 14,000 square foot building constructed in 1969. This building would be demolished if the rezoning is approved. If the property is rezoned it would be redeveloped as a seven story building including 101 hotel units and 22 apartment units. The apartment units would be restricted to no more than three unrelated tenants. The submitted plan shows 123 parking spaces and a nearby bus stop. A traffic study was not required by City Engineers. The Planning Commission did conduct a public hearing on June 14, 2017 and recommended approval of the rezoning petition. Mr. Mike Gestwick, Project Manager with Pike Development asked Council to approve the rezoning petition. There was no one else present who wished to speak to this item, and the public hearing was closed.

Council expressed the following questions and concerns regarding this property: Council Member Helgeson posed questions about the mixed use property to determine how much of the space must be allocated to the business given the industrial zoning area. He also posed questions about the roads, increased car traffic, and the impact on nearby businesses. Council Member Nelson acknowledged the positive aspects of the project, but he also mentioned the new hotel would be in direct competition with neighboring hotels. In addition, he questioned how many people the project will employ as it is desirable to keep and attract higher paying jobs in the City. Council Member Wilder inquired about whether other businesses expressed reservations about the proposed rezoning and whether others have expressed interest in other uses.

Mayor Foster asked the Developer/Owner, Mr. Gestwick, to address questions of concern posed by Council regarding the proposed project. The Owner stressed they are committed to the project and have already submitted a \$60,000 deposit to secure a Marriott franchise license and they are working with local Marriott franchises as well. Vice Mayor Tweedy also asked for more clarity on the hotel and apartment features of the project. Mr. Gestwick stated that 22 is the maximum number of apartments for the project. In addition, Vice Mayor Tweedy asked how they arrived at the conclusion that the market could take the additional 100 rooms. Mr. Gestwick stated the company did a study in terms of occupancy rates, etc., which is used to get a loan. Council Member Nelson asked if there are other places in the City that could be used without rezoning. Mr. Gestwick responded the adjacent property owners are supportive of this location. City Attorney Walter Erwin explained at this point the developer cannot offer proffers to Council. Council Member Perrow asked how the delay would impact the project start date. Mr. Gestwick expressed the project would be delayed by six months.

Council Member Nelson made a motion, seconded by Council Member Perrow to table this item until the developer added proffers stating they would only be building a hotel and a few apartments. The motion to table this item failed by the following recorded vote:

Ayes: Helgeson, Nelson, Perrow

3

Noes: Dolan, Tweedy, Wilder, Foster

4

On motion of Vice Mayor Tweedy, seconded by Council Member Dolan, Council by the following recorded vote adopted Ordinance #O-17-064, as presented, granting the petition of Hotel Acquisitions 3 TPS, LLC, to rezone approximately one and fifty-six hundredths (1.56) acres from I-3, Heavy Industrial District to B-5, General Business District to allow the construction of a mixed-use building containing a hotel and apartment units at 4634 Murray Place:

Ayes: Dolan, Tweedy, Wilder, Foster

4

Noes: Helgeson, Nelson, Perrow

3

// In the matter of Community Development - Zoning, a public hearing was held regarding City Council Report #7 outlining the petition of Workman Oil for a Conditional Use Permit (CUP) to allow fill within the floodplain at 4012 and 4014 Wards Road and to allow the construction of a retail and restaurant space with a drive-through. City Planner Tom Martin introduced Dylan Bishop, an interim in Community Development who provided an overview of the CUP request, Ms. Bishop stated that this CUP is to allow fill within the floodplain and to facilitate a drive-through lane for a new retail and restaurant building. Mr. Bill Berkley with Berkley-Howell & Associates, representing Workman Oil, asked Council to approve the CUP. There was no one else present who wished to speak to this item, and the public hearing was closed.

On motion of Council Member Nelson, seconded by Council Member Wilder, Council by the following recorded vote adopted Resolution #R-17-065, as presented, granting the Conditional Use Permit to allow fill within the floodplain at 4012 and 4014 Wards Road and to allow the construction of a retail and restaurant space with a drive-through:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster

7

Noes:

0

// In the matter of Community Development - Zoning Amendments, a public hearing was held regarding City Council Report #8 regarding the petition of Tacoma, Inc. to amend the Future Land Use Map (FLUM) from Neighborhood Commercial and Low Density Residential to Community Commercial and to rezone approximately one and fifty-three thousandths (1.053) acres from R-2, Low-Medium Density Residential and R-3, Medium Density Residential to B-3C, Community Business District (Conditional) to allow the construction of a restaurant with a drive-through and associated parking at 1000, 1002 and 1004 Dandridge Drive. Tom Martin, City Planner provided an overview of the FLUM and rezoning request. Mr. Bill Berkley with Berkley-Howell & Associates, representing Tacoma, Inc. asked Council to grant the FLUM. There was no one else present who wished to speak to this item, and the public hearing was closed.

On motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote adopted Resolution #R-17-066, as presented, amending the Future Land Use Map of the Comprehensive Plan 2013-2030 for a certain area located at 1000, 1002 and 1004 Dandridge Drive from Neighborhood Commercial and Low Density Residential to Community Commercial:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7
Noes: 0

On motion of Council Member Perrow, seconded by Council Member Wilder, Council by the following recorded vote adopted Ordinance #O-17-067, as presented, changing a certain area located at 1000, 1002 and 1004 Dandridge Drive from R-2, Low-Medium Residential District and R-3, Medium Residential District to B-3C, Community Business District (Conditional):

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7
Noes: 0

// In the matter of Community Development, a public hearing was held regarding City Council Report #9 regarding the petition of Tacoma, Inc., to vacate a portion of right-of-way located along Old Forest Road, adjacent to the property at 1000 Dandridge Drive. The portion proposed for vacation contains approximately eight hundredths (0.08) of an acre. Tom Martin, City Planner gave a summary of the request for the petition for Tacoma, Inc. Mr. Bill Berkley with Berkley-Howell & Associates, representing Tacoma, Inc. asked Council to vacate a portion of right-of-way located along Old Forest Road. There was no one else present who wished to speak to this item, and the public hearing was closed. Council Member Perrow, Chair of the Physical Development Committee (PDC), stated that the request was considered by the PDC and made a motion to approve the request. The motion did not require a second, and Council by the following recorded vote adopted Ordinance #O-17-068, as presented, granting the petition of Tacoma, Inc., to vacate a portion of right-of-way located along Old Forest Road, adjacent to the property at 1000 Dandridge Drive. The portion proposed for vacation contains approximately eight hundredths (0.08) of an acre:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7
Noes: 0

// In the matter of City Council, Report #10 was considered. City Manager Bonnie Svrcek mentioned the President of the Lynchburg Hillcats requested this waiver. The Hillcats will be hosting its first home playoff game on September 8, 2017. The President of the Lynchburg Hillcats, Mr. Christopher Jones is requesting this waiver. He is requesting the normal rule that states fireworks should commence by 10:00 P.M. be waived until 11:00 P.M. only for this game. After Council discussion on this matter, Council Member Helgeson made a motion, seconded by Council Member Nelson to deny this waiver to the Lynchburg Hillcats not to allow fireworks to commence no later than 11:00 P.M. on Friday, September 8, 2017. Several of their concerns were:

- City has a noise ordinance
- Imposing on the neighbors in this area with noise so late at night
- Good policy in place, would like to stay with the original policy
- Will not violate the neighborhood
- Franchise agreement - should abide by the agreement

Council Member Perrow made a substitute motion, seconded by Council Member Dolan to replace the motion to deny the waiver to the Lynchburg Hillcats. The substitute motion passed by the following recorded vote:

Ayes: Dolan, Perrow, Tweedy, Wilder, Foster 5

Noes: Helgeson, Nelson 2

Council Member Perrow made a motion, seconded by Council Member Dolan to grant a waiver to the Lynchburg Hillcats for this time only to allow fireworks to commerce no later than 11:00 P.M. on Friday, September 8, 2017. Council by the following recorded vote adopted Resolution #R-17-069, as presented, to grant a waiver to the Lynchburg Hillcats to allow fireworks to commence no later than 11:00 P.M. on Friday, September 8, 2017 in the event of a rain or fog delay or the game has gone into extra innings:

Ayes: Dolan, Perrow, Tweedy, Wilder, Foster 5

Noes: Helgeson, Nelson 2

// In the matter of City Assessor, City Council Report #11 was considered. On motion of Council Member Perrow, seconded by Council Member Nelson, Council by the following recorded vote adopted Ordinance #0-17-070, as amended, to amend and reenact Sections 36-177 and 36-177.1 of the Code of the City of Lynchburg, 1981, the amended sections relating to the partial exemption of Real Estate Taxes for certain rehabilitated, renovated or replacement structures.:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// In the matter of Budget, City Council Report #12 was considered, to adopt a Resolution concerning the issuance of not to exceed \$33,500,000 principal amount of the General Obligation Public Improvement Refunding Bonds, Series 2017. On motion of Council Member Perrow, seconded by Council Member Dolan, Council by the following recorded vote adopted Resolution #R-17-071, as presented, authorizing the issuance of not to exceed \$33,500,000 principal amount of General Obligation Public Improvement refunding Bonds, Series 2017:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

On motion of Council Member Perrow, seconded by Council Member Dolan, Council by the following recorded vote introduced and laid over to a later meeting for final action Resolution #R-17-072, as presented, amending the FY 2018 General, Water, and Sewer Funds' Adopted Budgets and appropriating \$169,000, \$130,000, and \$26,000, respectively, with resources from the refunding bond proceeds for a total of \$325,000 for estimated issuance costs:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// In the matter of City Council, City Council Report #13 was considered. On motion of Council Member Wilder, seconded by Council Member Dolan, Council by the following recorded vote adopted Resolution #R-17-073, as presented, readopting City Council's Rules of Procedure which contain Council's schedule of regular meetings and work sessions for the upcoming year:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// On motion of Council Member Wilder, seconded by Council Member Nelson, Council by the following recorded vote elected to hold a closed meeting for: (i) the discussion and consideration of prospective candidates for the Towing Advisory Board pursuant to Section 2.2-3711(A.)(1) of the Code of Virginia; and, (ii) consultation with legal counsel and briefings by staff members concerning the case of Jacquelin Goard v. Crown Auto, Inc., and others, because discussion in an open meeting would adversely affect the negotiating or litigating posture of the City, and consultation with legal counsel and staff members regarding specific legal matters requiring the provision of legal advice, specifically, the discussion of legal matters related to the appointment of and qualifications for members of the Lynchburg School Board, pursuant to Section 2.2-3711(A.)(7) of the Code of Virginia.:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

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

// Council Member Wilder 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 Nelson, and Council by the following recorded vote adopted the motion:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// In the matter of Appointments, and on nomination of Council Member Perrow, seconded by Council Member Dolan, Council by the following recorded vote reconfirmed appointments for Kendall Craft, Melissa Foster and Jeff Nichols to serve on the Towing Advisory Board for terms to expire December 31, 2018:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// On nomination of Council Member Perrow, seconded by Council Member Dolan, Council by the following recorded vote appointed Warren McCormick to serve on the Towing Advisory Board to fill an unexpired term ending December 31, 2018:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// On nomination of Council Member Perrow, seconded by Council Member Dolan, Council by the following recorded vote appointed Timothy Clements, Donald W. Irby, James Hall, Daniel J. Laslie, and Charles Cramer, Jr., to serve on the Towing Advisory Board for terms to expire December 31, 2020:

Ayes: Dolan, Helgeson, Nelson, Perrow, Tweedy, Wilder, Foster 7

Noes: 0

// The meeting was adjourned at 11:05 P.M.

Clerk of Council

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **3**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Vacate Templeman Street

KEY ELEMENTS:

☐ Economic Development ☐ Excellent Government ☒ Natural and Built Environment ☐ Safe Community ☐ Vibrant Community

RECOMMENDATION: Approval of the Templeman Street right-of-way vacation.

SUMMARY: Ashley L. Smith and Kristen D. Smith, owners of 3526 Fort Avenue (Lafayette Apartments), are petitioning to vacate a portion of right-of-way adjacent to the property known as Templeman Street. The total area of the proposed vacation is approximately twenty-three hundredths (0.23) of an acre and contains a portion of driveway and paved parking area. The owner of 3610 Avenue has agreed to the proposed vacation. If the vacation is approved, each property owner will gain land up to the center of the right-of-way.

The petitioners are requesting the right-of-way vacation to bring the parking area under private ownership, since it serves the residents of the Lafayette Apartments. The right-of-way vacation would not impact vehicle or pedestrian access in the area since it is currently functioning as a private parking area and driveway.

PRIOR ACTION(S):

July 18, 2017: The Technical Review Committee (TRC) reviewed the petition. The TRC comments have been incorporated into the proposed ordinance.

FISCAL IMPACT: \$5,650 - \$14,125 (assessed value range based on the zoning of the adjacent lots, property frontage and proximity to a signalized intersection)

CONTACT(S):

Rachel Frischeisen, Planner – 455-3900
Kent White, Community Development Director – 455-3900

ATTACHMENT(S):

- Ordinance
- Application
- Plat

REVIEWED BY: bms

UNCODIFIED ORDINANCE:

AN ORDINANCE VACATING A PORTION OF RIGHT-OF-WAY KNOWN AS TEMPLEMAN STREET.

WHEREAS, Ashley L. & Kristen D. Smith, are petitioning to vacate a portion of right-of-way known as Templeman Street; and

WHEREAS, City Council finds that no public inconvenience will result from vacating the right of way; and

WHEREAS, City Council determined that the City has no need for the portion of public right-of-way in question and the City's continued ownership of such public right-of-way is not necessary or required to serve the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lynchburg, on its own motion, and in accordance with the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Sections 35-71 through 35-77 of the City Code, 1981, as amended, the following described right of way be, and the same hereby is, discontinued and vacated, namely:

Beginning at a 1" pipe found at the intersection of the southeastern right-of-way of Fort Avenue and the northwestern right-of-way of Templeman Street, thence along the right-of-way of Fort Avenue North 40 degrees 49 minutes 58 seconds East 40.00 feet to a rebar found in the southeastern right-of-way of Templeman Street; thence leaving Fort Avenue and along the southeastern right-of-way of Templeman Street South 50 degrees 00 minutes 28 seconds East 245.30 feet to a rebar found in the northwestern right-of-way of Craighill Street; thence leaving Templeman Street and along the right-of-way of Craighill Street South 39 degrees 09 minutes 26 seconds West 40.00 feet to a stone monument found in the northwestern right-of-way line of Templeman Street; thence leaving Craighill and along the right-of-way of Templeman Street North 50 degrees 00 minutes 28 seconds West 246.47 feet to the point of beginning and containing 0.226 acres.

Provided, however, that any easement to locate, relocate, repair, replace, maintain and perpetually operate all utilities currently located therein or needed by the City in the future is hereby reserved unto the City of Lynchburg and the construction of a permanent structure over any utility line without the prior written approval of the City is prohibited.

BE IT FURTHER ORDAINED that the Clerk of Council is hereby authorized and directed to deliver a duly certified copy of this ordinance to the Clerk of the Circuit Court for the City of Lynchburg so that said certified copy of this ordinance may be recorded as deeds are recorded and indexed in the name of the City of Lynchburg, and the City Manager is hereby authorized to sign any documents that may be needed to complete the vacation of the right-of-way.

Adopted:

Certified:

Clerk of Council

APPLICATION FOR THE VACATION OF

Templeman Street

LOCATED

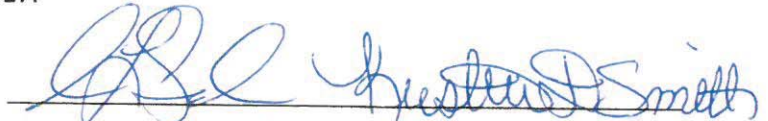
Off Fort Avenue, 0.12 miles northeast of the intersection of Fort Avenue and Memorial Avenue

The undersigned applicant, Ashley L. & Kristen D. Smith, pursuant to the provisions of Section 15.2-2006 of the Code of Virginia, 1950, as amended, and Section 35-71 through Section 35-77 of the City Code 1981, as amended, respectfully makes application to the Lynchburg City Council for the vacation of that certain portion of Templeman Street and unnamed right-of-way described as follows:

Beginning at a 1" pipe found at the intersection of the southeastern right-of-way of Fort Avenue and the northwestern right-of-way of Templeman Street, thence along the right-of-way of Fort Avenue North 40 degrees 49 minutes 58 seconds East 40.00 feet to a rebar found in the southeastern right-of-way of Templeman Street; thence leaving Fort Avenue and along the southeastern right-of-way of Templeman Street South 50 degrees 00 minutes 28 seconds East 245.30 feet to a rebar found in the northwestern right-of-way of Craighill Street; thence leaving Templeman Street and along the right-of-way of Craighill Street South 39 degrees 09 minutes 26 seconds West 40.00 feet to a stone monument found in the northwestern right-of-way line of Templeman Street; thence leaving Craighill and along the right-of-way of Templeman Street North 50 degrees 00 minutes 28 seconds West 246.47 feet to the point of beginning and containing 0.226 acres.

The applicant further requests the Lynchburg City Council to hold a public hearing on this application at its meeting to be held in the Council Chamber, City Hall, 900 Church Street, Lynchburg, VA on July 25, 2017, at 7:30 p.m., or as soon thereafter as the matter may be heard, and at the conclusion of which hearing to consider whether or not to vacate the above described portion of Templeman Street and unnamed right-of-way.

Given under our hand this 6th day of July, 2017.



Applicant: Ashley L. & Kristen D. Smith

Address: 2365 Whitley Road, Fort Mill, SC 29708

Phone Number: 704-258-7126

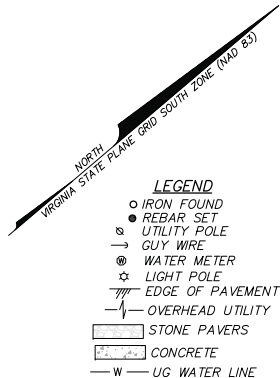
WE, THE ADJOINING PROPERTY OWNER(S) ARE IN AGREEMENT TO THE VACATION OF THE ABOVE DESCRIBED PROPERTY:



Adjoining Property Owner: Rodney Duncan

Address: 2009 Lakeside Drive #412, Lynchburg, VA 24501

Phone Number: 434-851-3967



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

REPRESENTATIVE FOR LOKATE, L.L.C.

COMMONWEALTH AT LARGE TO WIT:

STATE OF VIRGINIA

COUNTY/CITY OF _____

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

EXPIRES _____

NOTARY PUBLIC

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

ASHLEY L. SMITH

KRISTEN D. SMITH

COMMONWEALTH AT LARGE TO WIT:

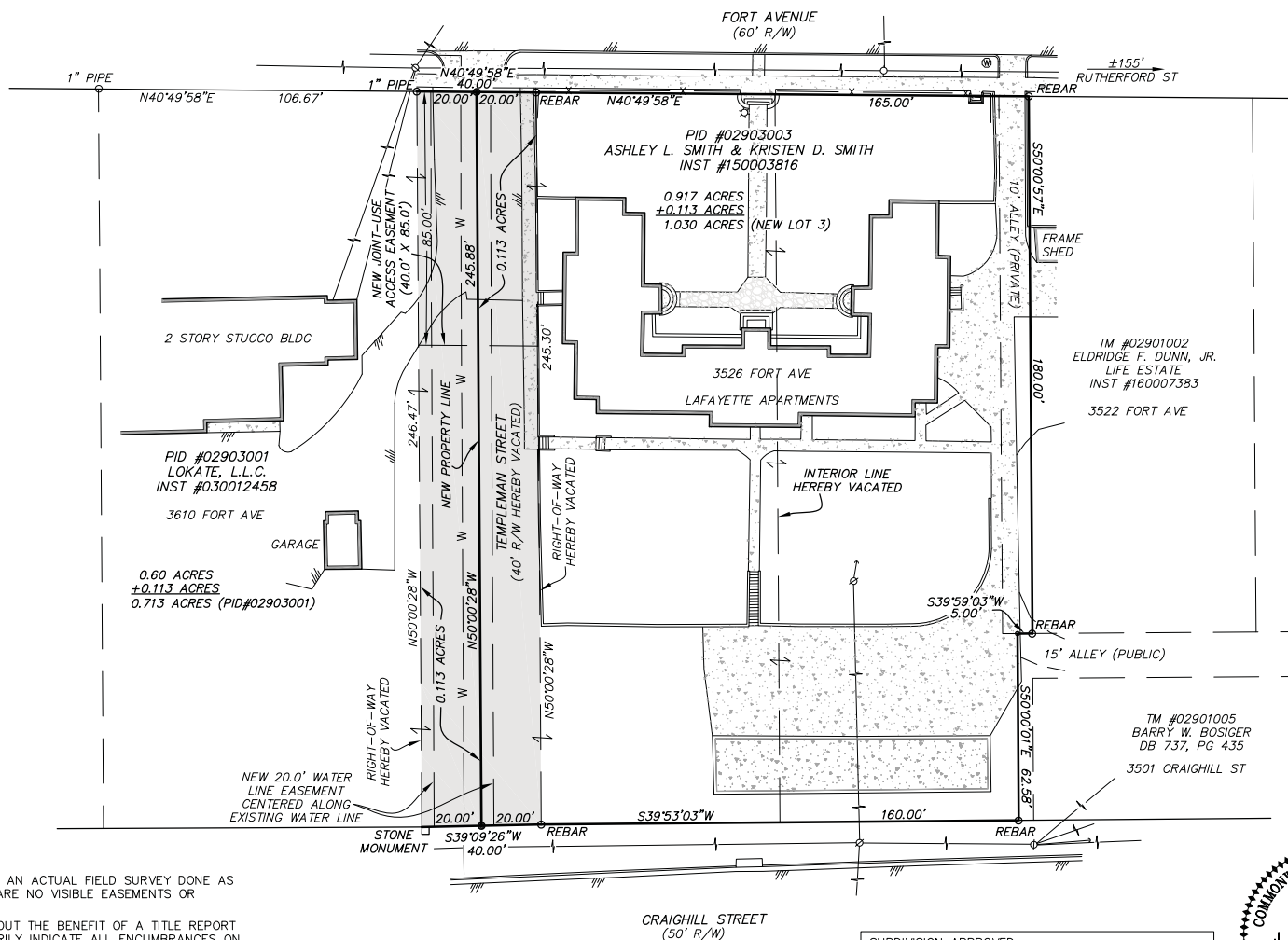
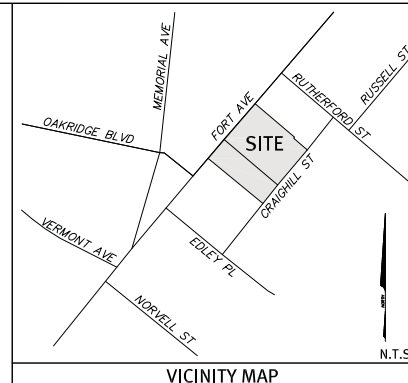
STATE OF VIRGINIA

COUNTY/CITY OF _____

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

EXPIRES _____

NOTARY PUBLIC



NOTES:

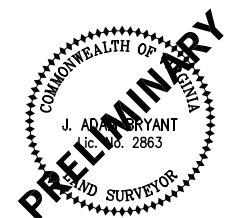
1. THIS PLAT HAS BEEN PREPARED FROM AN ACTUAL FIELD SURVEY DONE AS PER DATE OF THIS PLAT AND THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS EXCEPT AS SHOWN.
2. THIS PLAT HAS BEEN PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT, THEREFORE, NECESSARILY INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
3. THE AREA SHOWN HEREON IS LOCATED IN FLOOD HAZARD ZONE 'X' AND IS NOT LOCATED WITHIN FLOOD HAZARD ZONE 'A' FOR A 100 YEAR FLOOD AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AS SHOWN ON COMMUNITY-PANEL MAP #5100930043D DATED REVISED JUNE 3, 2008.
4. THE PARCELS SHOWN HEREON ARE SERVED BY PUBLIC WATER AND SEWER SERVICE.



SUBDIVISION APPROVED:

CITY ENGINEER, LYNCHBURG, VIRGINIA

CITY PLANNER, LYNCHBURG, VIRGINIA



PROJECT NO. 20161129
G.L. NO. _____
FILE NO. SL-14727
DATE: 6/20/17
DRAWN BY: JAB
CHECKED BY: JAB

HURT & PROFFITT

SHEET NO.
1 OF 1

**PLAT SHOWING
RIGHT-OF-WAY VACATION
TEMPLEMAN STREET
CITY OF LYNCHBURG, VIRGINIA**

ENGINEERING & SURVEYING & PLANNING
HURT & PROFFITT
INCORPORATED

2524 LANGHORNE ROAD
LYNCHBURG VA 24501
800.242.4906 TOLL FREE
434.847.7796 MAIN
434.847.0047 FAX

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **4**

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: Franchise Agreement between the Virginian Hotel, LLC and the City of Lynchburg

KEY ELEMENTS:

☐ Economic Development ☐ Excellent Government ☒ Natural and Built Environment ☐ Safe Community ☐ Vibrant Community

RECOMMENDATION: After a public hearing, adopt the attached franchise agreement allowing the Virginian Hotel, LLC to install, maintain and operate twenty flush mount lights in the City's sidewalks adjacent to the Virginian Hotel.

SUMMARY: The Virginian Hotel requested that the City allow the hotel to install twenty flush mount/on grade up lights in the City sidewalk adjacent to the hotel in coordination with the Downtown Waterline Replacement and Streetscaping construction. Since the installation of lighting is permanent in nature, staff determined after consultation with the City Attorney's office, that a Franchise Agreement was the appropriate process to memorialize this requested use of right-of-way.

The franchise agreement states that the Virginian Hotel shall be responsible for installation, maintenance and repair, of all flush mount lights and associated conduit. If requested by the City, the Virginian Hotel, LLC will be responsible for relocation or removal of the lights at its expense.

Since this item relates to a franchise agreement, the procedure will be a little different from a typical lease proposal and public hearing.

1. The Mayor will announce that the City is receiving bids to award a franchise to the Virginian Hotel, LLC.
2. The Virginian Hotel, LLC will submit a cover letter to go with the proposed Franchise Agreement stating that the Virginian Hotel, LLC wishes to enter into a Franchise Agreement with the City under the terms and conditions set forth in the proposed Franchise Agreement.
3. If no other party submits a proposal for the franchise, Council can proceed with the public hearing.
4. If another party submits a proposal, Council should defer this matter until September 26, 2017 and ask staff to review the proposal(s) and make a recommendation.

PRIOR ACTION(S): September 12, 2017-Physical Development Committee

FISCAL IMPACT: None

CONTACT(S): Gaynelle Hart, Director of Public Works, 455-4406
Cheree Taylor, Construction Manager, 455-4451
Lee Newland, City Engineer, 455-3947

ATTACHMENT(S): Franchise Agreement
Map of Franchise Area Depicting Light Locations

REVIEWED BY: bms

AN ORDINANCE GRANTING A FRANCHISE TO VIRGINIAN HOTEL, LLC, FOR THE INSTALLATION AND OPERATION OF TWENTY FLUSH MOUNT/ON GRADE UP LIGHTS, ASSOCIATED ELECTRICAL CONDUIT AND WIRING IN THE CITY SIDEWALKS THAT ARE ADJACENT TO THE VIRGINIAN HOTEL. THE FRANCHISE SHALL BE FOR A PERIOD OF FORTY YEARS BEGINNING ON OCTOBER 1, 2017, AND ENDING ON SEPTEMBER 30, 2057.

WHEREAS, this Franchise is between the City of Lynchburg, a municipal corporation of the Commonwealth of Virginia, hereinafter referred to as the "City," and the Virginian Hotel, LLC, a Virginia limited liability company, hereinafter referred to as the "Virginian Hotel"; and,

WHEREAS, Virginian Hotel, LLC, is currently renovating the property located at 712 Church Street, Lynchburg Virginia, known as the former Virginian Hotel for a hotel, restaurant, commercial and conference facility; and,

WHEREAS, the City is the owner of the public sidewalks for Church Street, 7th Street and 8th Street, which are adjacent to the property owned by the Virginian Hotel; and,

WHEREAS, as part of its renovation of the Virginia Hotel property, Virginian Hotel, LLC, wishes to install twenty flush mount/on grade up lights, associated electrical conduit and wiring, hereinafter referred to as the facilities, in the City's sidewalks that are adjacent to the Virginian Hotel as shown on the attached map, which by this reference is made a part of this Franchise.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG AS FOLLOWS:

ARTICLE I-GRANT AND PURPOSE

Subject to the provisions, conditions and restrictions hereinafter set in this Franchise, Virginian Hotel is hereby granted the right, privilege, franchise, and authority to install and maintain twenty flush mount/on grade up lights, associated electrical conduit and wiring, in the City's sidewalks that are adjacent to the Virginian Hotel.

ARTICLE II-TERM & CONSIDERATION

This Franchise will be effective for a term of forty years, beginning on October 1, 2017, and will remain in effect until September 30, 2057, unless the Franchise is sooner terminated as provided under Article VI—Damage to Property, Article VII—Indemnification and Insurance, or Article X—Termination of the Franchise.

It is intended that the Franchise between the City and Virginian Hotel allowing the installation and operation of twenty flush mount/on grade up lights, associated electrical conduit and wiring, in the City's sidewalks that are adjacent to the Virginian Hotel shall be a long term arrangement, and at the expiration of the initial term, the City and the Virginian Hotel will negotiate in good faith for a renewal of the Franchise for an additional term under mutually acceptable conditions.

During the term of the Franchise and any extension thereof, Virginian Hotel shall not sell, transfer, lease, assign, sublet, or dispose of this Franchise, or any of the rights or privileges granted to the Virginian Hotel by this Franchise, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation, or otherwise, without the prior written approval of the City.

In the event the Virginian Hotel ceases to operate, this Franchise shall automatically terminate at that time.

At the end of the Franchise period, unless a new Franchise has been negotiated, this Franchise agreement shall continue as a month-to-month tenancy, subject to all terms and conditions contained in this Franchise. Such month-to-month tenancy shall continue until such time as the City gives the Virginian Hotel thirty days written notice of the termination of the month-to-month tenancy.

Upon expiration or termination of this Franchise or the month-to-month tenancy, or earlier if the hotel ceases to operate, the Virginian Hotel must, at its own expense, remove all of the facilities that were installed in the public sidewalks from the public rights-of-way, and restore the sidewalks to their original condition.

ARTICLE III-CONSTRUCTION OF FACILITIES

The sole purpose of this franchise is to allow the Virginian Hotel authority to install and maintain twenty flush mount/on grade up lights, associated electrical conduit and wiring in the City's sidewalks that are adjacent to the Virginian Hotel. The Franchise shall not be expanded or extended for any other purposed or to any other locations without a written amendment to this Franchise as provided in Article IX—Amendments to Franchise. It is understood that under the terms of this Franchise, the Virginian Hotel will not become vested with any property rights in any portion of the public sidewalks.

The Virginian Hotel shall install and maintain the flush mount/on grade up lights, associated electrical conduit and wiring so as not to unreasonably interfere with other uses of or compromise the integrity of the sidewalks. The Virginian Hotel shall be responsible for any damages resulting to the City's sidewalks or other facilities as a result of the installation and maintenance of the flush mount/on grade up lights, associated electrical conduit and wiring. The Virginian Hotel shall also be responsible for any damages it causes to City owned property as a result of the installation and maintenance of the flush mount/on grade up lights, associated electrical conduit and wiring. A bond may be required of the Virginian Hotel with the amount to be determined by the City Engineer. The Virginian Hotel shall apply to the Department of Public Works for written approval by the City Engineer, prior to commencement of any construction or alteration of its facilities in the sidewalks, and must submit all available "as built" plans and other location data indicating the existence and approximate location of all facilities in the right of way to the City Engineer, and the City Engineer must approve such plans in writing.

The Virginian Hotel shall obtain a permit from the City and shall perform the work authorized in such permit in accordance with all requirements of any city, state, and building codes that are applicable to the installation and maintenance of the flush mount/on grade up lights, associated electrical conduit and wiring.

Any permit fee that may be required by the City for the installation of the facilities shall be in addition to any other fees that may be required. The maintenance obligations required in this Franchise shall be performed in accordance with City and State standards.

ARTICLE IV-RELOCATION OF FACILITIES

The Virginian Hotel shall be responsible for all costs associated with its installation and maintenance of the flush mount/on grade up lights, associated electrical conduit and wiring. Whenever the City determines it is necessary in connection with the repair, relocation, or

improvement of the public sidewalks or the repair, relocation or improvement of City-owned facilities that are located in the sidewalks or on public property, the City may require by written notification that the Virginian Hotel's facilities shall be removed or relocated. The Virginian Hotel shall remove or relocate its facilities within the time period designated by the City to such place and under such terms and conditions as specified by the City. The Virginian Hotel shall bear all expenses associated with the removal and relocation except that the City will issue, without charge to the Virginian Hotel, whatever City permits are required for the removal or relocation. If the Virginian Hotel does not complete its removal within the period of time specified by the City, the City may take such actions as necessary to effect such removal or relocation. Further, the Virginian Hotel will be responsible for any additional costs and expenses incurred by the City as a result of their failure to remove or relocate the flush mount/on grade up lights, associated electrical conduit and wiring. In the event it is necessary for the City to make emergency repairs to its utility lines or facilities or to perform any other emergency work within public sidewalks or public property, the City shall not have to give Virginian Hotel any advance notice of such emergency work. The City shall have the right to remove or relocate the flush mount/on grade up lights, associated electrical conduit and wiring in order to perform emergency work and the Virginian Hotel shall be responsible for all costs and expenses incurred by the City in such removal or relocation.

ARTICLE V-MAINTENANCE &INSPECTION

During the term of this Franchise, the Virginian Hotel will be responsible for the maintenance of all of the facilities that are installed on the sidewalks, and at its sole cost and expense maintain such facilities in a safe and presentable condition. The City, its agents and employees, shall have the right to inspect the facilities at reasonable times to make sure the Virginian Hotel is fulfilling its maintenance obligations, and if the City in its sole discretion determines it is appropriate to do so, the City may develop a maintenance schedule that Virginian Hotel shall follow to properly maintain the facilities. In the event the Virginian Hotel fails to follow the maintenance schedule, the City, after giving Virginian Hotel thirty days' notice, shall have the right to perform the needed maintenance and bill Virginian Hotel for the costs.

The failure of the Virginian Hotel to maintain the facilities shall be grounds for the termination of this Franchise as provided in Article X-Termination of the Franchise.

ARTICLE VI—DAMAGE TO PROPERTY

If the facilities that are installed in the sidewalks are partially damaged by fire, the elements, public enemy or other casualty so as to affect the use of the facilities, such damage shall be promptly repaired by the Virginian Hotel at its own cost and expense. If the Virginian Hotel's facilities shall be damaged or destroyed by a fire, the elements, a public enemy or other casualty to the extent that such facilities become unusable, either the City or the Virginian Hotel may cancel this Franchise unless the parties reach an agreement concerning the Virginian Hotel's repair of the facilities. The City shall be under no obligation to repair or rebuild any of the facilities.

The City shall not be liable for any damage to or loss of any of the Virginian Hotel's facilities, regardless of how such damage or loss occurs. It is expressly agreed and understood that the Virginian Hotel in placing its facilities in the public sidewalks does so at its own risk.

Virginian Hotel shall be responsible for repairing or replacing any damages to the City's property that are caused by the acts or omissions of the Virginian Hotel or its representatives.

ARTICLE VII-INDEMNIFICATION AND INSURANCE

Indemnification—The Virginian Hotel shall indemnify, hold harmless, and defend the City, its employees, officials, and agents, from and against any and all lawsuits, claims, causes of action, liability, demands, damages, disability, losses and expenses, of any nature whatsoever, including reasonable attorneys' fees, resulting or in any manner arising from the action or inaction of the Virginian Hotel in installing, maintaining, and operating its facilities in the City's sidewalks.

The City shall promptly notify the Virginian Hotel of any claims or lawsuits subject to indemnification and defense, and shall cooperate with all reasonable requests by the Virginian Hotel for information, documents, testimony, or other assistance appropriate to a resolution of such claims. The Virginian Hotel shall have full responsibility for and control of any action or undertaking directed at the resolution of such claims or lawsuits.

Insurance--During the term of this Franchise, Virginian Hotel shall obtain and maintain at Virginian Hotel's sole expense, with financially reputable insurers which are Franchised to do business in all jurisdictions where any work is performed, naming the City, its employees, officials, and agents, as an additional insured, not less than the following insurance:

- (a) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employer's liability limit of not less than \$500,000 per accident.
- (b) Commercial general liability, including coverage for contractual liability and products completed operations liability, with a limit of not less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage liability, naming the City, its employees, officials, and agents, as an additional insured.
- (c) "All risk" property insurance covering not less than the full replacement costs of any damage the Virginian Hotel, its employees, representatives, agents, or guests, may cause to the City's property.

The Virginian Hotel shall, as condition of this Franchise, prior to the commencement of any work, deliver to the City a certificate of insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and effect, and such insurance will be with companies acceptable to the City. The insurance required herein shall require that the Virginian Hotel must give the City thirty calendar days advance written notice of any cancellation, nonrenewal, or modification of coverage and a binder or certificate verifying new coverage in accordance with the requirements herein prior to any change, cancellation or nonrenewal date. In the event of such cancellation or nonrenewal notice, the Virginian Hotel shall obtain, pay all premiums for the renewal or replacement of the insurance required hereunder. The Virginian Hotel shall, at least thirty days prior to the expiration of the policies, furnish City with renewals or "binders" for the policies, or City may order the required insurance and charge the cost to the Virginian Hotel. Any and all such insurance policies shall name the City, its employees, officials and agents, as insured parties and shall include or be endorsed to include contractual liability.

The insurance required hereunder shall be primary, and any insurance or self-insurance maintained by the City shall be in excess of and shall not contribute with any insurance required of the Virginian Hotel under this Franchise. Any deductibles or self-insured retentions applicable to required coverage shall be paid by the Virginian Hotel, and the City shall not be required to participate therewith. All rights of subrogation against the City shall be waived.

Nothing contained in this Franchise shall limit the Virginian Hotel's liability to the City to the limits of the insurance certified or carried.

Notwithstanding any of the other provisions of this Franchise, the Virginian Hotel's failure to maintain the required insurance coverage throughout the term of this Agreement or the failure of the Virginian Hotel to deliver a new and valid binder or certificate verifying such coverage is grounds for the immediate termination of this Franchise without prior notice.

ARTICLE VIII-COMPLIANCE WITH LOCAL, STATE AND FEDERAL RULES AND REGULATIONS

The grant of this Franchise is subject to all ordinances, resolutions and procedures of the City as the same now exist or may be hereinafter be adopted, amended, revised, or codified, in lawful exercise of any power granted to the City by the General Assembly or any other lawful body. The City agrees that, except in cases of emergency, it will give the Virginian Hotel thirty days' notice of all such rules and regulations adopted by the City before the Virginian Hotel shall be required to comply therewith. In performing its responsibilities under this Franchise, the Virginian Hotel will comply with all applicable state and federal laws and regulations all federal, state and local law, ordinances, rules and regulations, currently in force or subsequently adopted that may apply to its activities.

ARTICLE IX-AMENDMENTS TO FRANCHISE

The City and the Virginian Hotel may agree to modify the Franchise from time to time; however, any significant changes in the Franchise must be approved by City Council as required by the Code of Virginia.

ARTICLE X-TERMINATION OF THE FRANCHISE

The City retains the right to withhold or withdraw any and all privileges granted under this Franchise and to terminate this Franchise at any time if the Virginian Hotel fails to comply with any of the terms of the Franchise. Exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise. Prior to exercising this right, the City Manager, or such other person or persons as the City Manager may from time to time designate, shall provide the Virginian Hotel with written notification of the Virginian Hotel's failure to comply with the terms of the Franchise. The Virginian Hotel shall have thirty days from the date of such notice to remedy any such default. The Virginian Hotel may make a written request for a reasonable extension of the period in which it may remedy any such default to the City Manager, or such other person or persons as the City Manager may from time to time designate. Any such request by the Virginian Hotel shall be in writing and must be made at least fifteen days prior to the expiration of the initial thirty day period. Any subsequent request shall be in writing and must be made prior to the expiration of any subsequent period.

If there are instituted by or against the Virginian Hotel proceedings in bankruptcy or insolvency during the term of this Franchise, the City may terminate the Franchise at any time thereafter. The exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise. Any successors, or assignee or assignees, or trustee, or receiver of the Virginian Hotel resulting from proceedings in bankruptcy or under any insolvency law shall be subject to and bound by all of the provisions, terms, conditions, and limitations of this Franchise. The City may terminate the Franchise as

to any such successor or successors, or assignee or assignees, or trustee, or receiver of the Virginian Hotel at any time.

The City retains the right to withhold or withdraw any and all privileges under this Franchise and to terminate this Franchise at any time if there is a taking of the Virginian Hotel's assets by a court of competent jurisdiction. Exercise of this right by the City shall be in addition to and not in place of any other rights, which the City has under the terms of this Franchise.

ARTICLE XI-NOTICES

Notices to the City and the Virginian Hotel shall be sufficient if sent to the following persons and addresses or to such other persons and addresses as the City or Virginian Hotel may designate in writing from time to time.

Notices to the Virginian Hotel shall be sufficient if sent by registered mail, postage prepaid, addressed to:

Blair Godsey
Virginian Hotel, LLC
101 Mountain Avenue
Roanoke, VA 24016

Notices to the City shall be sufficient if sent by registered mail, postage prepaid, addressed to:

The Lynchburg City Manager
900 Church Street,
Lynchburg, Virginia 24504

ARTICLE XII-GENERAL CONDITIONS

(a) Construction, repairs, or expansion of the public rights of way and City owned utilities may take place during the term of this Franchise and the Virginian Hotel accepts this Franchise subject to any inconvenience or loss of use of the flush mount/on grade up lights, associated electrical conduit and wiring may become necessary because of said construction, repairs, or expansion, and the City shall not be responsible for any loss of revenues the Virginian Hotel may experience as a result of such construction, repairs or expansion.

(b) Marginal headings contained in this Franchise are for convenience only and shall not be considered to amplify, relate, modify or otherwise affect any of the terms, provisions or conditions of this Franchise.

(c) In the event that any provision of this Franchise shall be construed to be invalid or unenforceable, then the remaining portions shall remain in full force and effect.

(d) This Franchise shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any legal action filed by either party to this lease arising out of the performance or non-performance of the terms of this Franchise shall be filed in the courts of the City of Lynchburg, Virginia and in no other forum.

(e) The Virginian Hotel does hereby covenant and agree that no person on the grounds of race, sex, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the operation of the hotel, and the Virginian Hotel

agrees that it will not discriminate against and will make all reasonable efforts to accommodate persons with disabilities as required by the Americans with Disabilities Act.

(f) There are no intended third party beneficiaries of this Franchise.

(g) All terms and conditions with respect to this Franchise are expressly contained herein, may only be modified as provide in Article IX—Amendments to Franchise, and both parties agree that no representative or agent of City or the Virginian Hotel has made any representation or promise with respect to this Franchise not expressly contained herein.

ARTICLE XIII-METHOD OF ACCEPTANCE

Any person, firm, corporation, or other entity bidding for this Franchise shall deposit with the bid its check in the sum of \$100.00, payable to the City as the security to the City that the Grantee shall accept the Franchise within thirty days after the adoption of the ordinance granting the same. Upon the failure of the Grantee to accept this Franchise pursuant to the provisions of this section, such Grantee shall forfeit this deposit to the City. The checks of all other bidders shall be returned upon the acceptance of the Franchise by the selected Grantee. The check will be returned to the successful bidder upon the execution of the Franchise.

This Franchise shall be and become effective and shall constitute a contract of Franchise between the City and Grantee when the Grantee shall cause a copy thereof to be signed by a proper official of the Grantee duly authorized thereto and under its corporate seal, duly attested to by an authorized official of the Grantee, accepting the terms and provisions of this Franchise on behalf of said Grantee.

Adopted:

Certified: _____
Clerk of Council

FORM OF ACCEPTANCE

The foregoing Franchise, as set forth in the ordinance adopted by the Council of the City of Lynchburg, Virginia on August 8, 2017, is hereby accepted by Virginian Hotel, LLC, according to the terms thereof for a period beginning September 1, 2017, and ending on August 31, 2057.

This acceptance is executed on behalf of Virginian Hotel, LLC, by W. Blair Godsey, its Manager, this _____ day of _____, and 2017, by virtue of the authority duly and properly vested in him as a Manager of Virginian Hotel, LLC.

VIRGINIAN HOTEL, LLC

W. Blair Godsey, Manager

111K

Hotel Virginian Parking Deck



X = Light

20 Flush Mounted Up Lights
(Not to Scale)

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **5**

CONSENT:
ACTION:

REGULAR:
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Public Hearing – Authorize Lease of City/Airport property to Banker Aviation, LLC

KEY ELEMENTS:

☒ Economic Development ___ Excellent Government ___ Natural and Built Environment ___ Safe Community ___ Vibrant Community

RECOMMENDATION: After a public hearing, authorize the City Manager to execute a lease agreement with Banker Aviation, LLC to occupy a 12,000 square-foot corporate aircraft hangar with attached 1,800 square-foot office/lounge area at Lynchburg Regional Airport.

SUMMARY: This project consists of Lynchburg Regional Airport constructing a new corporate hangar on the west side of the airfield located at the edge of the airport's existing mid-field aircraft parking apron next to the existing General Aviation Terminal building. The site was identified in the 2010 Airport Master Plan for future development of corporate, aircraft storage and/or maintenance facilities to accommodate future growth in aeronautical activities and is included on the airport's FAA-approved Airport Layout Plan (ALP). The existing aircraft parking apron currently serves transient charter, military, and general aviation aircraft parking on an as-needed basis, and will continue to do so after the hangar facility is built.

The project was put out for competitive bid in July 2017 and a total of four (4) bids were received on August 22, 2017. The low bid amount was in line with the engineer's estimate of cost for the project, and meets funding criteria to move forward with construction.

There is a statutory requirement for a public hearing prior to leasing City property.

PRIOR ACTION(S): April 25, 2017. A \$1,600,000 appropriation was included in the FY 2017 Third Quarter Budget Adjustments for construction of this facility.

FISCAL IMPACT: The project will be funded by approximately \$256,000 in state entitlement grant funding for eligible site work, approximately \$300,000-\$400,000 in airport capital reserves, with the remainder to be funded temporarily with the City of Lynchburg line-of-credit until long-term funds are available through the next City bond issue or a Virginia Resources Authority (VRA) loan. The annual rent has been negotiated to sufficiently cover any future debt service, the value of ground rent, and the rent value of the out-of-pocket airport capital contribution. The lease is structured with a five (5) year term and one five (5) year option, and will contain an annual rent escalator of approximately 2.5%.

CONTACT(S): Mark F. Courtney, Airport Director, 455-6089

ATTACHMENT(S): Building / Site drawings

REVIEWED BY: bms

RESOLUTION:

BE IT RESOLVED That the Lynchburg City Council authorizes the City Manager to execute a lease agreement by and between the City of Lynchburg and Banker Aviation, LLC for the use of a 12,000 square-foot hangar facility and attached 1,800 square-foot office/lounge area located at the Lynchburg Regional Airport; and,

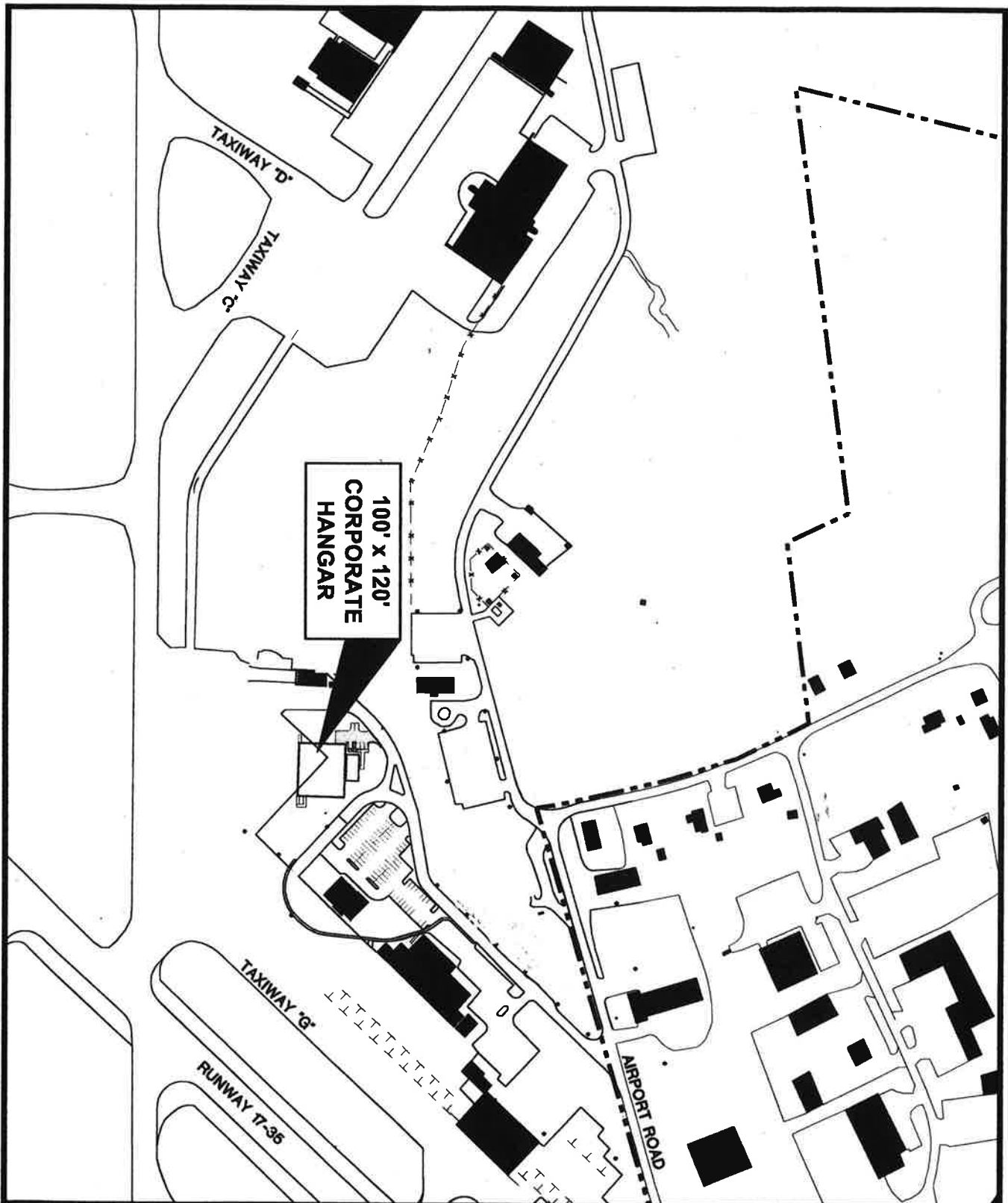
BE IT FURTHER RESOLVED that the City Finance Director is authorized to advance/loan the Airport sufficient funds to complete the project if temporary or permanent financing is not available during construction.

Adopted:

Certified:

Clerk of Council

114V



Scale : 1"=300'

Lynchburg Regional Airport - Lynchburg, Virginia

Proposed Corporate Hangar Site Location

TALBERT & BRIGHT

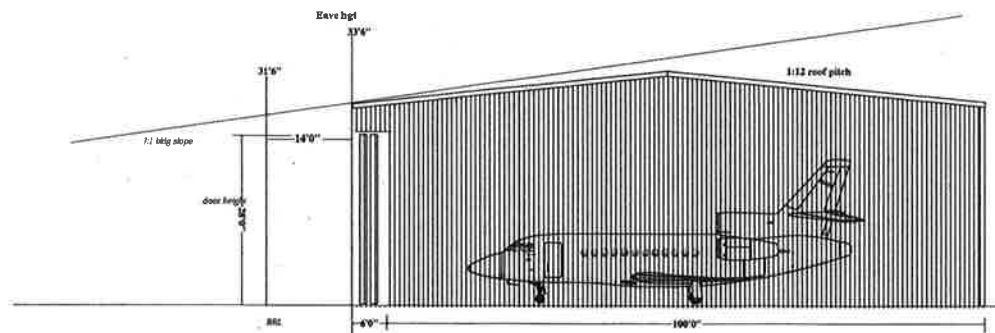
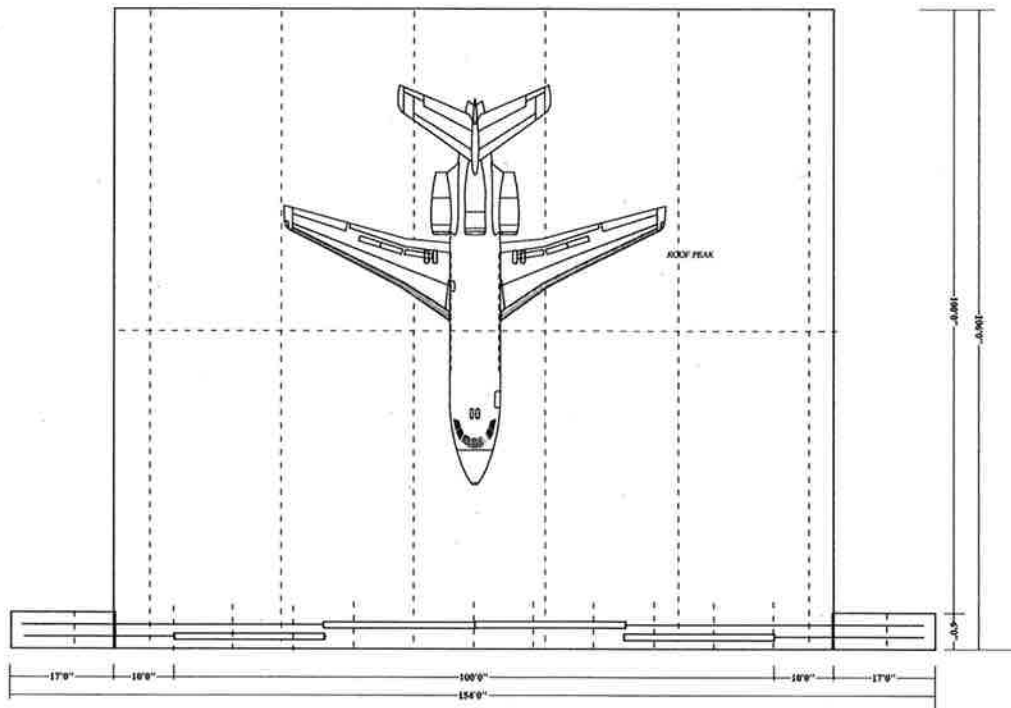
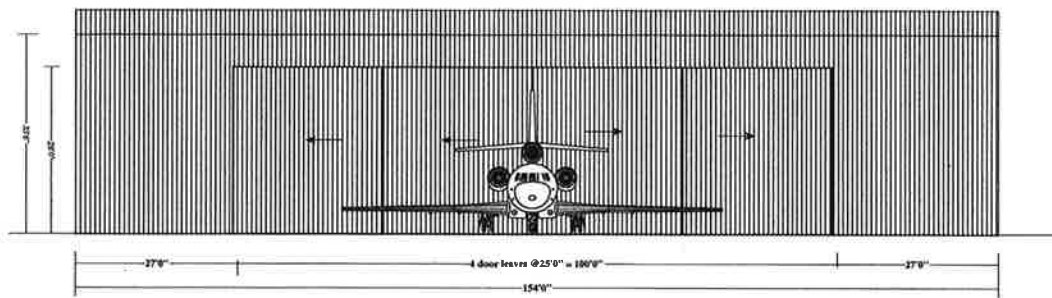
ENGINEERING & PLANNING CONSULTANTS

10105 KRAUSE ROAD, SUITE 100

CHESTERFIELD, VIRGINIA 23832

PHONE: 804-768-6878 FAX: 804-768-6871

1:12 roof pitch



KIRK AIRPORT SOLUTIONS, INC.
Lago Vista, Texas
815-263-3403
rkirk @kirkairportsolutions.com
www.kirkairportsolutions.com

LYNCHBURG REGIONAL AIRPORT
LYNCHBURG, VIRGINIA

4/18/2017

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **6**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Public street renaming: Peninsular Street to Moses Lane

KEY ELEMENTS:

___ Economic Development ___ Excellent Government **X** Natural and Built Environment **X** Safe Community ___ Vibrant Community

RECOMMENDATION: Rename the street as proposed.

SUMMARY: Planning staff has suggested renaming a portion of Peninsular Street to Moses Lane. The purpose of the renaming is to provide the properties along the street with easily identifiable and distinct addresses from the other section of Peninsular Street.

PRIOR ACTION(S):

July 18, 2017: The Technical Review Committee (TRC) reviewed the petition and had no concerns.

August 9, 2017: Planning Commission reviewed the request and had no concerns.

FISCAL IMPACT: None

CONTACT(S): Rachel Frischeisen, Planner – 455-3900
Kent White, Community Development Director – 455-3900

ATTACHMENT(S):

- Resolution
- Planning Commission Minutes – August 9, 2017
- Map showing portion of Peninsular Street to be renamed to Moses Lane

REVIEWED BY: bms

RESOLUTION:

A RESOLUTION APPROVING THE RENAMING OF THE PORTION OF PENINSULAR STREET LOCATED OFF OF THE 220TH BLOCK OF PENINSULAR STREET.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LYNCHBURG that the portion of Peninsular Street located off of the 220th Block of Peninsular Street is hereby changed to Moses Lane.

Adopted:

Certified:

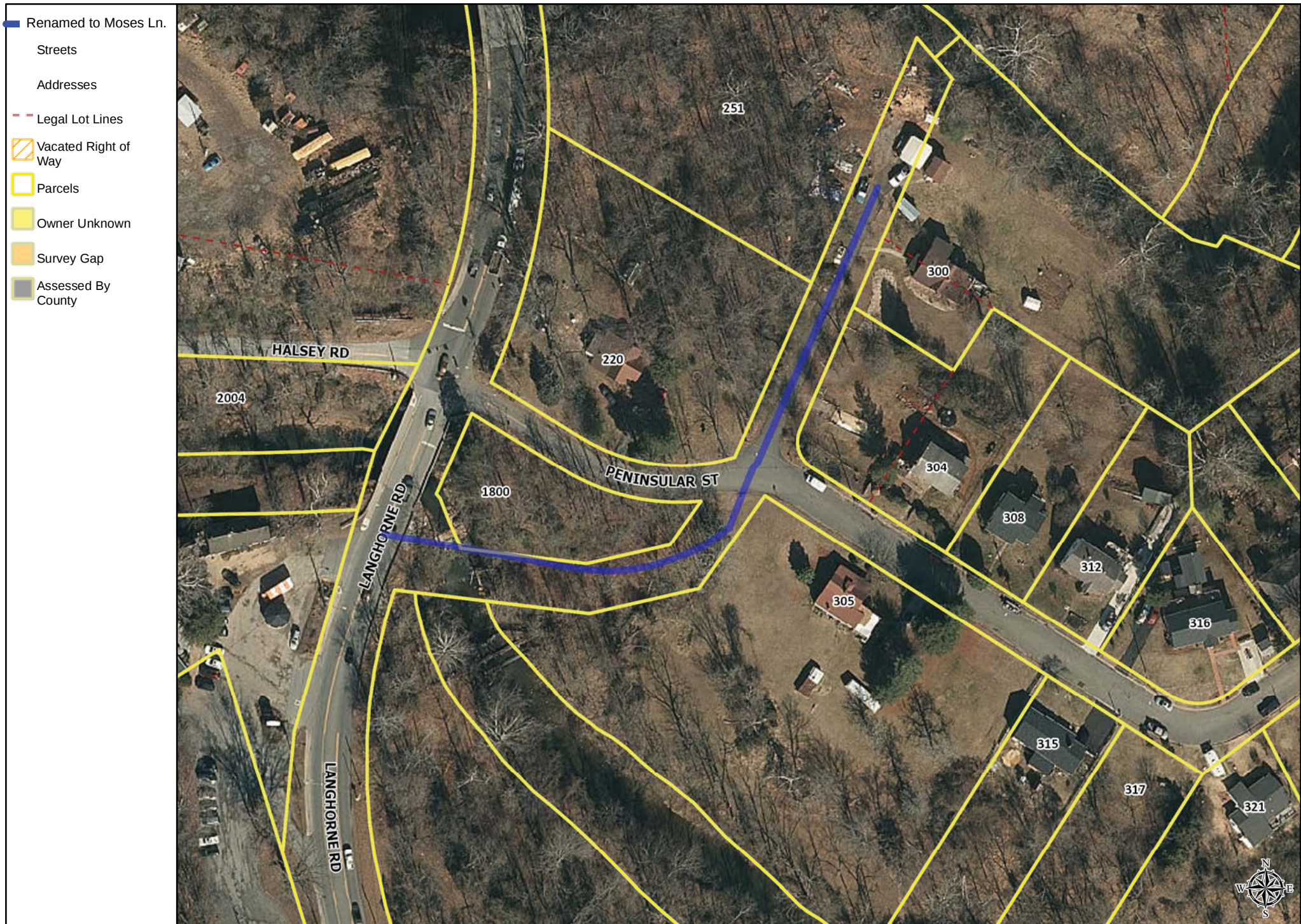
Clerk of Council

109K

MINUTES OF THE AUGUST 9, 2017 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

Portion of Peninsular Street Renaming to Moses Lane:

Ms. Rachel Frischeisen summarized the Planning Commission report for the commissioners. She explained that this item is for their comment only and does not require a motion or vote. After hearing the report, the commissioners did not have any comments or concerns with the street renaming and were in consensus that it should be forwarded to City Council for its consideration.



DISCLAIMER: THIS MAP IS NEITHER A LEGALLY RECORDED MAP NOR A SURVEY AND IS NOT INTENDED TO BE USED AS SUCH. THE INFORMATION DISPLAYED IS A COMPILATION OF RECORDS, INFORMATION, AND DATA OBTAINED FROM VARIOUS SOURCES. THE CITY OF LYNCHBURG IS NOT RESPONSIBLE FOR ITS ACCURACY OR HOW CURRENT IT MAY BE.

0 100 200
1 inch = 100 feet 1:1,200

PRINTED ON
July 18, 2017

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **7**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Poverty reduction appropriation request for FY 2018

KEY ELEMENTS:

X Economic Development ___ Excellent Government ___ Natural and Built Environment ___ Safe Community **X** Vibrant Community

RECOMMENDATION: Approve the use of \$15,000 of the amount reserved in the FY 2018 Adopted Budget to address poverty.

SUMMARY: On May 9, 2017, Council adopted Resolution #R-17-049, specifying that FY 2018 General Fund Non-Departmental Poverty Initiative funds in the amount of \$50,000 may only be spent upon approval by a majority vote of City Council.

Attached is a proposed budget of \$15,000 to support the community engagement facet of the City's ongoing poverty reduction effort. Funding is requested for financing of three (3) *From Poverty to Progress* events to be held at E.C. Glass High School (or similar venue) in the amount of \$5000 per meeting.

PRIOR ACTION(S):

- September 8, 2015: Council voted to fund a demographic analysis of Lynchburg with a special focus on poverty and to continue funding for "Bridges Out Of Poverty" Training for City Employees.
- May 10, 2016: Council adopted Resolution #R-16-064, specifying that FY 2017 General Fund Non-Departmental Poverty Initiative funds in the amount of \$50,000 may only be spent upon approval by a majority vote of City Council.
- November 10, 2016: Council further discussed the matter of reducing poverty during their retreat and agreed to move forward with the process of collaboration through "Bridges Out Of Poverty" Work Groups and multiple external partners as it pertained to poverty reduction.
- April 11, 2017: Council adopted Resolution #R-17-030 which approved the use of \$14,000 from the FY2017 Adopted Budget to address poverty reduction.

FISCAL IMPACT: Use of \$15,000 of the FY 2018 allocation for poverty reduction will leave a remaining balance of \$35,000.

CONTACT(S): John H. Hughes, IV, Assistant City Manager, 434-455-3990

ATTACHMENT(S): Resolution
Proposed FY 2018 *From Poverty to Progress* budget

REVIEWED BY: bms

RESOLUTION:

BE IT RESOLVED THAT The Lynchburg City Council does hereby authorize staff to expend \$15,000 of the \$50,000 in funding available to address poverty in the FY 2018 Adopted Budget. This amount (\$15,000) is allocated to support three (3) *From Poverty to Progress* community engagement events during FY 2018 to be held at E.C. Glass High School (or similar venue) in the amount of \$5,000 per meeting.

Adopted:

Certified:

Clerk of Council

113V

FROM POVERTY TO PROGRESS EXPENSES

WATER BILL INSERTS & PRINTING	\$1,200.00
CHILD CARE	\$225.00
FRAMERY - PRINTS AND DRY MOUNT	\$120.00
BRIGHT IMAGES - FLYERS, POSTERS, PROGRAMS,CARDS	\$1,000.00
SAM'S CLUB - REFRESHMENTS	\$325.00
AMAZON - EASEL PADS, PENS, LANYARDS, BADGES	\$180.00
FACEBOOK - EVENT PROMOTION	\$50.00
N & A - DISPLAY AD	\$1,500.00
RADIO ADVERTISING	\$400.00
	\$5,000.00

TOTAL FOR THREE (3) SESSIONS IN FY 2018

\$15,000.00

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **8**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: Agreement for Bridge over Route 460 at Liberty University

KEY ELEMENTS:

___ Economic Development ___ Excellent Government **X** Natural and Built Environment ___ Safe Community ___ Vibrant Community

RECOMMENDATION: Approve the attached Resolution to enter into an agreement with the Virginia Department of Transportation (VDOT) and Liberty University (LU) to specify the inspection and maintenance of a VDOT owned, grade separation structure at Liberty University over US Route 460 within the City.

SUMMARY: Staff has been working with VDOT and LU on an agreement that outlines the ownership, maintenance and inspection of a new bridge over Route 460 near the City/Campbell County line. The Letter of Understanding stipulates that LU constructed the bridge in the City, VDOT owns the bridge, and VDOT will perform all maintenance and inspections of the bridge except for items such as the brick façade, shared use path, security and lighting systems for which LU is responsible for the cost of the inspections and maintenance.

PRIOR ACTION(S): August 8, 2017 – Physical Development Committee

FISCAL IMPACT: None for the City.

CONTACT(S):

Gaynelle Hart, Director of Public Works 455-4406
Lee Newland, P.E. City Engineer 455-3947

ATTACHMENT(S): Resolution
Letter of Understanding

REVIEWED BY: bms

RESOLUTION:

WHEREAS, the Lynchburg City Council desires to enter in an agreement with VDOT and LU to specify the inspection and maintenance of a VDOT owned, grade separation structure at Liberty University over US Route 460 within the City Limits; and,

WHEREAS, this agreement is outlined in a Letter of Understanding between the three parties,

NOW, THEREFORE, BE IT RESOLVED THAT: The Lynchburg City Council hereby supports the Letter of Understanding between VDOT, LU and the City for the inspection and maintenance of a VDOT owned, grade separation structure at Liberty University over US Route 460 within the City Limits.

BE IT FURTHER RESOLVED THAT: Bonnie Svrcek, City Manager, is authorized to execute the Letter of Understanding and to execute any other documents for agreements that may be needed for this project.

Adopted:

Certified:

Clerk of Council

110K

**LETTER OF UNDERSTANDING FOR INSPECTION AND MAINTENANCE OF A
VDOT OWNED, GRADE SEPARATION STRUCTURE AT LIBERTY UNIVERSITY
OVER US460 IN THE CITY OF LYNCHBURG**

THIS LETTER OF UNDERSTANDING FOR INSPECTION AND MAINTENANCE of a Liberty University constructed, VDOT owned, grade separation structure in the City of Lynchburg, is made as of the date last signed below by and between the City of Lynchburg (hereinafter “City”); Liberty University (hereinafter “University”); and the Commonwealth of Virginia, Department of Transportation (hereinafter “Department”);

WHEREAS, the Department considers accessory elements of structures, such as, but not limited to, the brick façade, lighting, and shared use path, that are crossed by public roads but are not required for the purposes of those using said road to be ineligible for maintenance by the Department; and

WHEREAS, the University, with City and Department approval, designed and constructed a public road and bridge over Route 460, incorporating accessory elements; and

WHEREAS, the City and the Department agree that this public road and bridge will divert traffic from existing crossings of Route 460, providing a benefit to the public; and

WHEREAS, in accordance with the Code of Virginia, §15.2-2265, a plat was recorded transferring title and easements, in fee simple, to all portions set apart for streets, alleys and areas for public use to the City; and

WHEREAS, said plat shows areas dedicated to the public, including a road and turn-around easement at the University that passes over a structure that the Department deems to be a grade separation structure in the City; and

WHEREAS, uniquely qualified personnel are required to perform periodic safety inspections of bridge structures to assure their structural integrity and the safety of those using the structure; and

WHEREAS, the Department routinely inspects and maintains structures of the systems of state highways with appropriately qualified personnel in accordance with the National Bridge Safety Inspection Act; and

WHEREAS, the City, pursuant to authorities established in Title 15.2 Code of Virginia, consented to the grade separation and construction of the structure and, upon completion by the University, desires the Department to inspect the structure according to the National Bridge Inspection Standards (NBIS); and

WHEREAS, the City and the University desire the Department to assume the responsibilities for the inspection and maintenance of the structural integrity of the structure as part of the systems of state highways maintained by the Department;

NOW, THEREFORE, THIS LETTER OF UNDERSTANDING FOR INSPECTION, AND MAINTENANCE, in consideration of the covenants contained herein and the City's request that the structure be inspected and maintained by the Department as a part of the systems of state highways under its operational jurisdiction; and

In consideration of the Department's acceptance of responsibility to inspect and maintain the structure crossing;

I. The University agrees:

- A. To provide the Department with one set of the approved bridge plans for construction, signed and sealed by the Engineer of Record, who shall be a competent, licensed professional engineer in the Commonwealth of Virginia, and one complete set of the specifications. In addition to the "hard-copy", one electronic set of the approved plans and specifications shall be provided in PDF format.
- B. To provide the Department with approved shop drawings for fabrication and construction, reviewed and approved by the Engineer of Record, who shall be a competent, licensed professional engineer in the Commonwealth of Virginia and in responsible charge of construction of the bridge structure and accessory elements, to perform a cursory review for a period of five (5) business days, in advance of distribution of the approved shop drawings for fabrication and construction.
- C. To perform construction administration and materials quality assurance in accordance with the requirements for Local Public Agencies (LPAs) defined in Part 2, Chapter 13 of the Locally Administered Projects (LAP) Manual, updated March 1, 2016.
- D. To comply with any additional construction requirements requested by the Department, based on its review of the plans, specifications, and drawings provided in accordance with this Agreement, that the Department deems necessary for the safety of the public or for the operation of Route 460 or for the ability of the Department to provide for maintenance of Route 460 and the bridge structure.
- E. To notify the Department in writing at least thirty (30) days in advance of the completion of construction of the bridge structure to have qualified bridge inspection personnel available at the site to conduct the NBIS inspection. The University will comply with any instructions or requirements requested by such bridge inspection personnel upon performing such inspection as is reasonably required to bring the structure into compliance with all applicable laws, regulations and safety codes.

- F. To provide the Department, after construction has been completed and prior to acceptance by the Department, one complete set of the as-built drawings in electronic PDF format and one complete set of the specifications, and construction inspection records certified to the Department by a competent, licensed professional engineer in the Commonwealth of Virginia, attesting to the proper construction of the facility, including:
 - 1. The as-designed load rating performed by a competent, licensed professional engineer in the Commonwealth of Virginia in accordance with Department IIM-S&B-86.
 - 2. The as-built load rating performed by a competent, licensed professional engineer in the Commonwealth of Virginia in accordance with Department IIM-S&B-86.
- G. That the Department, in its sole discretion, may inspect the accessory elements of the structure at any time including, but not limited to the brick façade, lighting, shared use path, etc. and perform any emergency maintenance of these accessory elements it deems necessary for the safety of the public at the expense of the University. To reimburse the Department within thirty (30) days of being billed for the inspection and emergency services performed by or for the Department. Nothing herein shall preclude the University from obtaining contracts or indemnification from other persons or persons with respect to the performance of or liability for the maintenance of the accessory elements of the structure.
- H. To bear all reasonable costs associated with the periodic inspection of the accessory elements of the structure and any and all costs associated with subsequent maintenance, including that of any public safety security systems, and necessary reconstruction of the accessory elements of the structure.
- I. To bear all liability for any and all inspections and maintenance of any public safety security systems unless otherwise agreed to by the parties to this Agreement. Nothing herein shall preclude the University from obtaining contracts or indemnification from other persons or persons with respect to the performance of or liability for the maintenance of the system.
- J. With respect to the maintenance and operation responsibilities borne by the University as described in Paragraphs G, H, and I above, the University further agrees:
 - 1. That the University will provide routine maintenance such as snow removal, litter collection, sweeping, graffiti removal, and any other routine maintenance it deems necessary.

2. That the Department has no maintenance, upkeep and/or repair responsibility or liability for any elements of the brick façade, safety security systems, lighting, shared use path, or road, however the Department may perform maintenance on any elements of the brick façade, lighting, shared use path or road at its discretion as described in Section I.G of this Agreement, and when applicable subject to providing notice under Section III.C of this Agreement.
3. That the City has no maintenance, upkeep, repair and/or replacement responsibility or liability for the grade separation structure including any elements of the brick façade, lighting or shared use path.
4. The University will not seek indemnification or contribution from the Department with respect to any claims or damages arising from the Department's improper maintenance of accessory elements for which the University is responsible.

II. The City agrees:

- A. That the Department has no maintenance, upkeep and/or repair responsibility or liability for any elements of the brick façade, lighting, shared use path or road, however the Department may perform maintenance on any elements of the brick façade, lighting, shared use path or road at its discretion as described in Section I.G of this Agreement, and when applicable subject to providing notice under Section III.C of this Agreement.
- B. The City will not seek indemnification or contribution from the Department with respect to any claims or damages arising from improper maintenance for which the City or University is responsible.

III. The Department agrees:

- A. To the extent allowed under applicable law and upon appropriation and availability of funds, to bear the liabilities and responsibilities normally associated with the preservation of the structural safety of the facility, effective with the date the structure is accepted as part of the system of state highways maintained by the Department.
- B. To perform periodic inspections of the structure with appropriately qualified inspection personnel and to require maintenance of the structural integrity in keeping with its normal practices, once the structure is accepted as part of the system of state highways maintained by the Department.
- C. To endeavor to provide the City and University written advance notice of maintenance activity that it anticipates will exceed \$10,000 (ten thousand dollars) if performing maintenance of an emergency nature to elements of the brick façade, safety security systems, lighting, shared use path or road.

IV. The parties hereto further acknowledge that:

- A. The Department or the City, in its sole discretion may close the road or the structure as it deems necessary for the safety of the public or for proper completion of work.
- B. This Letter of Understanding does not relieve the parties hereto of liability due to negligence or of their rights and obligations pursuant to any applicable federal or state laws or regulations. This Letter of Understanding does not act as a waiver of the Department's or City's sovereign immunity or the Department's or City's rights to assert sovereign immunity as a defense against any action arising out of this Agreement.
- C. The parties expressly do not intend by execution of this Letter of Understanding to create in the public, or any member thereof, any rights as a third party beneficiary, or to authorize anyone not a party hereto to maintain a suit for any damages pursuant to the terms or provisions of this Letter of Understanding. In addition the parties understand and agree that this Letter of Understanding is not to be construed as an indemnification against third party claims.

In WITNESS WHEREOF, the parties sign and cause this Letter of Understanding to be executed.

Commonwealth of Virginia, Department of Transportation

By: _____
Charles A. Kilpatrick, Commissioner of Highways date

Signature of Witness

City of Lynchburg

By: _____
Bonnie Svrcek, City Manager date

Signature of Witness

Liberty University

By: _____
Jerry L. Falwell, President date

Signature of Witness

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 12, 2017**

AGENDA ITEM #: **9**

CONSENT:
ACTION: **X**

REGULAR: **X**
INFORMATION:

WORK SESSION:

CLOSED SESSION:
(Confidential)

ITEM TITLE: 2017 Edward Byrne Memorial Justice Assistance Grant (JAG)

KEY ELEMENTS:

___ Economic Development ___ Excellent Government ___ Natural and Built Environment **X** Safe Community ___ Vibrant Community

RECOMMENDATION: Following the required public hearing, adopt a resolution authorizing the submittal of an application for the 2017 Edward Byrne Memorial Justice Assistance Grant in the amount of \$41,936 with resources from an Edward Byrne Memorial Justice Assistance Grant to purchase law enforcement equipment for the Lynchburg Police Department, Lynchburg Sheriff's Office and the Office of the Commonwealth's Attorney.

SUMMARY: The City of Lynchburg is eligible to receive \$41,936 in Edward Byrne Memorial Justice Assistance Grant (JAG) funding. Funding will be utilized by the Lynchburg Police Department to purchase upgrades to the department's surveillance van (\$33,071). The Lynchburg Sheriff's Office will utilize funds to purchase six (6) M-4 patrol rifles to replace existing older units (\$4,515). The Office of the Commonwealth's Attorney will utilize funds to purchase two laptop computers with docking stations (\$4,350). Total equipment cost is \$41,936, which is fully reimbursable by the grant. No local matching funds are required.

PRIOR ACTION(S): No prior action

FISCAL IMPACT: None, no local match is required

CONTACT(S): Major K. Todd Swisher, 434-455-6154
Captain R.S Houck, 434-455-6177

ATTACHMENT(S): Resolution

REVIEWED BY: bms

RESOLUTION:

BE IT RESOLVED that the Lynchburg City Council approves the submittal of an application for the 2017 Edward Byrne Memorial Justice Assistance Grant in the amount of \$41,936 with resources from a Edward Byrne Memorial Justice Assistance Grant to purchase law enforcement equipment.

Introduced:

Adopted:

Certified:

Clerk of Council

112V