// An additional scheduled meeting of the Council of the City of Lynchburg was held on the 17th day of March, 2009, at 1:00 P.M., Council Chamber, City Hall, Bert Dodson, Jr., Vice President, presiding. The purpose of the meeting was to conduct a work session regarding the FY2010 Budget. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Johnson, 5

Absent: Perrow, Foster 2

// City Manager Kimball Payne and Deputy City Manager Bonnie Svrcek provided an overview regarding individual budgets within the following categories: General Government Administration, Judicial Administration, Public Safety, Public Works, Health and Welfare, Parks, Recreation and Cultural Services, Community Development, External Service Providers, Transfers/Non-Departmental Payments, Debt Service, Airport and Fleet.

// Council Member Johnson left the meeting at 1:31 p.m. during the presentation regarding the Financial Services Department, and returned to the meeting at 4:27 p.m. during the presentation regarding the Economic Development Department.

// During the budget discussion, Council Members raised several questions that required staff follow-up, i.e., (1) Public Works: Why is there an increase in Employee Benefits while salaries decreased? (2) Museums: Why did the cost of salaries and employee benefits increase? (3) External Service Providers: Provide the letter from the Martin Luther King, Jr. Lynchburg Community Council. (4) Human Resources: Why in comparing salaries and employee benefits from Actual FY2008 to Manager's Proposed FY2010 budget has the amount increased when the number of full-time employees has decreased? (5) Show a random same comparison of household real estate and personal property taxes to determine the net effect of the reassessment versus the applied personal property tax relief and devaluation of SUV's and pick-up trucks. (6) Council/Manager Offices: Explain Parking Management and related income. (7) Commonwealth Attorney Office: Why did salaries and employee benefits increase when the number of employees decreased? And (8) Fleet: Have the carryforward funds for Capital Outlay been exhausted? Council Members also asked staff to add the following items to "The List" for further discussion, i.e., Legislative Liaison position, Parking Division excluding parking enforcement, reduce Council pay to pre-July 1, 2008, level, marketing program, eliminate funding to the Lynchburg Neighborhood Development Foundation, closure of the Downtown Visitors Center, reduce Schools funding, reduce Reserve for Contingencies to $500,000, equalize the tax rate to $0.998, increase tax relief for the elderly, create a Volunteer Coordinator position, restore funding for the National League of Cities membership dues and the Mayor's Youth Council breakfast, restore two Police cadet position, utilize recruit school to fill early Fire Department retirements, compliance with the Lynchburg Regional Convention and Visitors Bureau contract, restore 3% employee pay cut, raise the Reserve for Contingencies to $1.2 million as required by policy, meet the Fund Balance Policy of 10%, reassign the DARE/School Resource Officers to the street, offer an early retirement incentive to reduce personnel costs, discuss employee salary cut versus employees paying for health benefits, other alternatives to employees pay cut, saving via consolidation of departments between City and School, Ivy Creek Park Development, reduce Downtown funding to $1.0.

million, and shut off the downtown fountain. Deputy City Manager Svrcek stated that information requested would be provided to City Council at the next work session.

// On motion of Council Member Johnson, 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., Community Development Advisory Committee pursuant to Section 2.2-3711(A)(1), Code of Virginia (1950), as amended:

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

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

// The meeting was adjourned at 5:25 p.m.

Clerk of Council

// A regular meeting of the Council of the City of Lynchburg was held on the 24th day of March, 2009, at 1:00 P.M., Council Chamber, City Hall, Joan F. Foster, President, presiding. The purpose of the meeting was to conduct a work session regarding several items. The following Members were present:

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

Absent: Dodson 1

// Vice Mayor Dodson arrived at 1:14 p.m.

// School Board Chair Julia Doyle along with Schools Superintendent Paul McKendrick and Schools Chief Financial Officer Beverly Padgett provided an overview regarding the Lynchburg City Schools FY 2009-2010 Operating Budget. Ms. Doyle's power point presentation included information regarding the Schools budget development process, operating revenue, operating expenditures, fiscal stimulus funding, and indicators of success. Ms. Doyle explained that this year's decision making process included input from staff, parents and the public, several public hearings, and involved considerable cause-effect discussions relative to recommended cuts and/or reductions in force. Ms. Doyle went on to say that the Schools are requesting level funding from the City and that the Schools operating budget reductions include the elimination of employee salary increases, the tuition assistance program, and student activity director stipends, the reduction of 68.5 positions, a reduction in school allotments, textbook purchases, workers compensation premium, drug testing to reflect random testing, and a reduction in Sonitrol monitoring program, in addition to reductions in the Central Office department funds, printing, postage and supplies. Ms. Doyle reviewed the restrictions associated with the funds from the American Recovery and Reinvestment Act and stated that the Schools are expecting to receive $2,892,748 -- salaries/$2,392,748 and Fort Hill School Renovations/$500,000. Schools officials responded to questions from Council Members regarding the federal stimulus package, City/Schools collaboration efforts, alternative education programs for the Fort Hill School, early retirement package for Schools employees, reduction in force policy, and the decline in School enrollment. Following discussion, Ms. Doyle agreed to provide City Council with the following information, i.e., (1) expenditures in fiscal year 2007 compared to those in fiscal year 2008, (2) data related to fund balance for the last three years, (3) per pupil allocations for 2006-08 and 2008-10, (4) a brief program description of the alternative education program for the proposed Fort Hill site, (5) the number of non-resident students, disaggregated by children of Lynchburg City Schools staff, students at the Virginia School of the Arts, and all other tuition paying students, and (6) projected staffing ratio of support staff to teachers.

// Airport Director Mark Courtney presented a power point presentation regarding recent activities at the Lynchburg Regional Airport. Mr. Courtney explained that the recent reduction in airline fares has resulted in an increase in the number of individuals using the Lynchburg Airport.

// City Manager Kimball Payne stated that last year the City was approached by the Secretary of Natural Resources asking the City to explore a wastewater reclaimed water project (wastewater reuse) with Rock Tenn. Mr. Payne explained that the reclaimed water would be used for Rock Tenn's process water in lieu of potable drinking water. Mr. Payne went on to say that a study was conducted to determine feasibility and based on the results, a project such as this does not appear to be viable due to the capital cost involved. Mr. Payne did note that there is a potential for economic stimulus money for this project, and that a water reclaimed project of this nature promotes sustainability; however, there are significant challenges that must be overcome of which all impacts are not yet known. Mr. Payne went on to say that future environmental benefits may be more significant as the reclaimed water system is possibly expanded and with expansion there is the potential for additional revenues and that staff would like to change its recommendation to deny participation in this project. Mr. Payne stated that since this is a green project that staff would like more time to explore its feasibility, with the understanding that if there are any costs to the City, that the project would need to come back to City Council for approval.

// City Manager Kimball Payne stated that last July the City received a letter from the Department of Housing and Urban Development (HUD) regarding a monitoring review of the City of Lynchburg Community Development Block Grant (CDBG) and HOME programs, and as a result of that review, HUD issued a monitoring report to the City on July 30, 2008, that contained thirteen findings, four concerns and twenty-eight comments. Director of Community Development Charlene Montford explained that the City reviewed the monitoring review report, consulted with subrecipients, gathered and updated data, and submitted a response to the Richmond HUD Office. Ms. Montford went on to say that the City has experienced compliance challenges with the administration of the CDBG and HOME programs during the period of the HUD review, and that the following internal controls have been put in place to strengthen the federal programs:

1) Program and financial policies and procedures;
2) A revised Citizen Participation Plan;
3) Enhanced Community Development Advisory Committee;
4) Training for the Community Development Advisory Committee;
5) Restructuring of the CDBG and HOME program allocation process;
6) Increased emphasis on compliance and monitoring; and
7) Mandatory training for non-profit agencies receiving and applying for federal funding.

Ms. Montford noted that after a thorough review of each finding, concern and comment by HUD, City staff has concluded that $1,389.43 of CDBG funds (Rebuilding Together Lynchburg) and $63,973.37 of HOME funds (Lynchburg Neighborhood Development Foundation) have been expended for activities that are not in compliance with the Code of Federal Regulations and should be reimbursed to the City's U.S. Treasury account with non federal funds, representing a total of $65,362.80. Ms. Montford stated that discussions with the two agencies continue on how and when these funds will be reimbursed, but if these funds are not paid by the agencies, then the City will need to reimburse HUD. In response to questioning, Ms. Montford stated that staff has not completed monitoring all of the recipients, and that HUD is still looking at one finding and one concern and that there is a potential for paying back to HUD some additional funds. Council Member Michael Gillette, Chair of the Community Development Advisory Committee (CDAC), stated that CDAC has discussed ways of moving forward with the CDBG and HOME Programs and indicated that unless Council advises differently, CDAC would like to move forward in very specific ways:

(1) CDAC is not going to consider giving money to organizations that are currently out of compliance, (2) as soon as an organization is back in compliance, CDAC will consider them with no prejudice against them for past non compliance, (3) we want City staff to finish monitoring the other recipients so that we don't repeat this cycle and we want to be sure that there is a clean monitoring report from City staff before we give out any new money, and (4) CDAC understands that we cannot give out awards to thirty different organizations and expect City staff to be able to do their job and that we accept the fact that we need to radically overhaul the handling of those monies. Council Members reached consensus for Council Member Gillette, as Chair of CDAC, to let the Committee know that City Council agrees with the direction that they are proposing for the CDBG and HOME Programs.

// City Manager Kimball Payne stated that the request for a resolution to authorize submittal of an application for $1,588,816 to the Department of Housing and Community Development (DHCD) for Virginia Community Development Block Grant Neighborhood Stabilization Program funds for the Diamond Hill and Early Street Neighborhood Projects needs to be pulled from the agenda. Mr. Payne explained that certain procedural requirements have not been met and therefore City Council cannot take action regarding this item. Mr. Payne did note that staff believes that these are good projects and if all of the procedural requirements can be met and grant funds become available later on this year, then staff will bring this request back to City Council for action.

// The meeting was adjourned at 5:00 p.m.

Clerk of Council

// A regular meeting of the Council of the City of Lynchburg was held on the 24th day of March, 2009, at 5:00 P.M. in the Council Chamber, City Hall, Joan F. Foster, President, presiding. Council Member Gillette gave the Invocation, followed by the Pledge of Allegiance. The following Members were present:

Present: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster 7

Absent: 0

// Mayor Foster recognized Jimysha Brown, a member of the Mayor's Youth Council.

// Copies of the minutes of the March 10 (2 meetings), 2009 meetings, having been previously furnished Council, reading was dispensed with, and on motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote approved the minutes as presented:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster 7

Noes: 0

// In the matter of Finance – Bonds/Schools - General, Resolution #R-09-013 amending the FY 2009 School Capital Projects Fund Budget and appropriating $16,000 for costs associated with the issuance of General Obligation School Bonds, laid over from the March 10, 2009 meeting, was again presented and read. In response to Council questioning, City Manager Kimball Payne acknowledged that these funds would only be expended if it is necessary to proceed with the issuance of the School bonds. On motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster 7

Noes: 0

// In the matter of Juvenile Services - General, Resolution #R-09-014 amending the FY 2009 Comprehensive Services Act (CSA) Fund budget and appropriating $898,500, with $652,674 reimbursement, to fund a projected deficit in the CSA fund in FY 2009, laid over from the March 10, 2009 meeting, was again presented and read, and on motion of Council Member Garrett, seconded by Council Member Gillette, Council by the following recorded vote adopted the Resolution:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster 7

Noes: 0

// In the matter of City Code, City Council Report #4 regarding amending the City Code relating to the recovery of the costs incurred by the City for boarding impounded animals was considered. City Attorney Walter Erwin stated that from time to time, Lynchburg's Animal Wardens have to seize animals that have been abandoned or abused by their owners or have been alleged to be dangerous or vicious dogs and that these animals are boarded at the Lynchburg Animal Shelter pending the proper disposition of the animals. Mr. Erwin explained that if such animals have to remain at the Animal Shelter for more than thirty days, the City can incur significant costs for boarding the animals, and the State Code allows a locality to adopt an ordinance requiring the owner of an impounded animal to post a bond to cover the costs incurred by the locality for boarding the animal. Mr. Erwin went on to say that the Animal Warden recommends that Lynchburg adopt such an ordinance. Council Member Helgeson expressed concern regarding an owner having to pay these costs if the charges are subsequently dismissed by the Courts or if the owner is found not guilty. Council Member Perrow made a motion, seconded by Council Member Gillette, to postpone this item until the April 14 meeting. City Attorney Erwin stated that the ordinance could be rewritten to provide that the owner is not required to pay the costs of boarding the animal if no charges are placed against the owner, or if the charges are subsequently dismissed or if the owner is found not guilty. Council Member Perrow withdrew his motion; Council Member Gillette withdrew his second to the motion. Council Member Perrow requested that the ordinance be rewritten to include language regarding an owner not having to pay these costs if the charges are subsequently dismissed by the Courts or if the owner is found not guilty and to bring the revised ordinance back to Council for further discussion at the April 14 meeting.

// In the matter of City Code, City Council Report #5 was considered. City Attorney Walter Erwin provided a brief summary regarding the request. On motion of Council Member Johnson, seconded by Council Member Perrow, Council by the following recorded vote adopted Ordinance #0-09-015, as presented, to repeal outdated Sections of the City Code dealing with housing and hygiene:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster 7

Noes: 0

// During roll call, and in response to Council Member Garrett's inquiry, City Manager Kimball Payne stated that he would check to see if the $440,000 from the Schools Text Book Reserve could be used to rescind the furloughs imposed on City employees during the remainder of the current fiscal year. Council Member Garrett also mentioned the upcoming Annual March on Litter. Vice Mayor Dodson requested a copy of the Economic Development Authority Fifth Street Business Assistance Plan and asked the City Attorney to contact the State Board of Elections to determine if they have come up with a clear definition of "domicile" for student voters. Mayor Foster reminded everyone regarding the Amazing Book Race – Lynchburg 2500.

// On motion of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote elected to hold a closed meeting to consider appointments to Boards and Commissions, i.e., Equalization Board and Community Development Advisory Committee and for consultation with legal counsel and briefings by staff members concerning probable litigation because such consultation and briefing in an open meeting would adversely affect the negotiating or litigating posture of the City, pursuant to Section 2.2-3711(A) (1) and (7), respectively, of the Code of Virginia, 1950, as amended:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster 7

Noes: 0

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

// Council Member Gillette 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 Johnson, and Council by the following recorded vote adopted the motion:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster	7
Noes:	0

// In the matter of Appointments, and on nomination of Council Member Gillette, seconded by Council Member Perrow, Council by the following recorded vote appointed Linda S. Sullivan to serve on the Community Development Advisory Committee for a term to expire December 31, 2012:

Ayes: Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster	7
Noes:	0

// The meeting was adjourned at 5:55 P.M.

Clerk of Council

// An additional scheduled meeting of the Council of the City of Lynchburg was held on the 31st day of March, 2009, at 7:00 P.M., in the Council Chamber, City Hall, Joan F. Foster, President, presiding. The purpose of the meeting was to conduct public hearings regarding the proposed real property tax increase, the FY2010 Proposed Budget and the 2010-2014 Capital Improvements Program. The following Members were present:

Present:	Dodson, Garrett, Gillette, Helgeson, Johnson, Perrow, Foster	7
Absent:		0

// City Manager Kimball Payne provided an overview regarding the proposed real property tax increase, explaining that the lowered rate necessary to offset increased assessment would be $0.998 per $100 of assessed value.

// A public hearing was held regarding the "Notice of Proposed Real Property Tax Increase." Mayor Foster stated that the public hearing is required by State law because the total assessed value of real property, excluding additional assessments due to new construction or improvements to property, exceeds last year's total assessed value of real property by 5%. Twelve individuals questioned the recent high reassessment of their properties and asked that City Council reduce the current real property tax rate to significantly offset the increase. Some of those individuals asked that the tax rate be reduced to $0.99 to make the increase in assessments revenue neutral, while others stated that they are on fixed incomes or disability and that the increases in their real estate taxes would cause them severe financial difficulties. Several people suggested the City could offset the lowered tax rate by delaying further work in areas like downtown revitalization. The Clerk also read into the record a letter expressing concern regarding the increase in the assessment on their home. There was no one else present who wished to speak, and the public hearing was closed.

// City Manager Kimball Payne provided an overview regarding the FY2010 Proposed Budget and the 2010-2014 Capital Improvements Program.

// A public hearing was held regarding the Proposed Fiscal Year 2010 Budgets of the City Government, Public Schools, Water, Sewer, Solid Waste, Airport and Other Funds, and the Proposed 2010-2014 Capital Improvements Program. Twenty-nine individuals spoke regarding the FY2010 Proposed Budget and the 2010-2014 Capital Improvements Program. Multiple people asked City Council not to close the downtown library, expressing concern that closing the downtown branch would negatively impact thousands of people, including families and low-income residents, and argued that the repercussions of closing the downtown library would far outweigh the expected savings of $81,000 a year. Others asked that the Law Library, which is contained in the Downtown Branch Library, remain downtown and open to the public. Several people spoke in support for the Schools, asking that City Council not reduce the requested level support to the Schools. One individual requested that the Schools stop the free tuition program while one other individual asked that the City not provide funding for the downtown fountain. Some speakers expressed support for the Ivy Creek Park, while others asked City Council to retain the School crossing guards, positions that are slated for elimination under the budget proposal. Several individuals urged City Council to provide funding to the Transit Company to keep the buses running, citing employment and medical needs of the people riding the buses. Several individuals asked City Council to continue to provide funding for CASA of Central Virginia, the Lynchburg Life Saving Crew, and Lynchburg Neighborhood Development Foundation. There was no one else present who wished to speak, and the public hearing was closed.

// The meeting was adjourned at 9:14 p.m.

Clerk of Council

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 4

CONSENT: **X** REGULAR: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Areva Office Building Sewer & Water Availability Fees**

RECOMMENDATION

Establish availability fees for sewer and water service for the new Areva Office Building as follows:

Sewer – 100,000 square feet @ 0.0965/sqft = $ 9,650.00
Water – 100,000 square feet @ 0.0611/sqft = $ 6,110.00
Total = $15,760.00

SUMMARY:

According to City Code Sec. 34-4 and Sec. 39-27, the sewer and water availability charges for floor space in excess of 100,000 square feet are to be determined by City Council. The amounts, apply the rate of the highest listed square footage to the approved site plan square footage. This is the same method used in 2006 for Millside Centre off of Graves Mill Road.

PRIOR ACTION(S):

Physical Development Committee on March 24, 2009

FISCAL IMPACT:

Additional revenues as noted for the City's Sewer and Water Funds.

CONTACT(S):

Lee Newland, Engineering Division Director, 455-3947
Charlene Montford, Community Development Director, 455-3902

ATTACHMENT(S):

Resolution
Copy of City Code Sections

REVIEWED BY: lkp

RESOLUTION:

Whereas Areva, on Old Forest Road, has requested sewer and water service for the new Office Building development and;

Whereas the code of the City of Lynchburg specifies that City Council will set the availability fees for such services and;

Whereas these fees have been calculated using prorated amounts;

Now, therefore BE IT RESOLVED that the fees will be $9,650 for the sewer and $6,110 for the water availability to the new Office Building at 3315 Old Forest Road.

Adopted:

Certified: ______________________________
Clerk of Council

025L

Chapter 34

SEWERS*

Art. I. In General, §§ 34-1-34-30
Art. II. Repealed, §§ 34-31-34-48
Art. III. Industrial Wastes and Pretreatment, §§ 34-66--34-78

ARTICLE I. IN GENERAL

Sec. 34-1. Definitions.

For the purposes of this chapter, all sewers running in the streets or alleys of the city or through private property that are designed or constructed to furnish sewer connection for more than one (1) lot shall be regarded as main or public sewers, provided that the sewer is built to city standards on a recorded easement or previously recognized on city sewer maps. All sewers leading from the main or public sewers to the property on either side shall be regarded as building sewers. A sewer serving two (2) or more buildings, constructed and paid for by property owners and not directly controlled by the city shall be regarded as a private sewer. (Code 1959, § 29-1)

Sec. 34-2. Construction and maintenance by city generally.

The city shall lay, construct and maintain all main or public sewers and connections with approved clean-outs and shall lay and construct all building sewers from their connection with the main or public sewers to the clean-out located at the property line of the street adjacent to the property into which the building sewer leads. (Code 1959, § 29-2; Ord. No_ 0-87-265, § 1, 11-24-87, eff. 1-1-88)

Sec. 34-3. Sewer connections to premises within the city; extensions of mains.

(a) A separate connection shall be required for each subdivision lot upon which a building is constructed. Only one (1) sewer service connection will be required where multiple lots are used to construct a building.

(b) The city will grant the right to use the sewerage system and will extend sewer mains where in the opinion of council it is practical and economically feasible under the following methods:

(1) Sewer mains installed by the city in the preservation of the health and general welfare of the citizenry for reasons of public necessity,

(2) Sewer mains installed in response to citizen request when evidenced by petition,

(3) Sewer mains installed in conjunction with industrial development and/or residential subdivision development. (Code 1959, § 29-6.2; Ord. of 6-15-77; Ord. No. 0-87-265, § 1, 11-24-87, eff. 1-1-88.)

Sec. 34-4. General terms, conditions, and provisions applicable to sewer mains extended or installed with city approval.

(a) Title to any sewer main extensions or service connections within the public right-of-way or requested easements shall vest in the city upon the completion of construction regardless of method of financing.

(b) Where public sewer systems are already installed, replacement or enlargement of the sewer pipes, when deemed necessary by the city, shall be made at the sole cost and expense of the city.

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*Cross references-Department of public works, § 2-225 et seq.; building, Ch. 11; housing and hygiene, Ch. 22; nuisances, Ch. 26; water, Ch. 39.

State law reference-Public utilities generally in connection with sewers, Code of Virginia, § 15.1-292 et seq.

(c) Whenever any person owning property along the line of any sewer main in the city which has been extended, installed or purchased by the city in the preservation of the health and general welfare of the public, or by petition, but without the participation of him or a previous owner of this property, shall desire the sewer service from said main to his premises, he shall be required to do the following:

(1) Fulfill the criteria as outlined under subsection (g) hereof, involving sewer main connections;

(2) Make an additional payment of an availability charge, the purpose of which is to defray in part the cost of providing outfall lines, pumping stations and waste treatment facilities. The availability charges are as follows:

a. Single-family residence:

(i) Where fifty (50) to fifty-nine (59) per cent of the potential customers ofthe project as determined by the city engineer sign petitions requesting such project, the charge shall be nineteen hundred fifty dollars ($1,950.00) per connection, for each such petitioner.

(ii) Where sixty (60) to sixty-nine (69) per cent of said customers sign such petitions, the charge shall be eighteen hundred fifty dollars ($1,850.00) per connection, for each such petitioner.

(iii) Where seventy (70) to seventy-nine (79) per cent of said customers sign such petitions, the charge shall be seventeen hundred fifty dollars ($1,750.00) per connection, for each such petitioner.

(iv) Where eighty (80) to eighty-nine (89) per cent of said customers sign such petitions, the charge shall be sixteen hundred and seventy-five dollars ($1,675.00) per connection, for each such petitioner.

(v) Where ninety (90) to ninety-four (94) per cent of said customers sign such petitions, the charge shall be fifteen hundred and fifty dollars ($1,550.00) per connection, for each such petitioner.

(vi) Where ninety-five (95) to one hundred (100) per cent of said customers sign such petitions, the charge shall be fourteen hundred and fifty dollars ($1,450.00) per connection, for each such petitioner.

b. Multifamily structures and mobile home parks where a single connection is made:

(i) For the first five (5) units, nine hundred and eighty dollars ($980.00) each.

(ii) For the second five (5) units, seven hundred and thirty dollars ($730.00) each.

(iii) For all additional units, four hundred and ninety dollars ($490.00) each.

Separate individual connections to each unit of a multifamily structure or mobile home park will require the same availability charge for each unit as a single-family residential unit. Separate connections serving more than one unit will require the availability charge as specified above in Section 34-4(c)(2)b.

c. Commercial service: Up to two thousand (2,000) square feet of floor space, or if a maximum four (4) inch diameter building sewer is used, the charge shall be nineteen hundred and fifty dollars ($1,950.00). If a connection sewer in excess of four (4) inches in diameter is required, the following charges shall apply:

Availability Charge:	Floor Space
$1,950.00	0 to 2,000 square feet
$2,440.00	2,001 to 10,000 square feet
$3,640.00	10,001 to 20,000 square feet
$6,110.00	20,001 to 35,000 square feet
$9,650.00	35,001 to 99,999 square feet
As determined by city council	100,000 square feet or greater

All availability charges for institutional service shall be as determined by city council on a case-by-case basis.

d. Just prior to the conclusion of each fiscal year, the city manager or his designee shall review all availability charges and connection fees, and recommend to council appropriate charges.

e. All extension agreements and service requests not included in original petitions shall be subject to the maximum prevailing availability charges and connection fees which are in effect at the time such agreement or request is approved by council, irrespective of the number of original petitioners.

(d) Whenever any property abutting a street is without a city sewer main, the owner desiring city sewer service shall be required to sign a petition for extension of sewer mains.

(1) Single-family and multifamily structures and mobile home parks: Upon receipt of said petition signed by at least fifty (50) per cent of the owners representing properties to be served by the sewer main extension, the city shall prepare an estimate for the installation of a sewer main.

Such estimate shall be prepared on the basis that the location, character and size of the extension, and the plans and specifications for the extension, and the materials used in the installation, replacement, maintenance and repair of the extension shall be as specified by the city.

(2) Commercial service: Where the council has determined the petitioned project to be economically feasible to the city, the availability charges set forth in Section 34-4(c)(2)c. shall be applicable.

Where the council has determined that the petitioned project is not economically feasible to the city, the cost of the project will be apportioned by council between the city and the benefitted property owners. The entire non-city portion shall be apportioned by council between the petitioning property owners as their availability charge. Any nonsigning property owner later petitioning for service shall pay the same proportioned share for each connection as the original signers.

(e) The owner or occupant of a single-family dwelling or a two-family dwelling that did not have access to city sewer lines prior to the extension of the line, may make arrangements to pay the availability charges in paragraph (c)(2)(a) and the connection charges in paragraph (g) of this section in installments. The city's billings and collections division may enter into a water and sewer service availability fee installment agreement with the owner or occupant of a single-family dwelling or a two-family dwelling under the following conditions:

(1) Only an owner or occupant that actually connects their dwelling to the city's sewer system is eligible to enter into a water and sewer service availability fee installment agreement.

(2) The availability and connection charges and interest must be paid in full within one year.

(3) Interest at the rate of five (5) percent per annum or the interest rate the city was charged for its most recent bond issue, whichever rate of interest is higher, will be charged on the unpaid balance of the availability and connection charges.

(4) Payments will be made on such dates and in such amounts as the billings and collections division, in its discretion, determines are appropriate.

(5) The unpaid balance of the availability and connection charges may be paid in full at any time without any prepayment penalty.

(6) The water and sewer service availability fee installment agreement cannot be assigned or assumed without the prior written consent of the billings and collections division.

(7) If the owners or occupants fail to make payments in accordance with the water and sewer service availability fee installment agreement, the city may discontinue water service to the property until all arrears for availability and connection fee installment payments due the city are paid in full.

(d) Property owners and tenants may continue to use private wells or other alternative water supply facilities for irrigation, agricultural and landscaping purposes.

(e) Any person, firm, partnership, corporation or other legal entity that violates any of the provisions of this section shall be guilty of a class 1 misdemeanor. Each day such violation continues shall constitute a separate offense. (Ord. No. 0-03-171, 10-14-03)

Secs. 39-18-39-25. Reserved.

ARTICLE II. CONNECTIONS WITH CITY WATER MAINS

DIVISION 1. GENERALLY

Sec. 39-26. Extension of mains-When authorized.

The city will grant the right to use water from its distribution system and will extend water mains where in the opinion of council it is practical and economically feasible under the following methods:

(a) Water mains installed by the city in the preservation of the health and general welfare of the citizenry for reasons of public necessity,

(b) Water mains installed in response to citizen request when evidenced by petition,

(c) Water mains installed in conjunction with industrial development and/or residential subdivision development. (Ord. of 10-27-75, § 32-16.1; Ord. of 6-15-77)

Sec. 39-27. General terms, conditions and provisions applicable to water mains extended or installed with city approval.

(a) Title to any water main extensions or service connections within the public right-of-way or requested easements shall vest in the city upon the completion of construction regardless of method of financing.

(b) Where public water systems are already installed, replacement or enlargement of the water pipes, when deemed necessary by the city, shall be made at the sole cost and expense of the city.

(c) Whenever any person owning property along the line of any water main in the city which has been extended, installed or purchased by the city in the preservation of the health and general welfare of the public, or by petition, but without the participation of him or a previous owner of this property, shall desire the water service from said main to his premises, he shall be required to do the following:

(1) Fulfill the criteria as outlined under subsection (g) hereof, involving water main connections

(2) Make an additional payment of an availability charge, the purpose of which is to defray in part the cost of providing transmission mains, booster pumping and distribution storage facilities. The availability charges are as follows:

a. Single-family residence:

1. Where fifty (50) to fifty-nine (59) per cent of the potential customers of the project as determined by the city engineer sign petitions requesting such project, the charge shall be one thousand two hundred twenty dollars ($1,220.00) per connection, for each such petitioner.

2. Where sixty (60) to sixty-nine (69) per cent of said customers sign such petitions, the charge shall be one thousand one hundred sixty dollars ($1,160.00) per connection, for each such petitioner.

3. Where seventy (70) to seventy-nine (79) per cent of said customers sign such petitions, the charge shall be one thousand one hundred dollars ($1,100.00) per connection, for each such petitioner.

4. Where eighty (80) to eighty-nine (89) per cent of said customers sign such petitions, the charge shall be one thousand forty dollars ($1,040.00) per connection, for each such petitioner.

5. Where ninety (90) to ninety-four (94) per cent of said customers sign such petitions, the charge shall be nine hundred eighty dollars ($980.00) per connection, for each such petitioner.

6. Where ninety-five (95) to one hundred (100) per cent of said customers sign such petitions, the charge shall nine hundred twenty dollars ($920.00) per connection, for each such petitioner.

b. Multifamily structures and mobile home parks where a master meter is used:

1. For the first five (5) units, six hundred ten dollars ($610.00) each.

2. For the second five (5) units, four hundred sixty dollars ($460.00) each.

3. For all additional units, three hundred ten dollars ($310) each.

4. Separate individual connections to each unit of a multifamily structure or mobile home park will require the same availability charge for each unit as a single-family residential unit. Separate connections serving more than one (1) unit will require the availability charge as specified above in Section 39-27(c)(2)b.

c. Commercial service: Up to two thousand (2,000) square feet of floor space or if a meter one (1) inch in diameter or smaller is used, the charge shall be one thousand two hundred twenty dollars ($1,220.00). If a meter in excess of one (1) inch in diameter is required, the following charges shall apply:

Availability charge	Floor space
$1,220.00	0 to 2,000 square feet
$1,530.00	2,001 to 10,000 square feet
$2,290.00	10,001 to 20,000 square feet
$3,820.00	20,001 to 35,000 square feet
$6,110.00	35,001 to 99,999 square feet
As determined by city council	100,000 square feet or greater

All availability charges for institutional service shall be as determined by city council on a case-by-case basis.

d. Just prior to the conclusion of each fiscal year, the city manager or his designee shall review all availability charges and connection fees, and recommend to council appropriate changes.

e. All extension agreements and service requests not included in original petitions shall be subject to the maximum prevailing availability charges and connection fees which are in effect at the time such agreement or request is approved by council, irrespective of the number of original petitioners.

(d) Whenever any property abutting a street is without a city water main, the owner desiring city water service shall be required to sign a petition for extension of water mains.

(1) Single-family and multifamily structures and mobile home parks:

a. Upon receipt of said petition signed by at least fifty (50) per cent of the owners representing properties to be served by the water main extension, the city shall prepare an estimate for the installation of a water maIn.

b. Such estimate shall be prepared on the basis that the location, character and size of the extension and the plans and specifications for the extension and the materials used in the installation, replacement, maintenance and repair of the extension shall be as specified by the city.

(2) Commercial service:

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 5

CONSENT: **X** REGULAR: CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Rescind School Capital Projects Fund Appropriation and Transfer funds from the General Fund Designated Fund Balance for Roofing, Paving, HVAC, and ADA Projects**

RECOMMENDATION:
Adopt a resolution to amend the FY 2009 School Capital Projects Fund budget and rescind $1,316,510 in prior appropriations as well as transfer $162,010 from the FY 2009 General Fund Designated Fund Balance to the Schools Capital Projects Fund with resources of $137,918 from the FY 2008 Return of Schools Fund Balance and $24,092 from the Schools Reserve for Future Expenditure Needs for roofing, paving, HVAC, and ADA projects.

SUMMARY:
The FY 2009 budget for the Schools Capital Projects Fund included $1,478,520 anticipated to be available from Lynchburg City Schools (LCS) ending fund balance for FY 2008. The ending fund balance for FY 2008 was actually $137,918.

LCS has expended and encumbered $162,010 from the anticipated ending fund balance for roofing projects, paving projects, and School administration HVAC and ADA projects.

LCS is requesting the following:
1. Rescind $1,316,510 in appropriations in the Schools Capital Projects Fund.
2. Transfer from the General Fund Designated Fund Balance $137,918 from the FY 2008 Return of Schools Fund Balance and $24,092 from the Schools Reserve for Future Expenditure Needs.

PRIOR ACTION(S):
Adopted FY 2009 Operating Budget and FY 2009 – 2013 Capital Improvement Program
Finance Committee February 24, 2009
Finance Committee March 24, 2009

FISCAL IMPACT:
Decrease appropriations in the Schools Capital Projects Fund and transfer funds from the General Fund Designated Fund Balance for Schools to the Schools Capital Projects Fund as noted above.

CONTACT(S):
Dr. Paul McKendrick, Superintendent of Schools, 522-3700
Beverly Padgett, Chief Financial Officer, 522-3700

ATTACHMENT(S):
Resolution
School Board Meeting Minutes, December 16, 2008

REVIEWED BY: lkp

RESOLUTION:
BE IT RESOLVED THAT the FY 2009 School Capital Projects Fund budget is amended and $1,316,510 in prior appropriations is rescinded, and

BE IT ALSO RESOLVED THAT $162,010 is transferred from the FY 2009 General Fund Designated Fund Balance to the School Capital Projects Fund with resources of $137,918 from the FY 2008 Return of School Fund Balance and $24,092 from the Reserve for Future Expenditure Needs for roofing, paving, HVAC, and ADA projects.

Adopted:

Certified: ________________________________
Clerk of Council

033L

Lynchburg City School Board
Regular Meeting
December 16, 2008

BOARD
MEMBERS
PRESENT:

Julie P. Doyle, Chairman
Thomas H. Webb, Vice Chairman
Keith R. Anderson
Mary Ann Barker
Albert L. Billingsly
Regina T. Dolan-Sewell
Leslie J. Faircloth
Darin L. Gerdes
Treney L. Tweedy
Natasha N. Chowdry, Student Representative Pro Tem, Heritage High School

BOARD
MEMBERS
ABSENT:

Pamela F. Gilmer, Student Representative, E. C. Glass High School

ADMINISTRATION
PRESENT:

Paul McKendrick, Superintendent
Roger L. Roberts, Deputy Superintendent
Stephen C. Smith, Assistant Superintendent of Curriculum and Instruction
Beverly A. Padgett, Chief Financial Officer
William A. Coleman, Director of Secondary Education
Leigh G. Forrester, Public Information Officer
Merle P. Herndon, Director of Professional Development and School Business Partnerships
Michael K. Rudder, Director of Elementary Education
Gregory P. Sullivan, Director of Information Technology
Edward R. Witt, Jr., Director of Facilities and Transportation
Wendie L. Summers, Recording Secretary/Clerk

MEDIA
PRESENT:

Annie McCallum, *The News & Advance*

Agenda
Items:

A-1. Notice of Closed Meeting
A-2. Certification of Closed Meeting
B.1 Public Comments
C. Consent Agenda
D. Student Representative Comments
E-1. Legislative Positions: 2008-09
F-1. Fund Transfer
F-2. School Operating Budget
F-3. Leave/Purchase Resolution
F-4. School Capital Projects Funds
F-5. Administrative Regulation 7-37: Dress and Appearance
G. Superintendent's Comments
H. Board Comments
I. Informational Items
J. Adjournment

The Lynchburg City School Board met for its regular meeting at 5:03 p.m. in the Board Room at the School Administration Building. Ms. Doyle opened the meeting and requested that those in attendance stand and recite *The Pledge of Allegiance.*

A-1. Notice of Closed Meeting

Upon MOTION by Rev. Anderson, SECONDED by Dr. Gerdes, the school board convened a closed meeting at 5:04 p.m. pursuant to the Code of Virginia §2-2.3711 (A) (1) to discuss a specific personnel matter.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes

No Votes: None

Abstentions: None

Mrs. Tweedy arrived at 5:30 p.m.

A-2. Certification of Closed Meeting

Upon MOTION by Rev. Anderson, SECONDED by Mr. Billingsly, the school board reconvened in open session at 5:42 p.m.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

Upon MOTION by Mr. Faircloth, SECONDED by Rev. Anderson, the school board approved by roll call vote the following Certification of Closed Meeting:

The Lynchburg City School Board certifies that, in the closed meeting just concluded, nothing was discussed except the matters specifically identified in the motion to convene in a closed meeting and lawfully permitted to be so discussed under the provisions of the Virginia Freedom of Information Act cited in that motion.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

Upon MOTION by Mrs. Barker, SECONDED by Mr. Billingsly, the school board approved the addition of items F-4. School Capital Projects Funds and F-5. Administrative Regulation 7-37: Dress and Appearance to its school board meeting agenda.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

B-1. Public Comments

In accordance with School Board Policy 1-41: Public Participation, the school board welcomes requests and comments as established in the guidelines within that policy. Individuals who wish to speak before the school board shall have an opportunity to do so at this time.

Ms. Karen Roebuck spoke before the school board asking that charges for school lunches be eliminated and that a free basic lunch be available for all students in public education.

C. Consent Agenda

Upon MOTION by Rev. Anderson, SECONDED by Mr. Webb, the school board approved the school board meeting minutes of November 13, 2008 (Special Meeting), and November 18, 2008 (Study Session), and School Board Policy 2-15.1: School Visitors with Service Animals.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

(SEE SCHOOL BOARD DOCUMENT FILE, MEETING OF DECEMBER 16, 2008, EXHIBIT “A,” FOR A COPY OF THE CONSENT AGENDA ITEMS.)

D. Student Representative Comments

Miss Natasha N. Chowdry, student representative pro tem for Heritage High School, provided the school board with information about the events and activities occurring at her school.

E-1. Legislative Positions: 2008-09

The Lynchburg City School Board reviewed its legislative positions for 2008-09 during its meeting on December 2, 2008. The school administration has made modifications to the legislative positions as directed by the school board. The school administration now requests that the school board approve these legislative positions so that they can be forwarded to state legislators.

Upon MOTION by Mr. Faircloth, SECONDED by Mr. Webb, the school board approved the legislative positions for 2008-09.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Mrs. Tweedy

No Votes: Dr. Gerdes

Abstentions: None

(SEE SCHOOL BOARD DOCUMENT FILE, MEETING OF DECEMBER 16, 2008, EXHIBIT “B,” FOR A COPY OF THE LEGISLATIVE POSITIONS FOR 2008-09.)

F-1. Fund Transfer

The accounting firm of Brown, Edwards & Company, LLP, recently completed its annual audit of the school division’s financial statements and other business related activities for the fiscal year that ended June 30, 2008. One of the firm’s findings noted that the school division’s expenditures “exceeded the final budget…[by] $240,000.” Coupled with that, the audit indicated that there was a shortfall in projected revenue for the fiscal year by $200,000. Thus, the school division expenditures exceeded the final budget by more than $440,000.

The superintendent met with the city manager on December 5, 2008, to discuss this matter and to find ways to resolve it so that the school division would realize a balanced budget for the aforementioned fiscal year. As a result of those discussions, the school administration is recommending that the school board approve the transfer of $440,000 from one of the school division’s reserve accounts, Textbooks, which has a balance of $1.5 million. That textbook reserve would then have a balance of $1.06 million.

To ensure that this matter does not recur, the school administration has enacted strategies that would make certain that the school division has funds for all planned expenditures, to include, but not be limited to, making reductions in the 2008-09 budget. Such reductions should provide a reserve, some of which can be used to replace the funds taken from the Textbook Reserve account.

Upon MOTION by Mr. Billingsly, SECONDED by Rev. Anderson, the school board requested that the Lynchburg City Council allow the school board to transfer $440,000 from the school division’s Textbook Reserve account to the Contingency Fund Reserve Account.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

F-2. School Operating Budget: 2009-10

During this presentation, the school administration had hoped to provide information regarding the governor’s proposed budget for 2009-10; however, that information will not be available until December 17, 2008. At this point, it appears that funding received from the state will be at least five percent less than funding received last year. The school administration will provide additional information to the school board at its meeting on January 6, 2009. Following further discussion, the school board also scheduled a study session for January 12, 2009, as it will be necessary for the school administration to forward its proposed request for funding to the city manager for the 2009-10 school operating budget by January 15, 2009.

F-3. Lease/Purchase Resolution

The 2008-09 operating budget includes funds for $500,000 for lease/purchase financing for the acquisition of school buses and $500,000 for lease/purchase financing for technology. On October 17, 2008, Lynchburg City Schools issued a request for proposals (RFP) to qualified firms for the purpose of acquiring competitive bids for this service. A total of four firms responded to the RFP.

An evaluation team, consisting of members of school administration, reviewed the proposals. The RFP award was made to SunTrust Bank.

In order to finalize the transaction, it is necessary for the school board to adopt a resolution in support of the lease/purchase agreement. The proposed resolution appeared as an attachment to the agenda report.

Upon MOTION by Mr. Billingsly, SECONDED by Dr. Gerdes, the school board adopted the lease/purchase resolution in support of the lease/purchase financing proposed by SunTrust Bank for the purchase of school buses and technology equipment.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

(SEE SCHOOL BOARD DOCUMENT FILE, MEETING OF DECEMBER 16, 2008, EXHIBIT “C,” FOR A COPY OF THE LEASE/PURCHASE AGREEMENT.)

F-4. School Capital Projects Fund

The FY2009 budget for the School Capital Projects fund included $1,478,520 from Lynchburg City Schools ending fund balance for FY2008. The ending fund balance for FY2008 was $137,918.

The school division has expended and encumbered $162,010 from the anticipated ending fund balance for roofing projects, paving projects, and HVAC and ADA projects for the School Administration Building.

The school administration requests that the school board approve the following items:

1. Rescind $1,316,510 in appropriations in the School Capital Projects Fund.
2. Transfer from the General Fund Designated Fund Balance $137,918, from the FY2008 Return of School Fund Balance, and $24,092 from the Reserve for Future Expenditure Needs.

It was explained that the school administration will provide the school board with a six-month report of the current budget revenues and expenditures to ensure that the school operating budget accounts are within budgetary limits. Additionally, the school administration will hire an outside consultant to review accounts for the past three years. The consultants findings will be provided to the school board at its meeting on January 20, 2009. The school board will also provide this information to the city council at its work session on January 27, 2009.

Upon MOTION by Mr. Faircloth, SECONDED by Mr. Webb, the school board approved the request to rescind $1,316,510 in appropriations in the School Capital Projects Fund and transfer the General Fund Designated Fund Balance $137,918 from the FY2008 Return of School Fund Balance and $24,092 from the Reserve for Future Expenditure Needs.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Mrs. Tweedy

No Votes: Dr. Gerdes

Abstentions: None

F-5. Administrative Regulation 7-37: Dress and Appearance

The Lynchburg City School Board adopted changes to Administrative Regulation 7-37: Dress and Appearance, effectively implementing an academic dress code for secondary students. Since its implementation, the administrations at the two high schools, with assistance of members of the central office administration team, have found it necessary to provide specific details regarding some of the guidelines.

The proposed revisions to the administrative regulation appeared on the attachment.

Upon MOTION by Dr. Gerdes, SECONDED by Mrs. Tweedy, the school board approved the revisions to Administrative Regulation 7-37: Dress and Appearance.

Yes Votes: Ms. Doyle, Mr. Webb, Rev. Anderson, Mrs. Barker, Mr. Billingsly, Dr. Dolan-Sewell, Mr. Faircloth, Dr. Gerdes, Mrs. Tweedy

No Votes: None

Abstentions: None

(SEE SCHOOL BOARD DOCUMENT FILE, MEETING ON DECEMBER 16, 2008, EXHIBIT "D," FOR A COPY OF ADMINISTRATIVE REGULATION 7-37: DRESS AND APPEARANCE.)

G. Superintendent's Comments

Dr. McKendrick stated that Delegate Valentine has agreed to attend the school board/city council joint meeting on December 18, 2008.

H. Board Comments

Mr. Billingsly provided school board members with copies of the photographs taken by the electron microscope at the Central Virginia Governor's School for Science and Technology. This microscope is the only one in the country used specifically by students.

Mrs. Barker stated that she had attended the Fine Arts Night at Robert S. Payne Elementary School and commended the Kindergarten and first grade student for their performance.

Ms. Doyle attended the GO Centers mock trial event and thanked the attorneys, bailiff, and judge for their participation in the event.

I. Informational Items

Next School Board Meeting: Tuesday, January 6, 2009, 5:30 p.m., Board Room, School Administration Building

School Board Study Session: Monday, January 12, 2009, 5:30 p.m., Board Room, School Administration Building

J. Adjournment

The meeting adjourned at 7:40 p.m.

Julie P. Doyle, Chairman

Wendie L. Summers, Clerk

(SCHOOL BOARD DOCUMENT FILES ARE LOCATED IN THE DEPARTMENT FOR FINANCE AT THE SCHOOL ADMINISTRATION BUILDING.)

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 6

CONSENT: REGULAR: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Rezoning: I-2 Light Industrial District to B-5C, General Business District (Conditional) – 3010, 3012 Wards Road**

RECOMMENDATION: Approval of the rezoning petition.

SUMMARY: Farrell Lynchburg Properties, LLC is petitioning to rezone two (2) tracts totaling one and forty-three hundredths (1.43) acres at 3010 and 3012 Wards Road from I-2 Light Industrial District to B-5C, General Business District (Conditional). The rezoning petition would allow the use of an existing building and parking area for automobile sales and service.

The Planning Commission recommended approval of the rezoning petition because:

- The *Comprehensive Plan* recommends an Employment 2 use in this area. Since the *FLUM* is not designed to be parcel specific, and Community Commercial uses are designated for the area surrounding the property, the proposed commercial use is suitable for the property.
- The Department of Economic Development and the Economic Development Authority's Property Committee had no objection to the proposed rezoning, noting that the properties were not of interest for industrial use (due to the small size and since there were no other industrially zoned properties within the vicinity of the site).
- The City's Transportation Engineer recommended that the petitioner work with the City to install an extra signal head assembly system to provide signal heads for drivers exiting the existing driveway of the site. The petitioner agreed with the recommendation and has proffered that a traffic signal would be installed at the four (4)-way intersection of Wards Road and 3012 Wards Road.

PRIOR ACTION(S): March 25, 2009: Planning Division recommended approval of the rezoning.
March 25, 2009: Planning Commission recommended approval of the rezoning petition (7-0) with the following voluntarily submitted proffer:

1. A traffic signal will be installed at the four (4)-way intersection of Wards Road and 3012 Wards Road.

BUDGET IMPACT: None

CONTACT(S): Charlene Montford, 455-3902; Tom Martin, 455-3990

ATTACHMENT(S):

- Ordinance
- Planning Commission Report
- Planning Commission Minutes
- Vicinity Map
- Vicinity Proposed Land Use Map
- Watershed Map
- Concept Plan
- Proffer
- Speaker Sign Up Sheet

REVIEWED BY: lkp

ORDINANCE:

AN ORDINANCE CHANGING A CERTAIN AREA LOCATED AT 3010 AND 3012 WARDS ROAD FROM I-2, LIGHT INDUSTRIAL DISTRICT TO B-5C, GENERAL BUSINESS DISTRICT (CONDITIONAL).

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in order to promote the public necessity, convenience, welfare and good zoning practice that Chapter 35.1 of the Code of the City of Lynchburg, 1981, as amended, be and the same is hereby further amended by adding thereto Section 35.1-76.____, which section shall read as follows:

Section 35..1-76.____. Change of a certain area located at 3010 and 3012 Wards Road from I-2, Light Industrial District to B-5C, General Business District (Conditional).

The area embraced within the following boundaries…

L E G A L   D E S C R I P T I O N

All those two parcels of land conveyed to Ferrell Lynchburg Properties, LLC by Deed recorded in Instrument Number 060006178 and designated as Parcel Three, known as 3010 Wards Road, and Parcel Four, known as 3012 Wards Road.

Beginning at a ½" Iron rod found at the Southern corner of Parcel Four at the intersection of the Eastern Right of Way of Wards Road and the Northwestern Right of Way of Southern Railway; thence leaving said railway and along Eastern Right of Way of Wards Road along a curve to the left for an arch length of 250.03 feet with a radius of 1677.02 feet and a central angle of 8 degrees 32 minutes 33 seconds with a chord length of 249.80 feet and bearing of North 0 degrees 47 minutes 06 seconds East to a ½" pipe found at the corner of Parcel 3 and Parcel 4; thence continuing along a curve to the left for an arch length of 106.54 feet with a radius of 1677.02 feet and a central angle of 3 degrees 38 minutes 24 seconds with a chord length of 106.52 feet and bearing of North 05 degrees 18 minutes 07 seconds West to a ½ " pipe found; thence North 7 degrees 49 minutes 26 seconds West 69.23 feet to a ½" iron rod found on the Southern line of Baer & Sons Memorial, Inc.; thence with said Baer line North 71 degrees 28 minutes 40 seconds East passing through a 1" pipe found at 214.33 feet for a total distance of 341.46 feet to a 5/8" iron rod found on the said line of Southern Railway; thence along a curve to the left for an arch length of 294.70 feet with a radius of 5970.58 feet and a central angle of 2 degrees 49 minutes 41 seconds with a chord length of 294.67 feet and bearing of South 31 degrees 41 minutes 45 seconds West to the corner of Parcel Three and parcel Four; thence along a curve to the left for an arch length of 321.08 feet with a radius of 5970.58 feet and a central angle of 3 degrees 04 minutes 52 seconds with a chord length of 321.04 feet and bearing of South 28 degrees 29 minutes 00 seconds West to the Point of Beginning and containing 1.432 Acres of land.

… is hereby changed from I-2, Light Industrial District to B-5C, General Business District (Conditional) subject to the conditions set out hereinbelow which were voluntarily proffered in writing by the owner, namely Farrell Lynchburg Properties, LLC, to wit:

1. A traffic signal will be installed at the four (4)-way intersection of Wards Road and 3012 Wards Road.

And the Director of Community Development shall forthwith cause the "Official Zoning Map of Lynchburg, Virginia," referred to in Section 35.1-4 of this chapter to be amended in accordance therewith.

Adopted:

Certified: ______________________________
Clerk of Council

028L

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

To: Planning Commission
From: Planning Division
Date: March 25, 2009
Re: **REZONING: I-2, Light Industrial District to B-5C, General Business District (Conditional) to allow the use of an existing building and parking area for automobile sales and service at 3010 and 3012 Wards Road**

I. PETITIONER

Farrell Lynchburg Properties, LLC, 2009 Williamson Road, Roanoke, VA 24012
Representative: Stephen Plunkett, Berglund Oak Ridge Toyota, 3000 Wards Road, Lynchburg, VA 24502

II. LOCATION

The subject properties include two (2) tracts totaling one and forty-three hundredths (1.43) acres at 3010 and 3012 Wards Road.

Property Owners: Farrell Lynchburg Properties, LLC, 2009 Williamson Road, Roanoke, VA 24012

III. PURPOSE

The purpose of this petition is to allow the use of an existing building and parking area for automobile sales and service.

IV. SUMMARY

- The *Comprehensive Plan* recommends an Employment 2 use in this area. Adjacent land uses designated by the *Future Land Use Map* (*FLUM*) also include Community Commercial, Resource Conservation, Institutional and Public Use.
- Petition agrees with the *Zoning Ordinance* in that automobile dealerships are permitted within a B-5, General Business District.

<u>The Planning Division recommends approval of the rezoning petition.</u>

V. FINDINGS OF FACT

2. **Comprehensive Plan.** The Lynchburg *FLUM* recommends an Employment 2 use for this area. Employment 2 uses include light and heavy manufacturing, research and development, flex space and large-scale office uses. Restaurant, hotel and business service uses are also appropriate, if sized and designed to serve the employment area. **[page 5.4]** The subject properties represent one of the last industrially zoned parcels within the area; the adjacent properties are zoned B-3C, Community Business District (Conditional) and B-5 General Business District. Adjacent land uses designated by the *FLUM* include a combination of Community Commercial, Institution, Resource Conservation and Public Use.

   The Economic and Employment Area chapter of the *Comprehensive Plan* prompts staff to "identify areas of the City with the potential, through redevelopment, to support the expansion of existing and the attraction of new industrial and office development." **[page 9.6]** Planning staff asked the Department of Economic Development and the Economic Development Authority's [EDA] Property Committee to review the project with regard to the potential land use change for the area. Economic Development and the EDA both had no objection to the proposed rezoning, noting that the properties were not of interest for industrial use (due to the small size and since there were no other industrially zoned properties within the vicinity of the site). They also noted that the proposed rezoning would not negatively impact the future commercial development of the property.

Since the *FLUM* is not designed to be parcel specific, and Community Commercial uses are designated for the area surrounding the property, the proposed commercial use is suitable for the property.

3. **Zoning.** The subject property was annexed into the City in 1976. The existing I-2, Light Industrial District zoning was established in 1978 with the adoption of the current *Zoning Ordinance*.

4. **Proffers.** The petitioner voluntarily submitted the following proffer with the rezoning application:

    1. A traffic signal will be installed at the four (4)-way intersection of Wards Road and 3012 Wards Road.

5. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the proposed rezoning.

6. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

- On June 10, 2008, City Council approved Liberty University's petition to amend the *FLUM* from Low Density Residential to an Institutional use at 3794, 3778, 3786, 3802 and 4000 Candlers Mountain Road, a petition to rezone approximately two hundred and thirty-seven (237) acres from B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) at 3778, 3786, 3794, 3802 and 4000 Candlers Mountain Road, a conditional use permit (CUP) for the Liberty University Master Plan at 3778, 3786, 3794, 3802, 4000, 4250, 4300, 5000, 5001 Candlers Mountain Road, 1000, 1001, 1005 Ericsson Drive, 100 Mountain View Road, 100, 112, 200, 212, 300 Liberty Mountain Drive, 1971, 1973, 1975, 1977 University Boulevard and 4013 Wards Road and a CUP for the Liberty University Consolidated Sign Plan.

- On March 25, 2008, City Council approved Liberty University's petition to name two existing private streets on the Liberty University campus off Candlers Mountain Road "Regents Parkway" and "Research Lab Road."

- On November 13, 2007, City Council approved Liberty University's petition to amend the *FLUM* from Institution to Community Commercial and rezone three and eighty-three hundredths (3.83) acres from R-C, Conservation District to B-3C, Community Business District (Conditional) at 500 Liberty Mountain Drive, and a CUP to allow the construction of a building across the City of Lynchburg and Campbell County corporate limit.

- On November 13, 2007, City Council approved Robert Hartless's petition to rezone twenty-four hundredths (0.24) of an acre from B-3, Community Business District to B-5C, General Business District (Conditional) to allow the use of an existing building as a rental car office with parking and vehicle storage area for up to six (6) automobiles at 2415 Wards Road.

- On April 10, 2007, City Council approved Backyard Real Estate's petition to rezone one and forty-seven hundredths (1.47) acres from B-3C, Community Business District (Conditional) to B-5C, General Business District (Conditional) at 2731 Wards Road to allow the use of an existing building as an automobile dealership, service area, parking and vehicle display area.

- On December 16, 2003, City Council approved Liberty University's petition to rezone a tract of approximately one hundred and twenty-three (123) acres on Liberty Mountain Drive from B-3, Community Business District, to B-5C, General Business District (Conditional) and a tract of eighty-three (83) acres at 100 Mountain View Road from I-2, Light Industrial District, to B-5C, General Business District (Conditional), to allow university, church and K-12 uses.

- On December 16, 2003, City Council approved Liberty University's petition for a CUP to allow university and K-12 uses at Liberty Mountain Drive and 100 Mountain View Road.

- On October 14, 2003, City Council approved Liberty University, TRBC, and GDT, CG1, LLC's petition for a CUP to allow a community recreation facility at 100 Mountain View Road.
- On November 13, 2001, City Council approved Liberty University's petition for a CUP to allow the construction of a student center and associated parking at 1971 University Boulevard.
- On April 10, 2001, City Council approved Wards Road Properties, LLC's petition for a CUP to allow fill within the one hundred (100)-year floodplain for the construction of storage inns at 2601 Old Wards Road.
- On September 12, 2000, City Council approved Back Yard Real Estate, LLC's petition to rezone approximately one and one-half (1.5) acres from I-2, Light Industrial District to B-3C, Community Business District (Conditional) and a conditional use permit to fill in the floodplain at 2731 Wards Road to allow the expansion an existing parking lot for a restaurant use.
- On April 14, 1998, City Council approved Liberty University's petition for a CUP to allow the construction of four (4) new dormitories, a visitor's center, additions to the DeMoss building and associated parking areas at 1971 University Boulevard.
- On March 14, 1989, City Council approved Old Time Gospel Hour /Liberty University petition for a CUP to allow the construction of a twelve thousand (12,000) seat football stadium and a nine thousand (9,000) seat basketball arena (the Vine Center) on the Liberty University main campus.
- On April 12, 1988, City Council approved Old Time Gospel Hour's petition to rezone the thirty (30) acres of the Liberty University main campus from I-2, Light Industrial District to B-5, General Business District to allow the construction of dormitories and the expansion of other university related uses.
- On June 12, 1984, City Council approved Erwin P. Baer's petition for a CUP to allow the construction of an outlet mall in a floodway fringe area at 3000 Wards Road.
- On April 10, 1984, City Council approved Wayne E. Newcomb's petition for a CUP to allow the construction of a car wash and the sale of gasoline in a floodway fringe area at the corner of Glass Avenue and Wards Road.
- On January 10, 1984, City Council approved James A. Agnew's petition for a CUP to allow the construction of a building and parking area in a floodway fringe area at 2735 Wards Road.
- On November 11, 1983, City Council approved Old Time Gospel Hour's petition to rezone one hundred thirty-three (133) acres on Liberty Mountain Drive from R-C, Conservation District to R-4, Multi-Family Residential District (Conditional) to allow the construction of four (4) apartment buildings and a two hundred fifty (250)-bed health care facility.
- On October 12, 1982, City Council approved A.T. Williams Oil Company's petition for a CUP to allow the construction of an automobile service station at 3001 Wards Road.
- On December 12, 1978, City Council adopted the *Official Zoning Map*. With this adoption, one hundred forty-two (142) acres of the Liberty University main campus was rezoned from M, Manufacturing to B-5, General Business District.

7. **Site Description.** The subject properties include a one (1)-story building and parking area, originally used for automobile detailing and a rental car facility. The property is bound to the north by a combination of commercial retail properties; to the east and south by Norfolk and Southern Railway and Liberty University; and to the west by undeveloped, institutional (Central Virginia Community College) property and commercial retail uses, Rock Castle Creek and a Lynchburg Expressway off-ramp.
8. **Proposed Use of Property.** The purpose of this petition is to allow the use of an existing building and parking for automobile sales and service. The proposed vehicle display would serve both Berglund Oak Ridge Toyota and Berglund Red Ridge Kia; the dealerships would also continue to use the existing building as an automobile detailing facility. The site is served by existing water and sewer services. Street trees, parking area plantings and parking area screening are all required by the City's *Zoning Ordinance* for this development. Section 35.1-25.1.7 of

the City Code allows for parking area landscaping and parking area screening to be disbursed in a reasonable manner so as not to interfere with display and maintenance if the primary use of the area is for the sale of motor vehicles.

9. **Traffic, Parking and Public Transit.** The City's Transportation Engineer noted that the existing driveway at 3012 Wards Road exits at the intersection of Wards Road and the U.S. Route 29 Business access ramp. There are currently no signal heads directing drivers leaving the driveway that they can safely enter this intersection. The City's Transportation Engineer recommended that the petitioner work with the City to install an extra signal head assembly system to provide signal heads for drivers exiting the driveway. The petitioner agreed with the recommendation and has proffered that a traffic signal would be installed at the four (4)-way intersection of Wards Road and 3012 Wards Road.

   Parking requirements for the proposed development are set at two (2) spaces for each three (3) employees and two (2) spaces for each service bay by the City's *Zoning Ordinance*. The proposed auto detailing facility would have no more than six (6) employees on duty and three (3) service bays, which will require a total of ten (10) parking spaces. The concept plan indicates that thirteen (13) parking spaces are provided, thus exceeding the requirements of City Code. In addition, sixty-three (63) spaces are provided for the vehicle display area.

   Public transit is currently accessible in this area. The Greater Lynchburg Transit Company Route Four C (4C) runs along Wards Road. The closest bus stop is located between the subject properties and the intersection of Glass Avenue and Wards Road, approximately five hundred (500) feet from the site.

10. **Storm Water Management.** New impervious area for the project would not exceed one thousand (1,000) square feet; as such a stormwater management plan is not required. However, it should be noted that the additional landscaping proposed for the project would provide both a stormwater quality and quantity benefit for the watershed.

11. **Emergency Services.** The City's Fire Marshal had no concerns about the proposed rezoning petition.

    The Police Department had no concerns regarding the proposed vehicle sales and service area.

12. **Impact.** The use of an existing building and parking area as an automobile sales and service area would provide for a less intensive use than many of those allowed by the existing I-2, Light Industrial District zoning. Traffic, stormwater management and public safety comments have all been addressed to the satisfaction of City staff and the result is a project that provides for renovation and landscaping improvements to the existing property.

13. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary concept plan on March 3, 2009. All comments related to the proposed plan use were minor in nature and have or will be addressed by the petitioner prior to final site plan approval.

VI. PLANNING DIVISION RECOMMENDED MOTIONS:

The Planning Commission waives the twenty-one (21) day submittal requirements for proffers.

Based on the preceding Findings of Fact, the Planning Commission recommends to City Council approval of Farrell Property, LLC's petition to rezone approximately one and forty-three hundredths (1.43) acres located at 3010 and 3012 Wards Road from I-2, Light Industrial District to B-5C, General Business District (Conditional) to allow the use of an existing building and parking area for automobile sales and service with the voluntarily submitted proffer.

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Charlene B. Montford, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia L. Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Gerry L. Harter, Traffic Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith A. Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Administrator
Mr. Kent L. White, Senior Planner
Mr. Jacob M. Dorman, Environmental Reviewer
Mr. Stephen Plunkett, Representative

VII. ATTACHMENTS

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

MINUTES OF THE MARCH 25, 2009 PLANNING COMMISSION MEETING (MINUTES HAVE NOT BEEN APPROVED):

a. **Petition of Farrell Lynchburg Properties, LLC to rezone 1.45 acres at 3010 and 3012 Wards Road from I-2, Light Industrial District to B-5, General Business District to allow the use of an existing building and parking areas for automobile sales and service.**

Mr. White addressed the commissioners with the following comments. The purpose of this petition is to allow the use of the existing building and parking for automobile sales and service. The proposed vehicle display would serve both Berglund Oak Ridge Toyota and Berglund Red Ridge Kia. The dealerships would also use the existing building as an automobile detailing facility.

The original concept plan distributed with the packets showed pavement and striped parking spaces on the adjacent property owned by Norfolk Southern Railway. Although that plan did reflect the actual site conditions, staff thought that might be confusing as it continues through public hearing because it infers that Berglund Toyota is already using this lot, which they currently are not. To avoid confusion, staff asked Berglund to submit a revised plan that removed all of those improvements from the adjacent property. The commissioners have been given the new plan.

Land use is designated by the *Future Land Use Map* in the area to include Employment 2, Community Commercial, Resource Conservation, Institutional and Public use. Staff spoke with the office of Economic Development and the Economic Development Authority's property committee. Both had no objections to the proposing rezoning as the properties are not of interest for industrial use. The properties are too small and there is no real industrial property around the sites.

The City's Transportation Engineer noted that the existing driveway at 3012 Wards Road currently exits into the intersection with Wards Road and U.S. Business 29 access ramp. There is currently no signal for that driveway and the Transportation Engineer has worked with the petitioner to proffer that they will work with the City to install an extra signal at that intersection.

Stormwater management and public safety concerns have all been addressed to the satisfaction of City staff. There are two minor corrections to the report. On page four, the number of parking spaces should be changed from 86 to 63. The second correction is that the recommendation needs to contain the words "with the voluntarily submitted proffer." Staff is recommending the rezoning with the proffer.

Mr. Stephen Plunkett with Berglund came forward to represent the petition. The business has been operating under the two pieces of property and the rental lot for the last few years. The storage lot is where they recondition their vehicles when they are initially received before they are put on the main lot. Berglund would like the rezoning so that they can sell vehicles on the lot. Nothing will be changed from a building standpoint or with the site other than bringing it up to the *Landscape Ordinance.*

Chair Hamilton asked for anyone else present to speak in favor of the petition. No one came forward. She asked if there was anyone present to speak with questions or in opposition to the petition. No one came forward. She closed the public hearing portion of the petition.

Commissioner Barnes commented that the petition seems really straightforward. The use is not changing dramatically and the additional landscaping will help both aesthetically and with stormwater management.

Commissioner Sale asked Mr. Plunkett if they had worked at all with the property owner of the monument company that is between the two sites of the Toyota business in terms of that business having their property rezoned as well. Mr. Plunkett said that he has not had a conversation with the property owner about this rezoning. They have had some conversations in the past about possibly purchasing the property, but that has not been pursued due to the amount of the work that would need to be done.

Commissioner Sale asked for clarification from Mr. Plunkett that there are no intended changes to the current building, and Mr. Plunkett said that is correct.

Commissioner Swienton asked if the additional signal that will be installed will have some type of pressure wire so that the signal will not unnecessarily slow down traffic on Wards Road. Mr. White commented that he thought that there are triggers on the three existing arms of the signal, and this will basically close that loop.

Commissioner Worthington made the following motion, which was seconded by Commissioner Oglesby and passed by the following vote:

"That The Planning Commission waives the twenty-one (21) day submittal requirements for proffers."

AYES:	Barnes, Hamilton, Hannon, Oglesby, Sale, Swienton and Worthington	7
NOES:		0
ABSTENTIONS:		0
ABSENT:		0

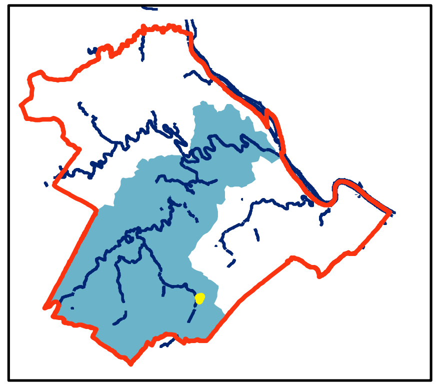
Commissioner Worthington made the following motion, which was seconded by Commissioner Oglesby and passed by the following vote:

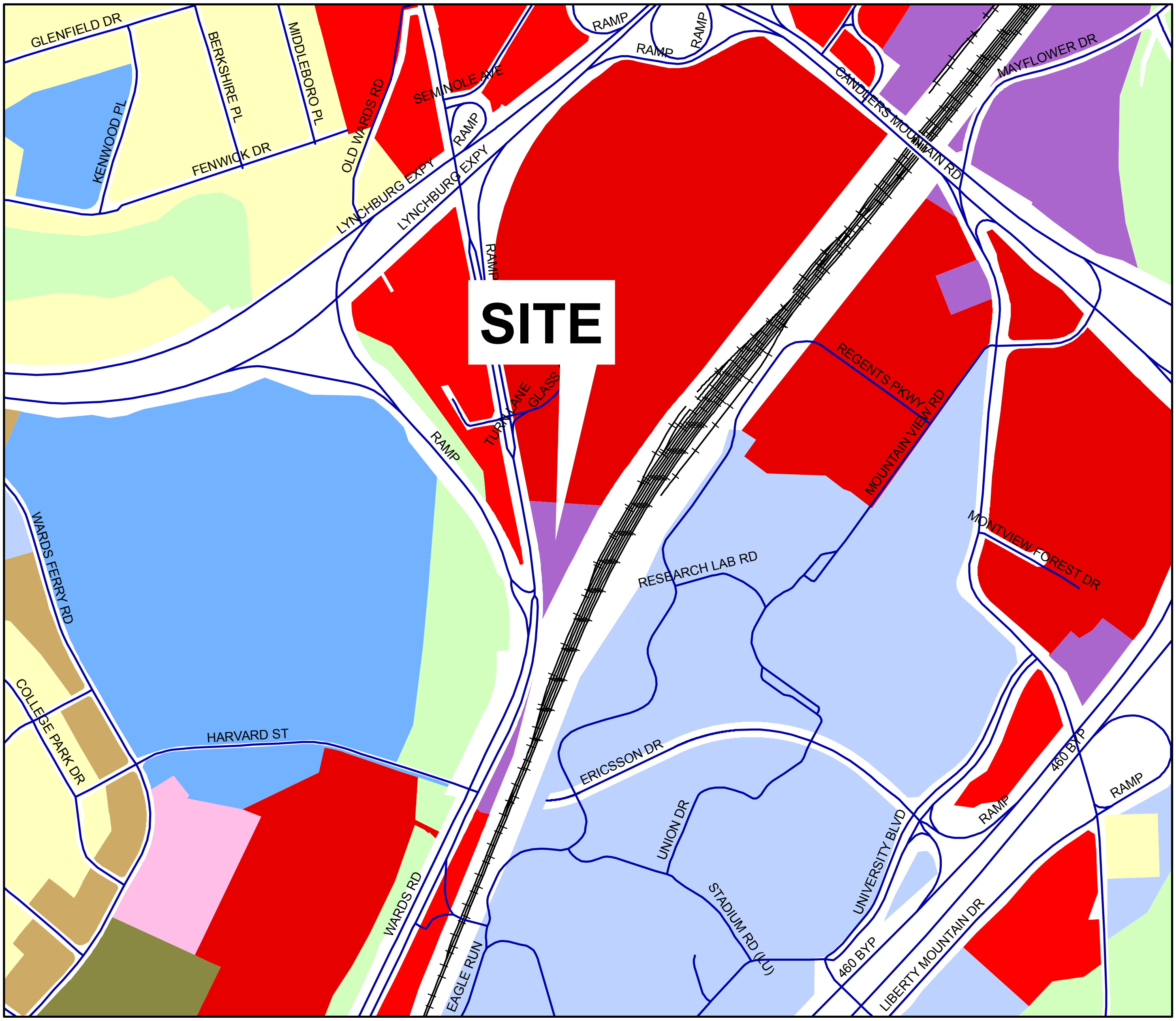
"That the Planning Commission recommends to City Council approval of Farrell Property, LLC's petition to rezone approximately one and forty-three hundredths (1.43) acres located at 3010 and 3012 Wards Road from I-2, Light Industrial District to B-5C, General Business District (Conditional) to allow the use of an existing building and parking area for automobile sales and service with the voluntarily submitted proffer."

Farrell Property Rezoning

Watershed Location Map

- Project Site
- FloodzoneAE
- Blackwater Creek
- Corporate Limit





- 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
- LocalHistoricDistrict

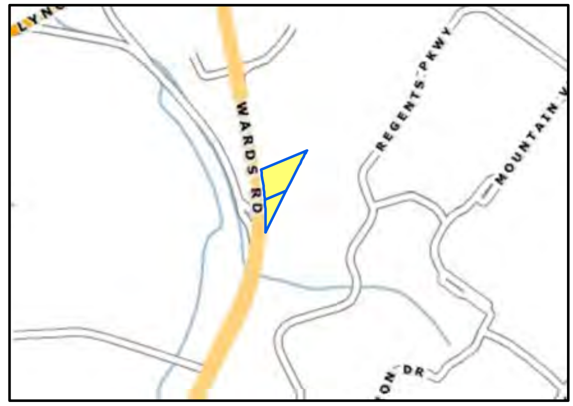
FARRELL PROPERTY
3010, 3012 WARDS ROAD
LAND USE PLAN

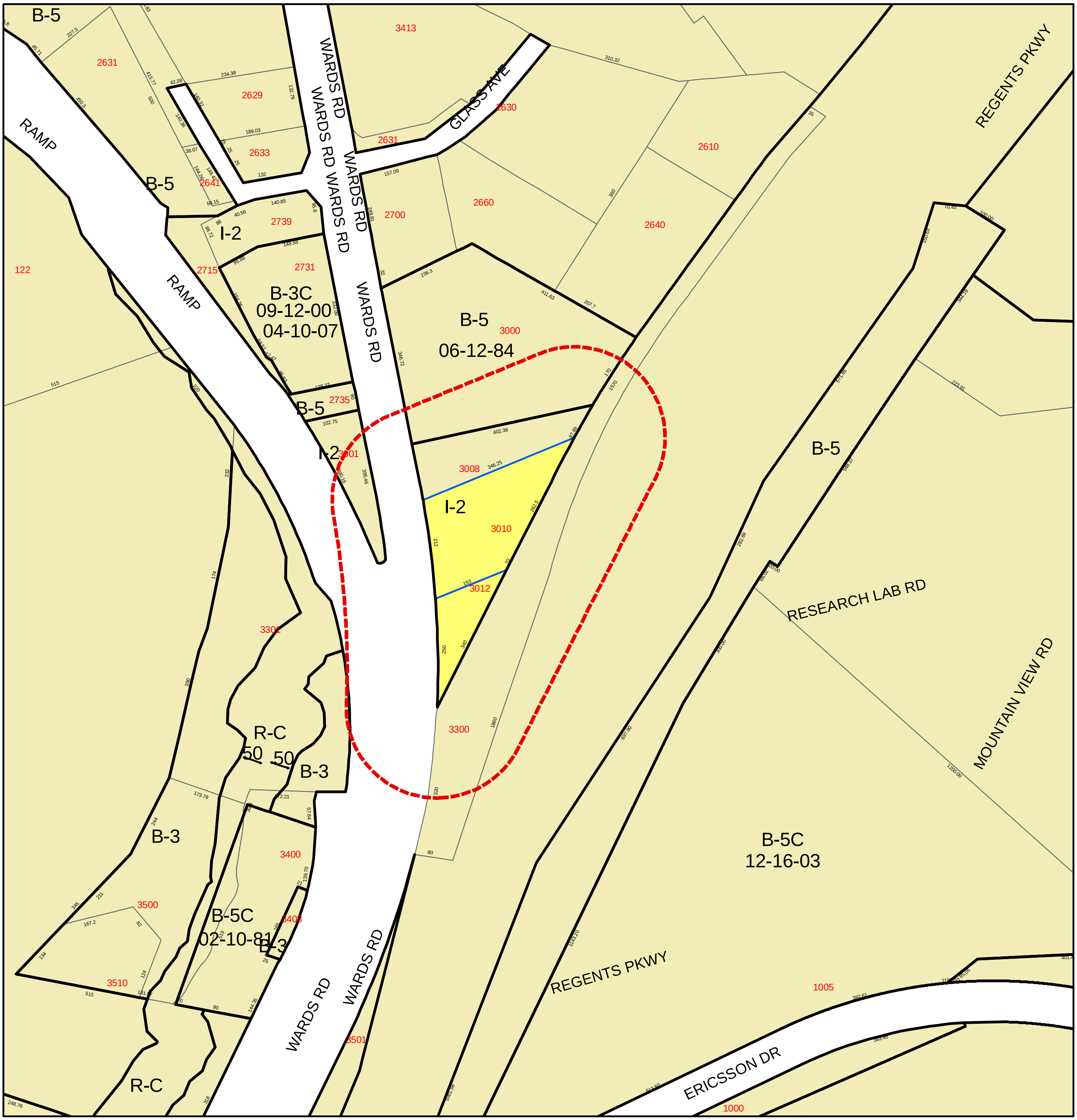
FARRELL PROPERTY

3010, 3012 Wards Road
PIN# 246-04-003/004
Rezoning from I-2 to B-5C
Petitioner-Farrell Lynchburg Properties, LLC

Subject Property

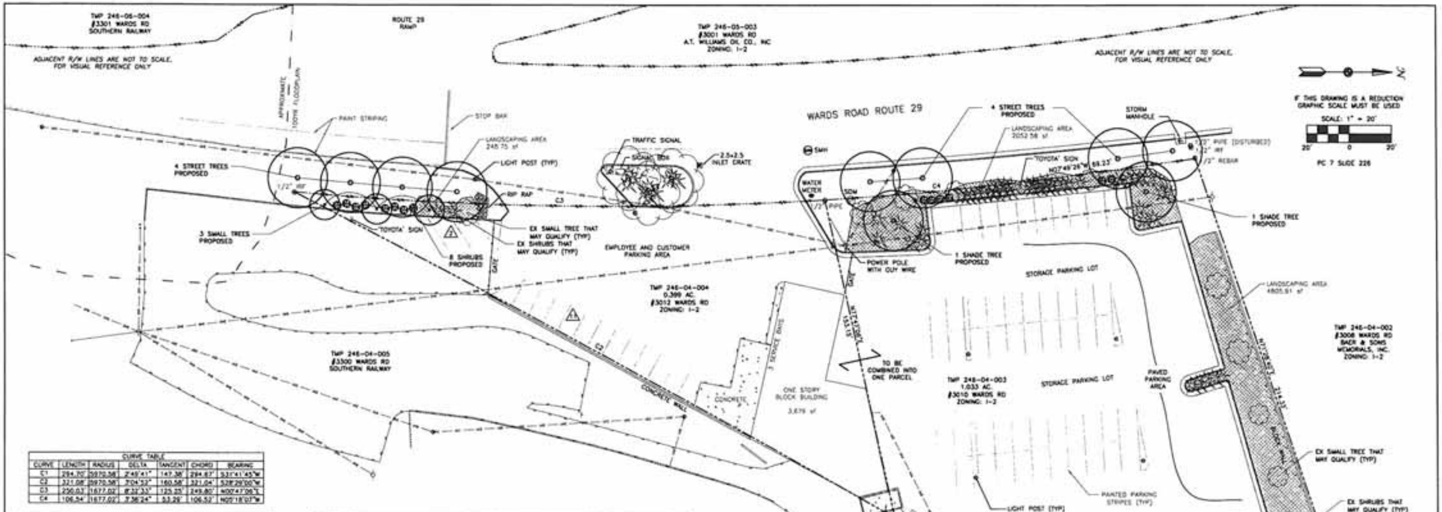
200 FT Buffer





FARRELL PROPERTY REZONING ADJOINING OWNERS

PIN	Owner	LocAddr
16231003	NORFOLK SOUTHERN CORPORATION ATTN:LLOYD CLINGENPEEL	3429 CANDLERS MOUNTAIN RD
24604001	FARRELL LYNCHBURG PROPERTIES LLC	3000 WARDS RD
24604002	BAER & SONS MEMORIALS INC	3008 WARDS RD
24604003	FARRELL LYNCHBURG PROPERTIES LLC	3010 WARDS RD
24604004	FARRELL LYNCHBURG PROPERTIES LLC	3012 WARDS RD
24604005	NORFOLK SOUTHERN CORPORATION ATTN:LLOYD CLINGENPEEL	3300 WARDS RD
24605003	A T WILLIAMS OIL CO INC	3001 WARDS RD
24606004	NORFOLK SOUTHERN CORPORATION ATTN:LLOYD CLINGENPEEL	3301 WARDS RD
Owner	FARRELL LYNCHBURG PROPERTIES LLC	
Petitioner	FARRELL LYNCHBURG PROPERTIES LLC	
Representative	STEPHEN PLUCKETT	



CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	BEARING
C1	294.70'	5970.58'	2°49'41"	147.38'	294.67'	S31°41'45"W
C2	321.08'	5970.58'	3°04'52"	160.58'	321.04'	S28°29'00"W
C3	250.03'	1677.02'	8°32'33"	125.25'	249.80'	N00°47'06"E
C4	106.54'	1677.02'	3°38'24"	53.29'	106.52'	N05°18'07"W

LINE TYPE LEGEND

- PK NAIL FOUND
- ROD/REBAR FOUND
- PIPE FOUND
- SANITARY MANHOLE (SMH)
- STORM DRAIN MANHOLE (SDM)
- LIGHT POLE
- POWER POLE
- WATER METER
- ELECTRIC METER
- SIGN POST
- EXISTING TREE
- PROPOSED TREE
- EXISTING BUSH
- PROPOSED BUSH
- PROPERTY LINES
- RIGHT OF WAY
- UNDERGROUND ELECTRIC
- OVERHEAD ELECTRIC
- EDGE OF PAVEMENT
- TREE LINE

VICINITY MAP
NOT TO SCALE

PARKING NOTES:

1. PARKING REQUIREMENTS:
   2 SPACES PER 1 SERVICE BAY (3 BAYS=6 SPACES)
   2 SPACES PER 3 EMPOYEES (6 EMPLOYEES=4 SPACES)

   10 SPACES REQUIRED; 13 SPACES PROVIDED.

LANDSCAPE NOTES:

1. 8 STREET TREES REQUIRED; 8 STREET TREES PROVIDED.
2. SHRUBS REQUIRED ALONG PUBLIC ROAD FRONTAGE; SHRUBS PROVIDED.
3. PARKING AREAS TO HAVE 1 SHADE TREE PER 8 PARKING SPACES.
4. BASED ON 13 PARKING SPACES PROVIDED FOR EMPLOYEES AND CUSTOMERS:

   ZONING REQUIRES 2 SHADE TREES; CONCEPT PROVIDES 2 NEW SHADE TREES.

   ZONING REQUIRES 13 SHRUBS; CONCEPT PROVIDES 8 NEW SHRUBS TO AUGMENT EXISTING SHRUBS ON SITE.

RECEIVED
MAR 2
COMMUNI
DEVELOPMENT

NOTES:

1. THIS SITE IS CURRENTLY ILLUMINATED WITH SHIELDED LAMPS. NO NEW LIGHTING IS PROPOSED.
2. BASED ON A GRAPHIC EXAMINATION OF FEMA MAP NUMBER 51009301060, REVISION DATE JUNE 3, 2003 THESE SUBJECT PROPERTIES LIE IN ZONE X (OUTSIDE OF THE 100YR FLOODPLAIN). HOWEVER, FEMA'S ZONE AE (SPECIAL FLOOD HAZARD AREAS) DOES PASS BELOW THESE PROPERTIES AS VERIFIED USING LYNCHBURG'S ONLINE GIS FLOOD LAYER OVERLAYS. THE FLOODPLAIN LINE SHOWN HERE IS A SCALED APPROXIMATION FOR VISUAL REFERENCE.
3. WE WILL SATISFY THE B-5 LANDSAPING REQUIREMENTS UPON REZONING APPROVAL.
4. NO SIGNIFICANT SITE CONSTRUCTION IS BEING PROPOSED WITH THIS REZONING REQUEST THAT WOULD REQUIRE EROSION AND CONTROL MEASURES TYPICALLY ASSOCIATED WITH SITE CLEARING ACTIVITIES.

COMMONWEALTH OF VIRGINIA
EARL W. MOTTLEY
Lic. No 1625
LAND SURVEYOR

WW ASSOCIATES
ENGINEERS SURVEYORS PLANNERS

DESIGNED BY:	PROJECT: REZONING PLAN FOR BERGLUND OAK RIDGE TOYOTA, CITY OF LYNCHBURG, VA		REVISION NUMBER: 2
DRAWN BY: DSB			REVISION DATE: 3-25-09
REVIEWED BY: EWM	TITLE: SURVEY OF EXISTING CONDITIONS/AS-BUILT		
WWA NUMBER: 209008.00	FILE NAME: 900800C-BASE.dwg	SCALE: H: 1"=20' V: N/A; DATE: 2-05-09	SHEET NUMBER: 1 of 1

W:\209008 Berglund Oak Ridge Toyota\209008.00 Survey\dwg\900800C-BASE.dwg\Survey

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 7

CONSENT: REGULAR: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Rezoning: B-1, Limited Business District, B-3, Community Business District and B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) – 3207, 3209 Forest Brook Road**

RECOMMENDATION: Approval of the rezoning petition

SUMMARY: George C. Walker Jr. and William M. Walker are petitioning to rezone approximately one and two tenths (1.2) acres at 3207 and 3209 Forest Brook Road from B-1, Limited Business District, B-3, Community Business District and B-3C, Community Business District (Conditional) to B-3C, Community Business District. The rezoning petition would facilitate the construction of an eight thousand eight hundred (8,800) square foot restaurant/retail building with associated parking.

The Planning Commission recommended approval of the rezoning petition because:
- The *Comprehensive Plan 2002-2020* recommends both Medium-Density Residential and Community Commercial uses for the area.
- Petition agrees with Zoning Ordinance in that both restaurant and retail uses are permitted in a B-3, Community Business District.

PRIOR ACTION(S):
March 11, 2009: Planning Division recommended approval of the rezoning petition.
March 11, 2009: Planning Commission recommended approval of the rezoning petition (4-0, with three members absent, Hannon, Sale, Barnes) with the following voluntarily submitted proffers:

1. The properties will be developed for restaurant/retail shopping with a maximum of 8,800 square feet of space in substantial compliance with the “Rezoning Plan for Tax Map Parcels #220-4-10 & 11 Forest Plaza West for George C. Walker, J. & William M. Walker” prepared by Berkley-Howell & Associates, P.C. dated January 7, 2009 and revised on February 10, 2009.
2. This rezoning shall be contingent on the concurrent development of the adjacent property at 3223-3225 Old Forest Road for a Wal-Mart Store and shall not become effective until a site plan has been approved by the City of Lynchburg for the construction of said Wal-Mart store.
3. Primary access to all properties will be through the Wal-Mart parking lot based on reciprocal access easements to be executed/reserved by the owner(s) of the respective adjacent properties.
4. All buildings will be constructed with architectural features and details on all sides that minimize the institutional/commercial appearance of said buildings.
5. Any retaining walls visible from any public street will be constructed with segmental block, brick, stone or stamped or colored concrete that gives the appearance of brick or stone. The walls will be landscaped at a minimum rate as follows: walls less than 8 feet in height require 1 evergreen shrub per 6 linear feet of wall; walls 8 feet in height or greater require 1 evergreen shrub per 6 linear feet of wall and 1 ornamental tree per 40 linear feet of wall. The walls will also have security lighting.
6. The properties at 3207 and 3209 Forest Brook Road are to be added to and become an integral part of each other as one contiguous parcel by a recombination plat to be submitted and approved by the City of

Lynchburg. This plat will dedicate approximately 0.077 acre of the subject property to the City of Lynchburg for additional right-of-way for Forest Brook Road.

BUDGET IMPACT: None

CONTACT(S):
Charlene Montford 455-3902
Tom Martin 455-3990

ATTACHMENT(S):

- Ordinance
- Planning Commission Report
- Planning Commission Minutes
- Concept Plan
- Architectural Renderings
- Proffers
- Speaker Sign Up Sheet

REVIEWED BY: lkp

ORDINANCE:

AN ORDINANCE CHANGING A CERTAIN AREA LOCATED AT 3207 AND 3209 FOREST BROOK ROAD FROM B-1, LIMITED BUSINESS DISTRICT, B-3, COMMUNITY BUSINESS DISTRICT AND B-3 COMMUNITY BUISNESS DISTRICT (CONDITONAL) TO B-3C, COMMUNITY BUSINESS DISTRICT (CONDITIONAL).

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG that in order to promote the public necessity, convenience, welfare and good zoning practice that Chapter 35.1 of the Code of the City of Lynchburg, 1981, as amended, be and the same is hereby further amended by adding thereto Section 35.1-76.____, which section shall read as follows:

Section 35.1-76.__. Change of a certain area located at 3207 and 3209 Forest Brook Road from B-1, Limited Business District, B-3, Community Business District and B-3, Community Business District (Conditional) to B-3C, Community Business District (Conditional).

The area embraced within the following boundaries…

L E G A L D E S C R I P T I O N

ALL THOSE CERTAIN LOTS OR PARCELS OF LAND SITUATE AT 3207 AND 3209 FOREST BROOK ROAD IN THE CITY OF LYNCHBURG, VIRGINIA AND FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A NEW IRON PIN ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID FOREST BROOK ROAD, WHICH PIN IS LOCATED APPROXIMATELY 200 FEET SOUTH OF THE INTERSECTION OF SAID FOREST BROOK ROAD WITH OLD FOREST ROAD, AND WHICH PIN IS A COMMON CORNER OF THE PROPERTY OF GEORGE C. WALKER, JR. & WILLIAM M. WALKER WITH THE PROPERTY OF MAHONE & SONS WALLCOVERING, INC.,

THENCE, WITH SAID MAHONE, NORTH 43 DEGREES 35 MINUTES 08 SECONDS EAST FOR A DISTANCE OF 181.64 FEET TO A 5/8" IRON PIPE FOUND, WHICH PIPE IS A COMMON CORNER WITH SAID MAHONE;

THENCE, WITH SAID MAHONE, NORTH 42 DEGREES 54 MINUTES 07 SECONDS EAST FOR A DISTANCE OF 16.00 FEET TO A ½" REBAR FOUND, WHICH REBAR IS A COMMON CORNER WITH SAID MAHONE AND WITH THE PROPERTY OF WAL-MART REAL ESTATE BUSINESS TRUST;

THENCE, WITH SAID WAL-MART THE FOLLOWING FIVE CALLS, SOUTH 32 DEGREES 25 MINUTES 32 SECONDS EAST FOR A DISTANCE OF 17.70 FEET TO A NEW IRON PIN;

THENCE, SOUTH 53 DEGREES 00 MINUTES 24 SECONDS EAST FOR A DISTANCE OF 104.14 FEET TO A NEW IRON PIN;

THENCE, SOUTH 44 DEGREES 55 MINUTES 53 SECONDS EAST FOR A DISTANCE OF 61.80 FEET TO A NEW IRON PIN;

THENCE, SOUTH 34 DEGREES 43 MINUTES 55 SECONDS EAST FOR A DISTANCE OF 78.80 FEET TO A NEW IRON PIN;

THENCE, SOUTH 52 DEGREES 15 MINUTES 18 SECONDS WEST FOR A DISTANCE OF 66.96 FEET TO A NEW IRON PIN, WHICH PIN IS A COMMON CORNER WITH SAID WAL-MART AND WITH THE PROPERTY OF THE GEORGE C. & LYNNE R. WALKER FAMILY FLLP PROPERTY;

THENCE, WITH SAID WALKER, NORTH 32 DEGREES 51 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 41.77 FEET TO A ½" REBAR FOUND, WHICH REBAR IS A COMMON CORNER WITH SAID WALKER AND WITH THE PROPERTY OF JEFFERSON & YODER, LLC;

THENCE, WITH SAID JEFFERSON, SOUTH 43 DEGREES 35 MINUTES 08 SECONDS WEST FOR A DISTANCE OF 170.42 FEET TO A NEW IRON PIN, WHICH PIN IS A COMMON CORNER WITH SAID WALKER AND WITH SAID JEFFERSON LOCATED ON SAID NORTHEASTERLY LINE OF FOREST BROOK ROAD;

THENCE, SOUTH 43 DEGREES 35 MINUTES 08 SECONDS WEST FOR A DISTANCE OF 38.28 FEET TO A POINT IN THE CENTERLINE OF SAID FOREST BROOK ROAD;

THENCE, NORTH 32 DEGREES 51 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 107.36 FEET TO A POINT IN THE CENTERLINE OF SAID FOREST BROOK ROAD;

THENCE, NORTH 43 DEGREES 35 MINUTES 08 SECONDS EAST FOR A DISTANCE OF 25.96 FEET TO A NEW IRON PIN, WHICH PIN IS A COMMON CORNER WITH SAID GEORGE C. WALKER, JR. & WILLIAM M. WALKER AND WITH SAID JEFFERSON LOCATED ON SAID NORTHEASTERLY LINE OF FOREST BROOK ROAD;

THENCE, WITH SAID LINE OF FOREST BROOK ROAD, NORTH 32 DEGREES 17 MINUTES 54 SECONDS WEST FOR A DISTANCE OF 107.56 FEET TO THE POINT OF BEGINNING;

TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS, AND RESTRICTIONS OF RECORD.

SAID PROPERTY CONTAINS 1.219 ACRES MORE OR LESS.

… is hereby changed from B-1, Limited Business District, B-3, Community Business District and B-3, Community Business District (Conditional) to B-3, Business District (Conditional) subject to the conditions set out hereinbelow which were voluntarily proffered in writing by the owner, namely George C. Walker Jr. and William M. Walker, to wit:

1. The properties will be developed for restaurant/retail shopping with a maximum of 8,800 square feet of space in substantial compliance with the "Rezoning Plan for Tax Map Parcels #220-4-10 & 11 Forest Plaza West for George C. Walker, J. & William M. Walker" prepared by Berkley-Howell & Associates, P.C. dated January 7, 2009 and revised on February 10, 2009.
2. This rezoning shall be contingent on the concurrent development of the adjacent property at 3223-3225 Old Forest Road for a Wal-Mart Store and shall not become effective until a site plan has been approved by the City of Lynchburg for the construction of said Wal-Mart store.
3. Primary access to all properties will be through the Wal-Mart parking lot based on reciprocal access easements to be executed/reserved by the owner(s) of the respective adjacent properties.
4. All buildings will be constructed with architectural features and details on all sides that minimize the institutional/commercial appearance of said buildings.
5. Any retaining walls visible from any public street will be constructed with segmental block, brick, stone or stamped or colored concrete that gives the appearance of brick or stone. The walls will be landscaped at a minimum rate as follows: walls less than 8 feet in height require 1 evergreen shrub per 6 linear feet of wall; walls 8 feet in height or greater require 1 evergreen shrub per 6 linear feet of wall and 1 ornamental tree per 40 linear feet of wall. The walls will also have security lighting.
6. The properties at 3207 and 3209 Forest Brook Road are to be added to and become an integral part of each other as one contiguous parcel by a recombination plat to be submitted and approved by the City of Lynchburg. This plat will dedicate approximately 0.077 acre of the subject property to the City of Lynchburg for additional right-of-way for Forest Brook Road.

And the Director of Community Development shall forthwith cause the "Official Zoning Map of Lynchburg, Virginia," referred to in Section 35.1-4 of this chapter to be amended in accordance therewith.

Adopted:

Certified: ______________________________
Clerk of Council

029L

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

To: Planning Commission
From: Planning Division
Date: March 11, 2009
Re: **REZONING: B-1, Limited Business District, B-3, Community Business District and B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) at 3207 and 3209 Forest Brook Road**

I. PETITIONER

George C. Walker, Jr. and William M. Walker, 3211 Old Forest Road, Lynchburg, VA 24501
Representative: George C. Walker, Jr. and William M. Walker, 3211 Old Forest Road, Lynchburg, VA 24501

II. LOCATION

The subject properties include two (2) tracts totaling approximately one and two tenths (1.2) acres at 3207 and 3209 Forest Brook Road.

Property Owners: Jefferson and Yoder, LLC, 3209 Forest Brook Road, Lynchburg, VA 24501
George C. Walker, Jr. and Lynne R. Walker, Family Limited Liability Partnership and William M. Walker, 3211 Old Forest Road, Lynchburg, VA 24501

III. PURPOSE

The purpose of this petition is to allow the construction of an eight thousand eight hundred (8,800) square foot restaurant/retail building with associated parking.

IV. SUMMARY

- Petition agrees with the *Comprehensive Plan* which recommends both Medium-Density Residential and Community Commercial uses for this area.
- Petition agrees with the *Zoning Ordinance* in that both restaurant and retail uses are permitted in a B-3, Community Business District.

The Planning Division recommends approval of the rezoning petition.

V. FINDINGS OF FACT

2. **Comprehensive Plan.** The Lynchburg *Comprehensive Plan* recommends both Community Commercial and Medium-Density Residential uses in this area. Community Commercial uses are characterized by retail, personal service, entertainment and restaurant uses that draw customers from at least several neighborhoods up to the entire City, ranging from one-hundred thousand (100,000) to two-hundred thousand (200,000) square feet and serving forty thousand (40,000) to seventy thousand (70,000) people. Medium Density Residential uses are characterized by small-lot single-family detached housing, duplexes, and townhouses with densities up to twelve (12) units per acre. **(pg. 5.5)**

   The *Future Land Use Map [FLUM]* is not intended to be parcel specific. Existing land uses in the surrounding area include a combination of single-family homes, apartments and commercial buildings; Community Commercial, Neighborhood Commercial, Office, Medium-Density Residential, and High Density Residential uses are also designated by the *FLUM*. Given existing zoning and adjacent land use patterns, the proposed commercial use is suitable for the property.

3. **Zoning.** The subject property was annexed into the City in 1976. The existing B-1, Limited Business District and B-3, Community Business District zones were established in 1978 with the adoption of the current *Zoning Ordinance*. The B-3C, Community Business District (Conditional) zoning was approved by City Council on August 14, 2007 as part of George and William Walker's petition to allow a portion of a commercial shopping center and parking at 3207 Forest Brook Road.

4. **Proffers.** The petitioner voluntarily submitted the following proffer(s) with the rezoning application:

    1. The properties will be developed for restaurant/retail shopping with a maximum of 8,800 square feet of space in substantial compliance with the "Rezoning Plan for Tax Map Parcels #220-4-10 & 11 Forest Plaza West for George C. Walker, J. & William M. Walker" prepared by Berkley-Howell & Associates, P.C. dated January 7, 2009 and revised on February 10, 2009.

    2. This rezoning shall be contingent on the concurrent development of the adjacent property at 3223-3225 Old Forest Road for a Wal-Mart Store and shall not become effective until a site plan has been approved by the City of Lynchburg for the construction of said Wal-Mart store.

    3. Primary access to all properties will be through the Wal-Mart parking lot based on reciprocal access easements to be executed/reserved by the owner(s) of the respective adjacent properties.

    4. All buildings will be constructed with architectural features and details on all sides that minimize the institutional/commercial appearance of said buildings.

    5. Any retaining walls visible from any public street will be constructed with segmental block, brick, stone or stamped or colored concrete that gives the appearance of brick or stone. The walls will be landscaped at a minimum rate as follows: walls less than 8 feet in height require 1 evergreen shrub per 6 linear feet of wall; walls 8 feet in height or greater require 1 evergreen shrub per 6 linear feet of wall and 1 ornamental tree per 40 linear feet of wall. The walls will also have security lighting.

    6. The properties at 3207 and 3209 Forest Brook Road are to be added to and become an integral part of each other as one contiguous parcel by a recombination plat to be submitted and approved by the City of Lynchburg. This plat will dedicate approximately 0.077 acre of the subject property to the City of Lynchburg for additional right-of-way for Forest Brook Road.

5. **Board of Zoning Appeals (BZA).** The Zoning Official has determined that no variances will be needed for the development of the property as proposed.

6. **Surrounding Area.** There have been several items requiring City Council approval in the immediate area:

    - On August 12, 2008, City Council approved Areva NP, Inc.'s petition to amend the *FLUM* from Low Density Residential to Office and to rezone four and eight tenths (4.8) acres from R-3, Medium Density Two-Family Residential District to B-1, Limited Business District to allow for the construction of an eight hundred and eight-five (885)-space parking facility at 111, 112 and 114 Kings Drive.

    - On August 14, 2007, City Council approved George and William Walker's petition to rezone two and two tenths (2.2) acres from B-1, Limited Business District to B-3C, Community Business District (Conditional) to allow the construction of a twenty-three thousand six hundred (23,600) square foot commercial shopping center with three (3) restaurant/retail buildings and associated parking at 3207, 3211, 3215 and 3217 Forest Brook Road.

    - On April 13, 2004, City Council approved Dawson Ford Garbee & Company's petition to rezone three (3) acres at 3631 Old Forest Road from B-1, Limited Business District and R-3, Two Family Residential District to B-1, Limited Business District (Conditional) to allow construction of an office complex.

    - On February 9, 1999, City Council approved Sims Wholesale Company, Inc.'s petition to rezone one and three-tenths (1.3) acres at 3245 Forest Brook Road from R-5, Multi-Family Residential District, to B-5C, General Business District (Conditional) to allow the use of the property for a truck turn-around and parking area.

- On June 9, 1998, City Council approved Atlantic Star Communication's petition to rezone five tenths (0.5) of an acre at 3305 Old Forest Road from B-3, Community Business District to B-5C, General Business District (Conditional) to allow the erection of a radio transmission tower.
- On June 9, 1998, City Council approved Atlantic Star Communication's conditional use permit petition to allow the erection of a radio transmission tower in a B-5C, General Business District (Conditional) at 3305 Old Forest Road.
- On April 14, 1998, City Council approved Thomas J. Gerdy's petition to rezone two and one-tenth (2.1) acres at 3622 Old Forest Road from R-5, Multi-Family Residential District to B-3C, Community Business District (Conditional) to allow the construction of a building for retail sales.
- On May 14, 1996, City Council approved Central Cellular Company of Lynchburg's conditional use permit petition to allow the construction of a one-hundred and eighty (180) foot unlit cellular telecommunications tower with related antennas and a twelve (12) foot by twenty-eight (28) foot equipment shelter on a sixty (60) foot by seventy (70) foot area in an I-2, Light Industrial District at 3245 Forest Brook Road.
- On February 13, 1996, City Council approved Sylvia W. Hobson's conditional use permit petition to allow the use of an existing structure to expand a previously approved child care center to permit three (3) shifts operating twenty-four (24) hours a day with approximately forty-five (45) children per shift and a maximum of sixty (60) children at any one time on seven-tenths (0.7) of an acre in an R-5, Multi-Family Residential District at 3208 Forest Brook Road.
- On April 12, 1994, City Council approved Clyde W. Bondurant and Beth B. Dunnam's conditional use permit petition to operate a child day care center for up to thirty-five (35) children in an R-5, Multi-Family Residential District at 3208 Forest Brook Road.
- On December 8, 1992, City Council approved Donald E. Ozmar's conditional use permit petition to allow the operation of a dance club in an existing building with a capacity of twelve hundred (1,200) people and the expansion of the parking area for approximately one hundred ninety-four (194) cars in a B-3, Community Business District in the Forest Plaza West Shopping Center at 3217 Old Forest Road.
- On January 14, 1992, City Council approved Monro Muffler Brake, Inc.'s conditional use permit petition to allow the construction of an automotive park facility for sales and minor repairs in a B-3, Community Business District at 3201 Old Forest Road.
- On June 13, 1989, City Council approved Creeper Crawler Cribbery, Inc.'s conditional use permit petition to allow the expansion of an existing child care center, including a new classroom building, expanded playground and a parking area at the rear of the property in a B-1, Limited Business District at 3601 Old Forest Road.
- On November 10, 1987, City Council approved Hallmark Investment's conditional use permit petition to allow the construction of a building and parking lot for an automobile lubrication station in a B-3, Community Business District at 3209 Old Forest Road.
- On October 8, 1985, City Council denied T.W.3., Inc.'s conditional use permit petition to remodel an existing building for use as a dinner club with music and dancing in a B-3, Community Business District at 3220 Old Forest Road.
- On May 14, 1985, City Council approved B & W's petition to rezone seven and seven tenths (7.7) acres at 3315 Old Forest Road from R-3, Two Family Residential Districts to B-1, Limited Business District and B-5C, General Business District (Conditional) to allow the construction of an office building.
- On February 12, 1980, City Council approved L.B. Wimmer's conditional use permit petition to construct a family amusement center in a B-3, Community Business District in the Forest Plaza West Shopping Center.

7. **Site Description.** The subject properties are bound to the east by Forest Plaza West Shopping Center (the proposed site for Wal-Mart), to the south (across Belle Terre Drive) by a mixture of single-family residences and

apartments and to the west and north by a combination of single-family residences, apartments and commercial businesses.

8. **Proposed Use of Property.** The proposed petition would allow for the construction of a one (1)-story commercial building which could include restaurant and/or retail uses. A portion of the area was originally rezoned on August 14, 2007 to allow similar uses; however, the proffers of that rezoning required the project to be in substantial compliance with a concept plan that provided for a three thousand six hundred (3,600) square foot building with a thirty-one (31)-space parking area. The petitioner has since contracted to purchase the adjacent property and proposes the construction of a larger eight thousand, eight hundred (8,800) square foot commercial building with a total of sixty-three (63) parking spaces. The site will be served by City water and sewer services. The proposed development is contingent on the development of the adjacent property [3223-3225 Old Forest Road] for a Wal-Mart store to allow for shared access and stormwater management features. The developer has proffered that, even if the rezoning is approved by City Council, the property would not be developed until such time that a site plan is approved for the construction of the Wal-Mart store.

   All buildings will be constructed with architectural features and details (including pergolas, a fountain, benches, etc.) on all sides that soften the commercial appearance of the building. Any retaining walls visible from any public or private street or residential district will be constructed of segmental block, brick, or stone sections compatible with the architecture of the buildings. Landscaping for the site will comply with the requirements of the City's *Zoning Ordinance*.

9. **Traffic, Parking and Public Transit.** The City's Transportation Engineer had no comments regarding the proposed rezoning.

   Parking requirements for the proposed restaurant are set by the City's *Zoning Ordinance* at one (1) space for every one hundred (100) square feet of usable floor space plus one (1) space for each three (3) employees on duty at any one time. The *Zoning Ordinance* requirement for a retail establishment is one (1) space for each three hundred (300) square feet of gross floor area plus one (1) space for each three (3) employees on duty at any one time. The proposed restaurant/retail uses would require a total of fifty-three (53) parking spaces. The petitioner's concept plan would provide for sixty-three (63) parking spaces, thus meeting the requirements of city code.

   Public transit is currently accessible at Forest Hills Court Shopping Center, approximately two thousand three hundred and fifty-nine (2,359) feet from the site; however, a public transit stop is also proposed immediately behind the development within the Wal-Mart parking area.

10. **Storm Water Management.** The proposed shopping center would result in an increase in stormwater runoff. Stormwater management for the proposed restaurant/retail building would be captured by a regional detention pond that Wal-Mart would construct as part of their development on the adjoining property. Water quality requirements will be addressed either through "in line" filters or individual "Best Management Practices" that will be incorporated into the design of the site (the specific method will be determined once the stormwater system is designed for the entire property). The proposed management strategy is acceptable to the City's Environmental Reviewer.

11. **Emergency Services.** The City's Fire Marshal had no comments regarding the rezoning for the proposed restaurant/retail shopping building.

    The City Police Department had no comments about the proposed restaurant/retail project.

11. **Impact.** The proposed restaurant/retail shop will complement the proposed Wal-Mart development and the surrounding area. The petitioner has worked closely with staff to ensure a consistent architectural style, adequate pedestrian connections and public transit facilities for the project. Traffic, parking, stormwater management and emergency services concerns have all been addressed to the satisfaction of City staff.

12. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan on February 2, 2009. Comments related to the proposed use were minor in nature and will be addressed by the developer 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 George and William Walker's petition to rezone one and two tenths (1.2) acres at 3207 and 3209 Forest Brook Road from B-1, Limited Business District, B-3, Community Business District and B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) with the voluntarily submitted proffers.

This matter is respectfully offered for your consideration.

William T. Martin, AICP
City Planner

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Charlene B. Montford, Director of Community Development
Mr. J. Lee Newland, City Engineer
Ms. Cynthia L. Kozerow, Lynchburg Police Department
Battalion Chief Greg Wormser, Fire Marshal
Mr. Gerry L. Harter, Transportation Engineer
Mr. Robert Drane, Building Commissioner
Mr. Keith Wright, Zoning Official
Mr. Robert S. Fowler, Zoning Administrator
Mr. Kent L. White, Senior Planner
Mrs. Erin B. Hawkins, Environmental Reviewer
Mr. Will Sigler, Berkley-Howell & Associates, Representative
Mr. George C. Walker, Applicant
Mr. William M. Walker, Applicant

VII. ATTACHMENTS

1. **Vicinity Zoning Pattern**
2. **Vicinity Proposed Land Use**
3. **Watershed Location Map**
4. **Concept Plan**
5. **Architectural Renderings**
6. **Proffers**

MINUTES FROM THE MARCH 11, 2009 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

a. Petition of George Walker and William Walker to rezone approximately 1.2 acres at 3207 and 3209 Forest Brook Road from B-1, Limited Business District, B-3, Community Business District and B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) to allow the construction of a retail/restaurant building with associated parking.

Mr. Martin addressed the commissioners with the following comments. The petition proposes construction of an 8,800 square foot restaurant/retail building with 63 associated parking spaces. City Council approved a rezoning request on August 14, 2007, for the portion of property outlined in red on the screen. The adjacent half acre parcel is currently zoned B-1, Limited Business District. The proposal is to rezone that to B-3 Conditional in order to build a larger restaurant/retail facility, as shown on the proposed site plan.

Access to the proposed development will be from an internal network from the proposed Wal-Mart shopping center. Stormwater management will also be addressed by using a regional facility that will be constructed along with the Wal-Mart shopping center. The voluntarily submitted proffers are adequate and almost identical to those that were submitted previously. The Planning Division recommends approval of the rezoning petition.

Mr. Buster Walker, who owns the properties with his brother William Walker, came forward to represent the petition. He pointed out that the property that is outlined in blue on the screen is what they are asking to be rezoned. They have been working on this for some time with Wal-Mart. If it is approved, they will probably start grading the same time Wal-Mart does, which is hopefully in May. He and Will Sigler from Berkley and Howell are available to answer any questions the commissioners might have.

Chair Hamilton asked for anyone else present to speak in favor of the petition. No one came forward. She asked if there was anyone present to speak with questions or in opposition to the petition. No one came forward. She closed the public hearing portion of the petition.

Commissioner Oglesby asked Mr. Walker if the two buildings on the properties would be torn down; the Oglesbys' office used to be at 3209 Forest Brook Road. Mr. Walker indicated that the buildings would be torn down.

Commissioner Swienton asked for clarification from Mr. Martin that the petition asks to rezone both the parcels in red and blue and that everything else is to remain the same. Mr. Martin said that is correct and explained that the reason the piece in red has to be rezoned is because the proffer in 2007 said it would be in substantial compliance with the site plan. The new development plan changes substantially what was approved previously. It makes it much neater and cleaner to have one site plan governing the entire site.

Commissioner Swienton referenced the rezoning in 2007 and asked about one of the proffers dealing with the applicant constructing a pork chop divider. He asked if this is unchanged and will not be affected by the new petition. Mr. Walker indicated that is correct.

Commissioner Swienton indicated that in 2007 the applicants had submitted an agreement they had entered into with Wal-Mart regarding stormwater runoff. He is assuming that they will have this property included in that agreement as well. Mr. Walker indicated that is correct.

Commissioner Swienton asked Mr. Martin why they are not amending the *Future Land Use Map (FLUM)* because that has been done on other properties like AREVA. He is curious what the policy is to determine whether or not we should amend the *FLUM.* Mr. Martin responded that the *Plan* recommends both Community Commercial and Medium-Density Residential uses in the area. Basically, this site is adjacent to Community Commercial, which is definitely on the *FLUM.* That map is not parcel specific, so there is some grey area. When you look at the surrounding land use patterns, existing land uses and previous decisions by this body and Council, staff did not feel it was necessary to amend the *FLUM.* Commissioner Swienton asked if there was any harm in doing it. Mr. Martin said there would not have been any harm in doing it, but staff had felt that it was close enough to what is being recommended for that area.

Commissioner Swienton commented that he was looking at the traffic flow and was wondering if there was a plan to have back door access out to the dumpster or is the plan to have the trash come to the front. Mr. Walker said that the trash truck will come through the new front entrance off Forest Brook Road, but the dumpster will be in the rear. Commissioner Swienton said that he was trying to figure out where the front of the building is located. Mr. Walker indicated that the front of the building is facing the proposed Wal-Mart shopping center, but there will be side and rear entrances to this development.

Chair Hamilton asked for some clarification as to how the stormwater management plan will work. Mr. Walker indicated that there is a location for a detention pond behind the Wal-Mart building. Mr. Sigler said that it is a regional detention pond. The Walkers have agreements for all of their properties and they will do the stormwater quality on their two sites before it gets to the Wal-Mart pond. It will be some sort of filtration, but he could not clarify any further, since they have not gotten that far in the process. Chair Hamilton asked if it would be a standard pond. Mr. Sigler said that is correct, but that it is a relatively large one. He indicated the drive near the north arrow on the site plan. That drive goes behind the Wal-Mart, and the pond is on the other side of that drive. Chair Hamilton asked what that borders. Mr. Sigler said it borders on Belle Terre Drive to the Three Fountains townhouse complex. Chair Hamilton asked if the screening of this pond will be subject to the landscaping ordinance. Mr. Martin said that is correct and that Wal-Mart's site plan is near approval.

Chair Hamilton indicated that the reason she asks about this is because in August of 2007 there was such an issue with how stormwater was flowing down Forest Brook Road. She asked Mr. Sigler if he thought that the grading and what is going on in this development is going to help alleviate some of the existing problems. Mr. Martin commented that it is a combination of what the City needs to do within its right-of-way. He believes the problems were occurring further down on the opposite side of the road. Obviously, when the property is developed and the new detention facility goes in, not only will quantity be addressed better but also the quality of it will be addressed, which is not being handled currently. He would also like to point out that planning staff and the City's *Comprehensive Plan* have been promoting these regional stormwater facilities. Here is a developer who is willing to work with the City on that. The developer could have put in underground detention or their own pond on site, but that is really not the best thing to do for the City or the environment. Mr. Sigler reiterated that on these two sites, their stormwater is contained and directed to the new detention pond. Commissioner Oglesby thought that the way the City is going to handle this is with more curb and gutter than is there now.

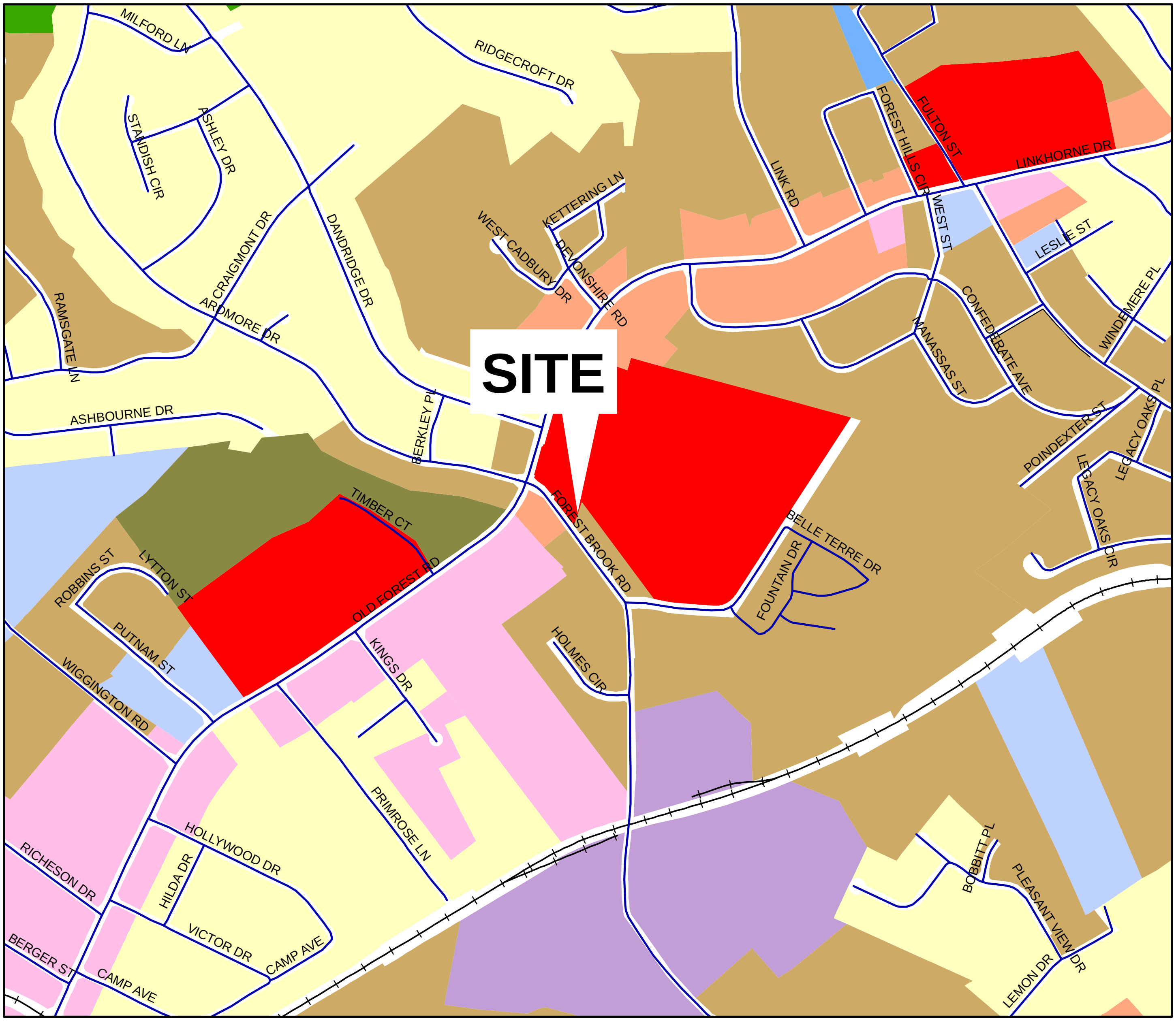
Commissioner Oglesby made the following motion, which was seconded by Commissioner Swienton:

"That the Planning Commission recommends to City Council approval of George and William Walker's petition to rezone one and two tenths (1.2) acres at 3207 and 3209 Forest Brook Road from B-1, Limited Business District, B-3, Community Business District and B-3C, Community Business District (Conditional) to B-3C, Community Business District (Conditional) with the voluntarily submitted proffers."

Commissioner Swienton commented that this is great to show that if we have a plan in place and an opportunity arises, there is a process where someone can come in and change the plan and improve it. He thinks that this does improve the original plan. Chair Hamilton agreed with that comment.

The motion passed by the following vote:

AYES:	Hamilton, Oglesby, Swienton and Worthington	4
NOES:		0
ABSTENTIONS:		0
ABSENT:	Barnes, Hannon & Sale	3



- 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
- LocalHistoricDistrict

WALKER PROPERTY
3207, 3209 FOREST BROOK ROAD
LAND USE PLAN

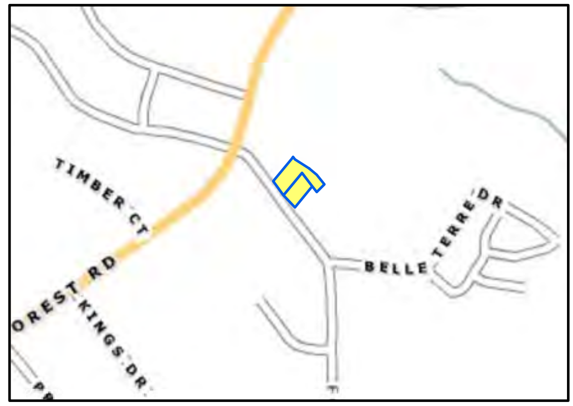
N

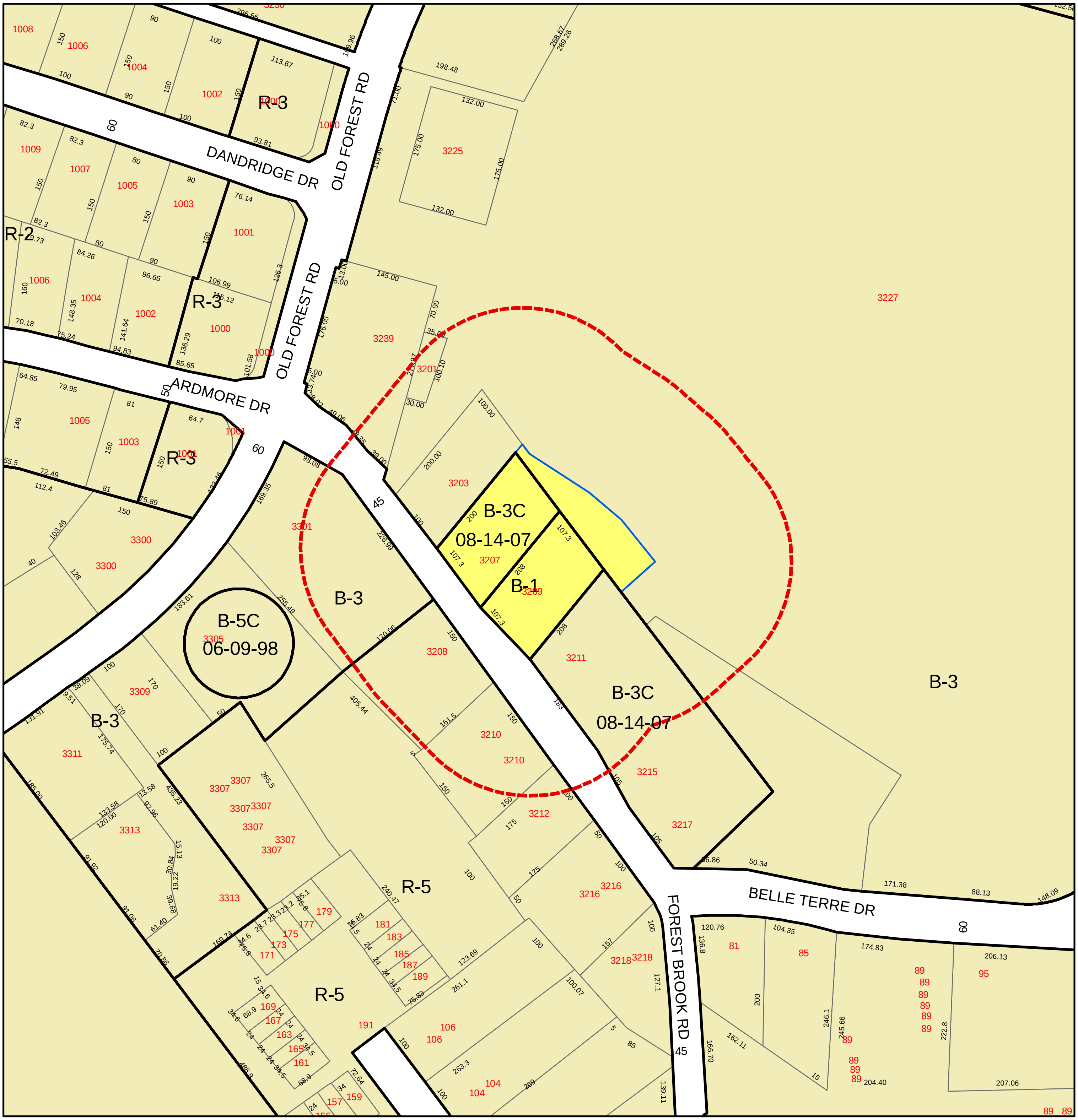
WALKER PROPERTY

3207, 3209 Forest Brook Road
PIN# 220-04-010/011
Rezoning from B-1, B-3, B-3C to B-3C
Petitioner-George & William Walker

Subject Property

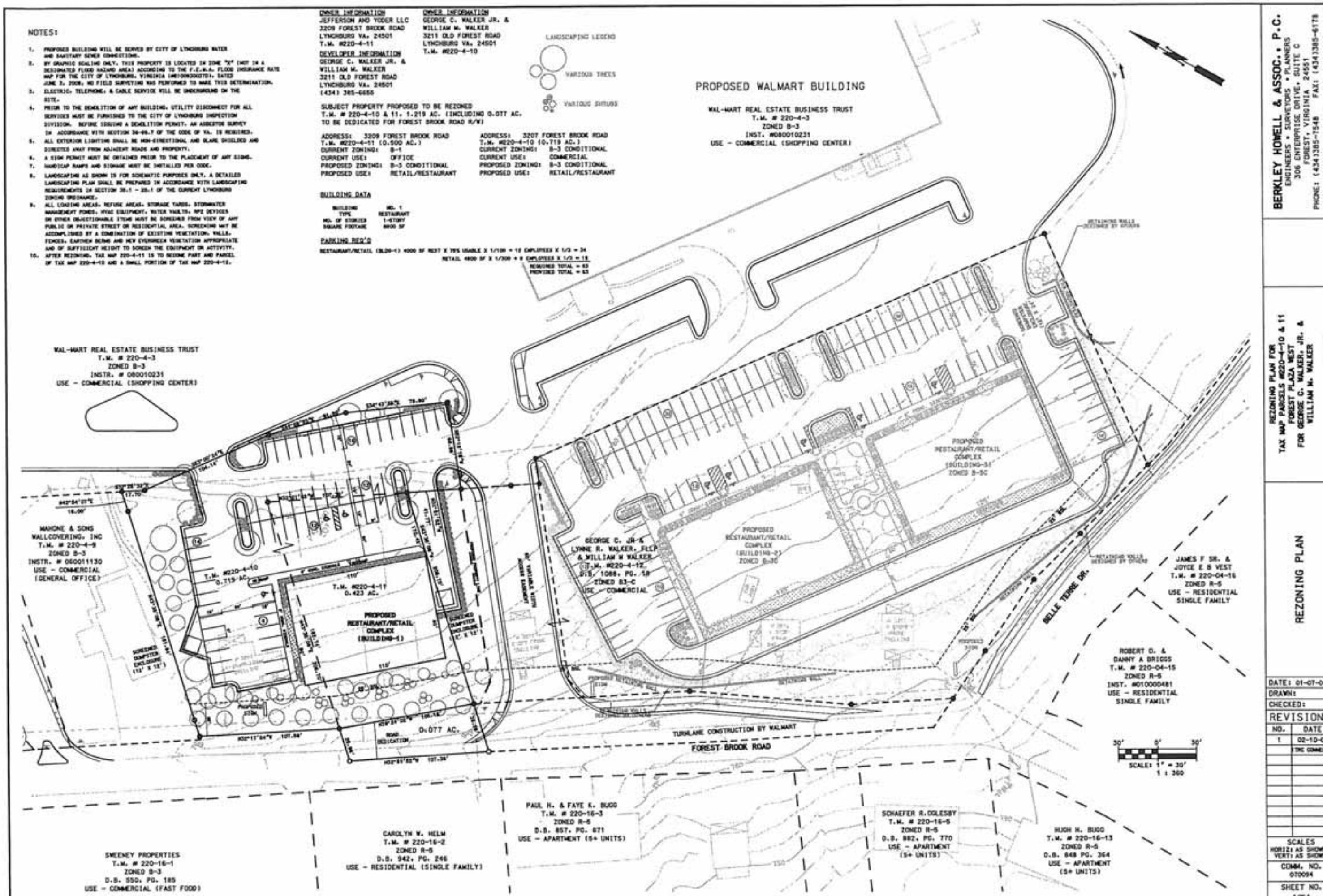
200 FT Buffer





WALKER PROPERTY ADJOINING OWNERS

PIN	Owner	LocAddr
22004003	WAL-MART REAL ESTATE BUSINESS TRUST PROPERTY TAX DEPT ATTN:0555 ST#4697	3227 OLD FOREST RD
22004004	CITY OF LYNCHBURG C/O STEVE LAWSON	3201 FOREST BROOK RD
22004008	LYNCHBURG OIL CO INC	3239 OLD FOREST RD
22004009	MAHONE & SONS WALLCOVERING INC	3203 FOREST BROOK RD
22004010	WALKER GEORGE C JR & LYNNE R FAMILY LIMITED LIABILITY PARTNERSHIP	3207 FOREST BROOK RD
22004011	JEFFERSON AND YODER LLC	3209 FOREST BROOK RD
22004012	WALKER GEORGE C JR & LYNNE R FAMILY LIMITED LIABILITY PARTNERSHIP	3211 FOREST BROOK RD
22016001	SWEENEY THOMAS M JR KAYE S L C/O SWEENEY PROPERTIES	3301 OLD FOREST RD
22016002	HOBSON SYLVIA & CW HELM D/B/A C/O CAROLYN W HELM	3208 FOREST BROOK RD
22016003	BUGG PAUL H & FAYE K	3210 FOREST BROOK RD
22016004	CARPENTER JARED	3212 FOREST BROOK RD
Owner	WALKER GEORGE C JR & LYNNE R FAMILY LIMITED LIABILITY PARTNERSHIP	
Petitioner	WALKER GEORGE & WILLIAM	
Representative	WALKER GEORGE & WILLIAM	


NOTES:
1. PROPOSED BUILDING WILL BE SERVED BY CITY OF LYNCHBURG WATER AND SANITARY SEWER CONNECTIONS.
2. BY GRAPHIC SCALING ONLY, THIS PROPERTY IS LOCATED IN ZONE "X" (NOT IN A DESIGNATED FLOOD HAZARD AREA) ACCORDING TO THE F.E.M.A. FLOOD INSURANCE RATE MAP FOR THE CITY OF LYNCHBURG, VIRGINIA, DATED JUNE 3, 2008. NO FIELD SURVEYING WAS PERFORMED TO MAKE THIS DETERMINATION.
3. ELECTRIC, TELEPHONE, & CABLE SERVICE WILL BE UNDERGROUND ON THE SITE.
4. PRIOR TO THE DEMOLITION OF ANY BUILDING, UTILITY DISCONNECT FOR ALL SERVICES MUST BE FURNISHED TO THE CITY OF LYNCHBURG INSPECTION DIVISION. BEFORE ISSUING A DEMOLITION PERMIT, AN ASBESTOS SURVEY IN ACCORDANCE WITH SECTION 36-99.7 OF THE CODE OF VA. IS REQUIRED.
5. ALL EXTERIOR LIGHTING SHALL BE NON-DIRECTIONAL AND GLARE SHIELDED AND DIRECTED AWAY FROM ADJACENT ROADS AND PROPERTY.
6. A SIGN PERMIT MUST BE OBTAINED PRIOR TO THE PLACEMENT OF ANY SIGNS.
7. HANDICAP RAMPS AND SIGNAGE MUST BE INSTALLED PER CODE.
8. LANDSCAPING AS SHOWN IS FOR SCHEMATIC PURPOSES ONLY. A DETAILED LANDSCAPING PLAN SHALL BE PREPARED IN ACCORDANCE WITH LANDSCAPING REQUIREMENTS IN SECTION 35.1 - 25.1 OF THE CURRENT LYNCHBURG ZONING ORDINANCE.
9. ALL LOADING AREAS, REFUSE AREAS, STORAGE YARDS, STORMWATER MANAGEMENT PONDS, HVAC EQUIPMENT, WATER VAULTS, RPZ DEVICES OR OTHER OBJECTIONABLE ITEMS MUST BE SCREENED FROM VIEW OF ANY PUBLIC OR PRIVATE STREET OR RESIDENTIAL AREA. SCREENING MAY BE ACCOMPLISHED BY A COMBINATION OF EXISTING VEGETATION, WALLS, FENCES, EARTHEN BERMS AND NEW EVERGREEN VEGETATION APPROPRIATE AND OF SUFFICIENT HEIGHT TO SCREEN THE EQUIPMENT OR ACTIVITY.
10. AFTER REZONING, TAX MAP 220-4-11 IS TO BECOME PART AND PARCEL OF TAX MAP 220-4-10 AND A SMALL PORTION OF TAX MAP 220-4-12.
OWNER INFORMATION
JEFFERSON AND YODER LLC
3209 FOREST BROOK ROAD
LYNCHBURG VA. 24501
T.M. #220-4-11
OWNER INFORMATION
GEORGE C. WALKER JR. &
WILLIAM W. WALKER
3211 OLD FOREST ROAD
LYNCHBURG VA. 24501
T.M. #220-4-10
DEVELOPER INFORMATION
GEORGE C. WALKER JR. &
WILLIAM W. WALKER
3211 OLD FOREST ROAD
LYNCHBURG VA. 24501
(434) 385-6666
LANDSCAPING LEGEND
VARIOUS TREES
VARIOUS SHRUBS
SUBJECT PROPERTY PROPOSED TO BE REZONED
T.M. # 220-4-10 & 11, 1.219 AC. (INCLUDING 0.077 AC. TO BE DEDICATED FOR FOREST BROOK ROAD R/W)
ADDRESS: 3209 FOREST BROOK ROAD
T.M. #220-4-11 (0.500 AC.)
CURRENT ZONING: B-1
CURRENT USE: OFFICE
PROPOSED ZONING: B-3 CONDITIONAL
PROPOSED USE: RETAIL/RESTAURANT
ADDRESS: 3207 FOREST BROOK ROAD
T.M. #220-4-10 (0.719 AC.)
CURRENT ZONING: B-3 CONDITIONAL
CURRENT USE: COMMERCIAL
PROPOSED ZONING: B-3 CONDITIONAL
PROPOSED USE: RETAIL/RESTAURANT
BUILDING DATA
BUILDING TYPE: NO. 1 RESTAURANT
NO. OF STORIES: 1-STORY
SQUARE FOOTAGE: 4800 SF
PARKING REQ'D
RESTAURANT/RETAIL (BLDG-1) 4000 SF REST X 75% USABLE X 1/100 + 12 EMPLOYEES X 1/3 = 34
RETAIL 4800 SF X 1/300 + 8 EMPLOYEES X 1/3 = 19
REQUIRED TOTAL = 53
PROVIDED TOTAL = 53
PROPOSED WALMART BUILDING
WAL-MART REAL ESTATE BUSINESS TRUST
T.M. # 220-4-3
ZONED B-3
INST. #080010231
USE - COMMERCIAL (SHOPPING CENTER)
WAL-MART REAL ESTATE BUSINESS TRUST
T.M. # 220-4-3
ZONED B-3
INSTR. # 080010231
USE - COMMERCIAL (SHOPPING CENTER)
MAHONE & SONS WALLCOVERING, INC
T.M. # 220-4-9
ZONED B-3
INSTR. # 060011130
USE - COMMERCIAL (GENERAL OFFICE)
T.M. #220-4-10
0.719 AC.
T.M. #220-4-11
0.423 AC.
PROPOSED RESTAURANT/RETAIL COMPLEX (BUILDING-1)
0.077 AC.
ROAD DEDICATION
GEORGE C. JR & LYNNE R. WALKER, FLLP & WILLIAM W WALKER
T.M. #220-4-12
D.B. 1086, PG. 18
ZONED B3-C
USE - COMMERCIAL
PROPOSED RESTAURANT/RETAIL COMPLEX (BUILDING-2) ZONED B-3C
PROPOSED RESTAURANT/RETAIL COMPLEX (BUILDING-3) ZONED B-3C
TURNLANE CONSTRUCTION BY WALMART
FOREST BROOK ROAD
BELLE TERRE DR.
RETAINING WALLS DESIGNED BY OTHERS
JAMES F SR. & JOYCE E B VEST
T.M. # 220-04-16
ZONED R-5
USE - RESIDENTIAL SINGLE FAMILY
ROBERT O. & DANNY A BRIGGS
T.M. # 220-04-15
ZONED R-5
INST. #010000481
USE - RESIDENTIAL SINGLE FAMILY
SCALE: 1" = 30'
1 : 360
SWEENEY PROPERTIES
T.M. # 220-16-1
ZONED B-3
D.B. 550, PG. 185
USE - COMMERCIAL (FAST FOOD)
CAROLYN W. HELM
T.M. # 220-16-2
ZONED R-5
D.B. 942, PG. 246
USE - RESIDENTIAL (SINGLE FAMILY)
PAUL H. & FAYE K. BUGG
T.M. # 220-16-3
ZONED R-5
D.B. 857, PG. 671
USE - APARTMENT (5+ UNITS)
SCHAEFER R.OGLESBY
T.M. # 220-16-5
ZONED R-5
D.B. 882, PG. 770
USE - APARTMENT (5+ UNITS)
HUGH H. BUGG
T.M. # 220-16-13
ZONED R-5
D.B. 848 PG. 364
USE - APARTMENT (5+ UNITS)
BERKLEY HOWELL & ASSOC., P.C.
ENGINEERS • SURVEYORS • PLANNERS
306 ENTERPRISE DRIVE, SUITE C
FOREST, VIRGINIA 24551
PHONE: (434)385-7548 FAX: (434)385-6178
REZONING PLAN FOR
TAX MAP PARCELS #220-4-10 & 11
FOREST PLAZA WEST
FOR GEORGE C. WALKER, JR. & WILLIAM W. WALKER
CITY OF LYNCHBURG, VIRGINIA
REZONING PLAN
DATE: 01-07-09
DRAWN:
CHECKED:
REVISIONS
NO. DATE
1 02-10-09
(TRC COMMENTS)
SCALES
HORIZ: AS SHOWN
VERT: AS SHOWN
COMM. NO.
070094
SHEET NO.
1 OF 1

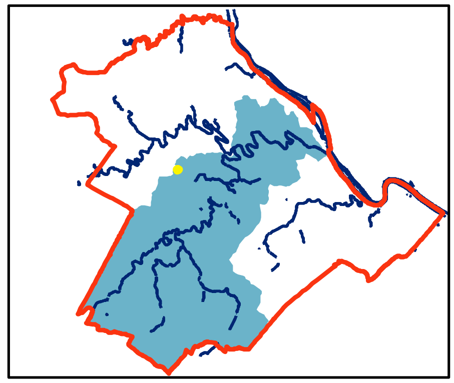
Walker Rezoning

Watershed Location Map

Project Site

Blackwater Creek

Corporate Limit



LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009**		AGENDA ITEM NO.: 8
CONSENT:	REGULAR: **X**	CLOSED SESSION: (Confidential)
ACTION: **X**	INFORMATION:	
ITEM TITLE: **FY 2010 Water and Sewer Rates**		

RECOMMENDATION: Pending comments at the public hearing approve the adoption of the attached ordinance enacting changes in the City Code effective July 1, 2009.

SUMMARY: At the February 24, 2009 Work Session, City Council considered proposed revisions to water/sewer rates as recommended by the City's Utility staff. The rate strategy for this year continues with the goals to:

a. Minimize the impact of rate adjustments on residential and other small customers.
b. Ensure necessary funding is provided for increases in operating and debt service costs.
c. Ensure compliance with the Special Order for Combined Sewer Overflow (CSO).
d. Ensure compliance with adopted Fund Balance and Debt Management Financial Policies.
e. Provide an equitable distribution of costs based on actual services provided.

The proposed increases include a 4% increase in the water volume rate to $2.13 per hcf, and a 3% increase in the sewer volume rate to $5.54 per hcf, as well as a 2.7% increase in the sewer only charge to $42.47 monthly. A complete list of existing and proposed rates is included in Attachment 1.

The 3% increase in the sewer volume rate is primarily driven by the need to maintain compliance with the CSO Special Order which dictates what the minimum sewer rate must be as it relates to the median household income.

The 4% increase in the water volume rate is driven primarily by the need to invest in the replacement of the aging water infrastructure.

PRIOR ACTION(S): February 24, 2009: City Council Work Session, FY 2010 Water and Sewer Rate Study & Status Report presentation by Department of Utilities staff.

FISCAL IMPACT: An overall net increase in revenues in the water and sewer fund of approximately 2.5% and 2.9%, respectively.

CONTACT(S):	Tim Mitchell, Director of Utilities	455-4252
	Greg Poff, Assistant Director of Utilities	455-4249
	Tammi Turner, Financial Professional III	455-4445

ATTACHMENT(S): Ordinance enacting the FY 2010 Water and Sewer rates
Attachment 1 - Rate Comparison Summary

REVIEWED BY: lkp

AN ORDINANCE TO AMEND AND REENACT SECTIONS 34-12.1 AND 39-54.1 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, AS AMENDED, THESE SECTIONS RELATING TO WATER AND SEWER RATES.

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

1. That Sections 34-12.1 and 39-54.1 of the Code of the City of Lynchburg, 1981, are hereby amended and reenacted as follows:

Sec. 34-12.1. Schedule of sewer rates.

(a) The monthly sewer rates for all consumers within the city shall be $~~5.38~~ 5.54 per h.c.f. of water used provided, however, that the rate of any party discharging industrial waste or processed water into the city system pursuant to an individual contract shall be as provided in such contract.

(b) The monthly sewer rate for customer accounts deemed "sewer only" (customers within the city without a water service connection) shall be $~~41.35~~ 42.47. This rate is derived as follows: (monthly volume charge of $~~5.38~~ 5.54 per h.c.f. x 7 h.c.f. + account charge of $3.69).

(c) In addition to the sewer rates provided in this section, a high strength waste surcharge is established for all customers with discharges in excess of twenty-five thousand (25,000) gallons per day and having biological oxygen demand and/or suspended solids concentrations in excess of normal wastewater.

The surcharge shall be as follows:

(1) For BOD concentrations in excess of three hundred (300) milligrams per liter (MG/l), eighteen dollars and forty-six cents ($18.46) per one hundred (100) pounds.

(2) For suspended solids concentrations in excess of four hundred (400) milligrams per liter (MG/l), twenty dollars and eighty-eight cents ($20.88) per one hundred (100) pounds.

(3) Truck hauled wastes disposal charges for residential and restaurant wastes as defined in Section 34-13 will be assessed at the following rates: one hundred seventy-seven dollars ($177.00) up to a limit of 2,500 gallons of capacity and thirty dollars ($30.00) for each 500 gallons of capacity over 2,500 gallons. Truck hauled wastes for special contract holders shall be charged in accordance to the terms of the contracting agreement.

(d) Annually, the director of financial services shall compute the average of each residential customer's level of monthly water consumption in hundred cubic feet (h.c.f.) for the most recent period beginning with the first billing in November and ending with the second billing in April. By multiplying this monthly average by 1.25, a seasonal consumption limit for sewer billing shall be derived for each residential account. This limit will apply during the period for the first billing in May through the second billing in October. This adjustment shall apply only to residential bills and shall not apply to any customers using water for the purpose of manufacturing or for commercial or multifamily dwellings.

Sec. 39-54.1. Schedule of water rates.

The monthly water rates for all consumers within the city shall be $~~2.05~~ 2.13 per h.c.f. of water used.

There shall be, in addition to any other charge, a monthly account (meter) charge of three dollars and sixty nine cents ($3.69) per meter.

2. That this ordinance shall become effective on July 1, 2009.

Adopted:

Certified: ________________________________
Clerk of Council

027LOrd

ATTACHMENT I

RATE COMPARISON SUMMARY

The following table provides a comparison of the current monthly water and sewer rates and the rates proposed for City Council approval, effective July 1, 2009.

	Current Rate	Proposed Rate	% Increase
Water			
Volume charge/hcf	$ 2.05	$ 2.13	4.0%
Sewer			
Volume charge / hcf	5.38	5.54	3.0%
BOD charge / 100 lbs	18.46	18.46	0.0%
TSS charge / 100 lbs	20.88	20.88	0.0%
Septic hauler charge	177.00	177.00	0.0%
Industrial permit fee	200.00	200.00	0.0%
Sewer only	41.35	42.47	2.7%
Fire Protection			
Hydrants & 8" or smaller fire lines	17.99	17.99	0.0%
10" fire lines	32.30	32.30	0.0%
12" fire lines	51.25	51.25	0.0%
Availability Fees			
Water	1,220.00	1,220.00	0.0%
Sewer	1,950.00	1,950.00	0.0%
Water Connection Fees			
3/4" & 5/8" meters	950.00	950.00	0.0%
1" service - 5/8" meter	1,000.00	1,000.00	0.0%
1" service - 1" meter	1,150.00	1,150.00	0.0%
Greater than 1" - minimum	1,150.00	1,150.00	0.0%
Sewer Connection Fees			
4" sewer line	1,100.00	1,100.00	0.0%
Greater than 4" - minimum	1,200.00	1,200.00	0.0%
Other Charges			
Account charge	3.69	3.69	0.0%
Cut-on charge	15.00	15.00	0.0%
Cut-off charge	25.00	25.00	0.0%
Delinquent account fee	5%	5%	0.0%

AGENDA ITEM # 9

April 8, 2009

Patricia Kost
Clerk of Council
900 Church Street
Lynchburg, VA

Re: John H. Wellons Foundation Proposed Senior Housing Project/Old Graves Mill Road

I, Joseph H. Reed, would like to be on the agenda for April 14,2009 Council meeting to speak on the above.

Joseph Reed
146 Salisbury Circle
Lynchburg, Va. 24502
434-237-7050

AGENDA ITEM #: 10

April 8, 2009

Patricia Kost
Clerk of Council
900 Church Street
Lynchburg, VA

Re: John H. Wellons Foundation Proposed Senior Housing Project/Old Graves Mill Road

I, Ripley Owen, would like to be on the agenda for April 14,2009 Council meeting to speak on the above.

Ripley Owen
155 Salisbury Circle
Lynchburg, Va. 24502
434-832-0324

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 11

CONSENT: REGULAR: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **John H. Wellons Foundation, Inc. Proposed Senior Housing—Request for Letter of Support**

RECOMMENDATION: Authorize a letter of support for the proposed project.

SUMMARY: Housing consultant Wendy Painter, on behalf of the John H. Wellons Foundation, Inc., will appear at Council's meeting seeking support for a proposed senior housing program under the HUD Section 202 program. The proposed development would have up to 60 one-bedroom apartments for individuals aged 62 and older with incomes at or below 50% of the area median income ($19,300 for one person and $22,050 for two people). The proposed site is located on Old Graves Mill Road behind the Timberlake Road Kroger and adjacent to the City's fire station. The project is similar to the Clearbrook Apartments on Hill Street, which the City supported. Unlike that project, the City is not being asked to make any financial commitment to enhance project scoring. The only City activity would be the extension of a sewer line to the property, which it would do for any development.

PRIOR ACTION(S): None

FISCAL IMPACT: Property tax revenue and utility customers.

CONTACT(S): Charlene Montford, 455-3902; Kimball Payne, 455-3990

ATTACHMENT(S): Information provided by Ms. Painter

REVIEWED BY: lkp

126L

LYNCHBURG CITY COUNCIL
JOHN H. WELLONS FOUNDATION, INC.
INFORMATION PACKET
APRIL 14, 2009 MEETING

- Request Summary
- Examples of Senior Communities
- Sample Support Letter
- Site Location
- John H. Wellons Foundation, Inc. Brochure
- Information Sheet

John H. Wellons Foundation, Inc.
Proposed Senior Apartment Community
Lynchburg Virginia

Request
Letter of support from the Mayor stating the City of Lynchburg's support of a HUD 202 Supportive Housing For Seniors application for funding to build approximately 50 apamnents for seniors on Old Graves Mill Road. (see enclosed sample letter) The funding application will be submitted in Mayor June of 2009.

Application Sponsors
The John H. Wellons Foundation, Inc. and the Lynchburg Community Action Corporation (LCAC) plan to jointly sponsor a funding application to build the new senior community. LCAC has a long history of serving the citizens of Lynchburg and was a co-sponsor with the Foundation to build the very successful Clearbrook Apamnent community in 2005 which is located at 3004 Hill Street.

The John H. Wellons Foundation, Inc.• based in Dunn, N. C., is an experienced developer, owner and manager of senior communities and has built over 20 communities with more than 800 units. The Foundation is committed to building quality, energy efficient apamnent communities to help seniors live a healthier, more secure, happy and useful life. (see enclosed brochure)

Location
The proposed location for the senior community is near the intersection of Timberlake Road and Old Graves Mill Road directly behind the Kroger grocery store. The four acre site sits between the Kroger and a City fire station. The site is zoned R-2 which will allow 80 units of multi-family units to be built. The Foundation plans to build up to 50 units on the site.

Need
The number of seniors is growing in every community, and the number of modest income seniors is increasing exponentially. Over 16% of the population of Lynchburg is over the age of 65 and almost 11% of those persons below the poverty level are seniors. We find that there are many seniors with incomes from Social Security and a small pension that need affordable housing. Clearbrook Apamnents, a senior apartment community developed by the Wellons Foundation, currently has 10 seniors on their waiting list. Seniors in the community need affordable apamnents that are well designed and safe. Units

are also built to handicapped accessible guidelines which offer a very important resource to the community.

Benefits

- Tax revenue for the City of Lynchburg through property tax will be significant. Clearbrook Apartments currently pays approximately $50,000 in property taxes each year. There will be an additional 50 households purchasing sewer and water services from the City as well as the utilities needed for the community space.

- Safe, attractive, energy efficient and functional housing will be available to a segment of the population that the community has identified as underserved.

- Space will be available for local service providers to access the senior population in a well designed and functional facility.

- The location provides easy access to amenities for seniors, reducing fuel usage and expense for seniors.

- The community will be built to EnergyStar standards which will reduce utility usage and provide a comfortable environment for residents.

April 15,2009

Mr. Don G. Wellons
John H. Wellons Foundation
PO Box 1254
Dunn, North Carolina 28335

RE: Senior Apartments - HUD 202 Application

Dear Mr. Wellons:

The City of Lynchburg recognizes the need for affordable housing for lower income seniors living in Lynchburg. I support your efforts to build senior apartments to be located on Old Graves Mill Road.

The apartment units will help our community meet the housing needs of our lower income seniors. The community space will be part of the development and will provide our senior service agencies a site to offer services, activities and programs that benefit seniors living at your new community as well as seniors living in nearby neighborhoods.

The City of Lynchburg hopes the U.S. Department of HUD will fund the development of these apartments for lower income seniors. If you need any additional information, please give me a call.

Sincerely,

Mayor


PEARSON DR
OLD GRAVES MILL RD
WILLOW BEND DR
WHISPERING PINES CT
ROUNDELAY RD
ROUNDELAY CIR
QUAIL LN
TIMBERLAKE RD
OAKMONT CIR
TIMBROOK

Information Sheet

Senior Apartments
Lynchburg, Virginia

Description of Development

The development will have up to 50 one-bedroom apartment units for seniors. It will have a community building for use by tenants. The site will be close to a residential neighborhood, to medical services, shopping and other support services.

Sponsors/Owners

The John H. Wellons Foundation, Inc. (JHWF) is a national sponsor of HUD Section 202 housing for seniors located in North Carolina, South Carolina and Virginia. The JHWF commitment to the development of safe, decent and affordable housing for seniors began September 11, 1982. Since that time, the JHWF has endeavored to provide elderly persons with housing specifically designed to meet their physical, social and physiological needs. The JHWF believes that its housing communities help residents live a more healthy, secure, happy and useful life. The JHWF has built 30 housing developments containing 1,214 units for the elderly.

Clearbrook Apartments at 3004 Hill Street in Lynchburg were built by the foundation in 2005. Lynchburg Community Action Corporation co-sponsored the funding application with the Foundation.

Resident Requirements

The Senior Apartments would be developed to provide affordable housing for modest income elderly persons.

All residents must be 62 years of age or older.

Income Limits

Fifty percent of Lynchburg's area median income in 2008 was $19,300 for one person and $22,050 for two people.

Resident Profile

Based on the characteristics of their elderly residents, the JHWF expects the residents of the apartments to be:

- Mostly single females in the late 60's and early 70's
- Able to live alone and care for themselves
- Incomes between $10,000 - $15,000
- Racially integrated community
- Between 30 and 50% of the residents are expected to have cars

Although the apartments are designed for the elderly who are able to live alone, care for themselves and meet their daily living needs, every effort will be made to help residents age in place. The Property Manager will assist residents as necessary with arranging for in-home services.

Rents and Rental Assistance

Modest income elderly persons living on fixed incomes of social security and/or a small pension have a difficult time finding affordable housing. High medical bills often make it more difficult to afford decent housing. The HUD 202 program established the rent for residents based on 30% of their income with adjustments for medical bills and prescriptions. HUD will provide rental assistance to the development for tenants.

Benefits to the Community

Over 16% of the population of Lynchburg is over the age of 65 and almost 11% of those persons below the poverty level are seniors. We find that there are many seniors with incomes from Social Security and a small pension that need affordable housing. Clearbrook Apartments, a senior apartment community developed by the Wellons Foundation currently has 10 seniors on their waiting list. The need to have affordable apartments that are well designed and safe is significant to seniors.

Information and Questions

If you have any questions concerning the proposed community, please contact
Wendy Painter at 919-782-1303.

Rev. 4.09

EXAMPLES OF RECENT WELLONS FOUNDATION SENIOR COMMUNITIES BUILT IN VIRGINIA

Barrows Mill Apartments - Martinsville, VA

Clearbrook Apartments - Lynchburg, VA

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 12

CONSENT: REGULAR: **X** CLOSED SESSION:
(Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Sale of three lots 3104 Fulton Street, 3036 Forest Hills Circle, and 2600 Rainbow Circle.**

RECOMMENDATION: Approval of sale of three lots located at 3104 Fulton Street, Tax Map No. 169-07-001, 3036 Forest Hills Circle, Tax Map No. 169-06-004, and 2600 Rainbow Circle, Tax Map No. 169-08-003 to Long Meadows, Inc. as long as satisfactory agreement has been finalized with the City for development.

SUMMARY: An RFP was solicited for potential development of the above 3 lots owned by the City, totaling approximately 6 acres. Proposals were received and reviewed with a recommendation given to the Physical Development Committee (PDC) based on the highest overall return to the City. After a public hearing, Council gave preliminary approval pending the drafting of a development agreement. PDC reviewed the development agreement on 3/24/09 and recommended approval to City Council. This proposal would develop this vacant property as residential.

PRIOR ACTION(S):
4/24/07 Physical Development Committee – Verbal Update
12/09/08 Physical Development – Closed Session
1/13/09 Public Hearing
3/24/09 Physical Development Committee

FISCAL IMPACT:

Sales Price - $70,000

Estimated Taxes Over 5 Years

First Year –
Real Estate Taxes - $ 9,893.00
Personal Property Taxes 3,990.00

Second Year –
Real Estate Taxes - $32,723.00
Personal Property Taxes 12,540.00

Third Year –
Real Estate Taxes - $58,597.00
Personal Property Taxes 21,090.00

Fourth Year –
Real Estate Taxes - $71,534.00
Personal Property Taxes 26,790.00

Fifth Year –
Real Estate Taxes - $71,534.00
Personal Property Taxes 26,790.00

CONTACT(S):
Steve Lawson – Real Estate Manager – 455-3945
Lee Newland, Director of Engineering – 455-3947
Charlene B. Montford, Director – Community Planning and Development – 455-3902

ATTACHMENT(S):
Site Location Map
Aerial site location map
Preliminary Subdivision Plat
Joint Development Agreement
Resolution

REVIEWED BY: lkp

RESOLUTION

A RESOLUTION TO CONVEY THE THREE VACANT LOTS AT 3104 FULTON STREET, 3036 FOREST HILLS CIRCLE, AND 2600 RAINBOW CIRCLE TO LONG MEADOWS, INC.

WHEREAS, the City of Lynchburg owns three vacant lots located at 3104 Fulton Street (Tax Map Number 169-07-001), 3036 Forest Hill Circle (Tax Map Number 169-06-004) and 2600 Rainbow Circle (Tax Map Number 169-08-003) in the City of Lynchburg, Virginia; and

WHEREAS, the City is not using the lots in question and has no plans to use the lots in the future and in July of 2008 requested proposals for the purchase and development of such lots; and

WHEREAS, Long Meadows, Inc. submitted a proposal to purchase the three lots for the sum of $70,000 and to build a mixture of energy efficient and environmentally green single family homes and single and two level attached homes on the lots; and

WHEREAS, a resolution authorizing the conveyance of the three lots to Long Meadows, Inc. was introduced to City Council at its January 13, 2009, Council meeting and was brought back to City Council for adoption at Council's April 14, 2009, Council meeting; and

WHEREAS, after careful review of the proposals it received, the City has determined that it is appropriate to convey the three lots to Long Meadows, Inc.; and

NOW, THEREFORE, BE IT RESOLVED that City Council hereby determines that the City has no need for the three lots located at 3104 Fulton Street, 3036 Forest Hill Circle and 2600 Rainbow Circle, and further finds the City's continued ownership of the lots is no longer necessary or required for the best interests of the City.
BE IT FURTHER RESOLVED that the City Council hereby approves the conveyance of the three lots at 3104 Fulton Street, 3036 Forest Hill Circle and 2600 Rainbow Circle to Long Meadows, Inc. and hereby authorizes the City Manager to execute a deed and any other documents that may be needed to convey said lots to Long Meadows, Inc. for the sum of $70,000.

BE IT FURTHER RESOLVED that the three lots at 3104 Fulton Street, 3036 Forest Hill Circle and 2600 Rainbow Circle are being conveyed to Long Meadows, Inc. subject to the condition that the lots shall be developed in accordance with the Development Proposal dated September 1, 2008, that Long Meadows, Inc. submitted in response to the City's Request for Proposals and in accordance with the Joint Development Agreement between the City and Long Meadows, Inc., copies of which are attached to this Resolution and by this reference made a part hereof.

Adopted:

Certified: ______________________________
Clerk of Council

031L

THE PLATTING OR DEDICATION OF THE FOLLOWING DESCRIBED LAND (SEE TITLE BLOCK AND NOTES) IS WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRE OF THE UNDERSIGNED OWNERS PROPRIETORS AND TRUSTEES, IF ANY, THE STATEMENT SHALL BE SIGNED BY SUCH PERSONS AND DULY ACKNOWLEDGED BEFORE AN OFFICER AUTHORIZED TO TAKE ACKNOWLEDGEMENT OF DEEDS.

THE UNDERSIGNED ALSO ACKNOWLEDGE BY THEIR SIGNATURES THAT THEY HAVE READ, REVIEWED AND UNDERSTAND THE NOTES AND CONTENTS SHOWN ON THIS PLAN AND THAT IT IS IN COMPLIANCE WITH THE SERVICES AS REQUESTED AND THAT THIS PLAN IS NOT VALID UNLESS SIGNED.

____
LONG MEADOWS, INC. / AGENT

TO WIT: STATE OF   CITY / COUNTY OF

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

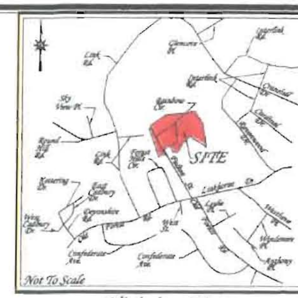
____
NOTARY PUBLIC

NOTES:

1. THIS CONCEPT PLAN WAS PREPARED FOR LONG MEADOWS, INC.
2. NO DETERMINATION OF WETLANDS WAS REQUESTED OF, NOR WAS ANY DETERMINATION/DELINEATION MADE BY ACRES OF VIRGINIA INC. OR THIS SURVEYOR. THIS PLAN DOES NOT ADDRESS THE EXISTENCE OR DELINEATION OF ANY ENVIRONMENTALLY SENSITIVE AREAS IN OR AROUND THE BOUNDARIES OF THIS PROPERTY.
3. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT SURVEYED OR EXAMINED OR CONSIDERED AS PART OF THIS CONCEPT PLAN. NO EVIDENCE OR STATEMENT IS MADE CONCERNING THE EXISTENCE OF UNDERGROUND OR OVERHEAD CONDITIONS, CONTAINERS OR FACILITIES THAT MAY AFFECT THE USE OR DEVELOPMENT OF THIS PROPERTY.
4. THIS SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE. THIS CONCEPT PLAN WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND DOES NOT THEREFORE NECESSARILY INDICATE ALL ENCUMBRANCES OR IMPROVEMENTS ON THIS PROPERTY. ALL ADJOINING OWNERS ARE NOW OR FORMER OWNERS.
5. THIS PROPERTY AS PLATTED FALLS WITHIN THE FLOOD ZONE "X" AS DETERMINED BY F.E.M.A. AND SHOWN ON THEIR MAP PANEL NO. 51009300370 DATED REVISION JUNE 3, 2008. NO CERTIFICATION BY THIS SURVEYOR IS MADE TO THE ACCURACY OF THE FLOOD INSURANCE RATE MAP.
6. IN PROVIDING THIS CONCEPT PLAN NO ATTEMPT HAS BEEN MADE TO OBTAIN OR SHOW DATA CONCERNING EXISTENCE, SIZE, DEPTH, CONDITION, CAPACITY OR LOCATION OF ANY UTILITY EXISTING ON THE SITE, WHETHER PRIVATE, MUNICIPAL OR PUBLIC OWNED.
7. IF THE SURVEYORS SIGNATURE ON THIS CONCEPT PLAN IS NOT SIGNED WITH BLUE INK, THIS PLAN IS A COPY AND COULD CONTAIN UNAUTHORIZED ALTERATIONS. CERTIFICATION APPLIES TO ORIGINAL COPIES AND IS CERTIFIED SOLELY THE PERSON(S) OR ENTITIES FOR WHOM THE PLAN WAS PREPARED.
8. ANY SUBAQUEOUS BEDS LOCATED WITHIN THE BOUNDARIES OF THIS PROPERTY MAY BE THE PROPERTY OF THE COMMONWEALTH OF VIRGINIA. THIS SURVEYOR HAS MADE NO ATTEMPT TO DETERMINE SAID OWNERSHIP. THEREFORE THE AREA SHOWN ON THIS CONCEPT PLAN IS PLUS OR MINUS AND IS INCLUSIVE OF ANY SUBAQUEOUS BEDS UNLESS OTHERWISE NOTED.
9. IT IS UNLAWFUL TO DISTURB ANY GRAVE OR GRAVE MARKER. ACCORDINGLY, ANY GRAVE OR ANY OBJECT OR STRUCTURE MARKING A PLACE OF BURIAL IDENTIFIED DURING THE SURVEY, PROPERTY RESEARCH OR PLAT PREPARATION OR AS DENOTED ON THIS PLAN, ACRES OF VIRGINIA, INC. AND THIS SURVEYOR EXPRESSLY DISCLAIM ANY RESPONSIBILITY (MONETARY OR OTHERWISE) FOR THE DESTRUCTION, REMOVAL OR DISTURBANCE OF ANY GRAVES OR GRAVE MARKERS THAT MAY NOT HAVE BEEN DETECTED OR SHOWN ON THIS PLAN AS WELL AS ANY GRAVES OR GRAVE MARKERS THAT HAVE BEEN SHOWN.
10. PRIOR TO THE IMPROVEMENT OR DISTURBANCE OF ANY LOT IN THE CITY OF LYNCHBURG BY ANY PERSON(S) OR ENTITY THE PLANNING DEPARTMENT SHALL BE CONTACTED CONCERNING, BUT NOT LIMITED TO, THE CURRENT ZONING, BUILDING SETBACK REQUIREMENTS, WATER OR SEWER SYSTEMS, HEALTH DEPARTMENT REQUIREMENTS, EROSION AND SEDIMENT CONTROL REQUIREMENTS, AND PRIVATE STREETS, PERMITS, ETC. STATE AND FEDERAL AGENCIES SHALL ALSO BE CONTACTED PRIOR TO ANY IMPROVEMENT OR DISTURBANCE TO THE PROPERTY, BY ANY PERSON OR ENTITY, CONCERNING BUT NOT LIMITED TO ALL OF THE AFOREMENTIONED REASONS AND TO INSURE THAT THEY COMPLY WITH THE CURRENT LAWS GOVERNING THE DISTURBANCE OR IMPROVEMENT OF THE PROPERTY. THE AFOREMENTIONED TASKS ARE NOT THE RESPONSIBILITY ACRES OF VIRGINIA INC. AND THIS SURVEYOR BUT ARE SOLELY THE RESPONSIBILITY OF THE PERSON(S) OR ENTITY CONDUCTING THE IMPROVEMENT OR DISTURBANCE. WE WILL NOT BE HELD RESPONSIBLE OR LIABLE FOR ANY DAMAGES, FINES OR OTHER MONETARY/CIVIL/CRIMINAL PENALTIES RESULTING FROM NON-COMPLIANCE WITH LOCAL,STATE OR FEDERAL LAWS AND REGULATIONS.
11. NOTICE IS GIVEN TO ANY PERSON(S) OR ENTITY THAT BY USING THIS PLAN OR ANY PORTION THEREOF YOU ACKNOWLEDGE THAT YOU HAVE READ, REVIEWED AND UNDERSTAND THE NOTES AND CONTENTS SHOWN ON THIS PLAN AND AGREE TO HOLD HARMLESS AND FREE FROM ANY LIABLITY ACRES OF VIRGINIA INC. ITS EMPLOYEES AND THIS SURVEYOR FOR INFORMATION NOT SHOWN OR PROVIDED. BEYOND THE SERVICES REQUESTED IT IS UNDERSTOOD THAT THIS PLAN SHOWS AND REPRESENTS THE EXTENT OF SERVICES AS REQUESTED. THIS INCLUDES BUT IS NOT LIMITED TO ANY CONTRACT PURCHASER AND PERSON(S) OR ENTITY THAT REQUESTED OR RENDERED PAYMENT FOR THE SERVICES.
12. ALL LOTS WITHIN STONEHAVEN WILL BE SERVED BY CITY OF LYNCHBURG PUBLIC WATER AND SANITARY SEWER.
13. ALL LOTS WITHIN STONEHAVEN WILL BE SERVED BY UNDERGROUND UTILITIES.
14. FINAL SUBDIVISION PLATS MUST BE RECORDED WITHIN SIX (6) MONTHS FROM DATE OF APPROVAL IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF LYNCHBURG. IF APPROVED PLATS ARE NOT RECORDED WITHIN SIX (6) MONTHS APPROVALS WILL BE VOID.
15. THE TOTAL SUBDIVIDED AREA OF LOTS WITHIN STONEHAVEN IS 8.202±ACRES

SOURCE OF TITLE: (169-06-003, 169-06-004 & 169-07-001)

THIS PROPERTY WAS CONVEYED TO THE CITY OF LYNCHBURG, A MUNICIPAL CORPORATION OF THE COMMONWEALTH OF VIRGINIA, BY DEED DATED NOVEMBER 10, 1958 AND RECORDED IN DEED BOOK 325 PAGE 358 IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF LYNCHBURG, VIRGINIA.



Vicinity Map

= Phase I
= Phase II
700 = City Contours

THIS CONCEPT PLAN WAS PREPARED (OCTOBER 16, 2008) FROM ACTUAL AND CURRENT COURT HOUSE RESEARCH AND WAS MADE UNDER MY SUPERVISION

COMMONWEALTH OF VIRGINIA
THOMAS C. BROOKS SR.
Lic. No. 2048
10/16/08
LAND SURVEYOR

THOMAS C. BROOKS, SR., L.S. NO. 2048
(VIRGINIA ASSOCIATION OF SURVEYORS CONTINUING EDUCATION PROFESSIONAL)

Approved By: ______________________
Director of Engineering / Date

Approved By: ______________________
Clerk of Council / Date

GRAPHIC SCALE 1"=60'
0 60 120 180

ACRES OF VIRGINIA, INC.
SURVEYORS~ENGINEERS~PLANNERS & SOIL CONSULTANTS
email: Serco2@aol.com
www.acresofvirginia.com

LYNCHBURG OFFICE:
404 CLAY STREET
LYNCHBURG, VA 24504
OFFICE: (434) 528-4674
FAX: (434) 846-1048

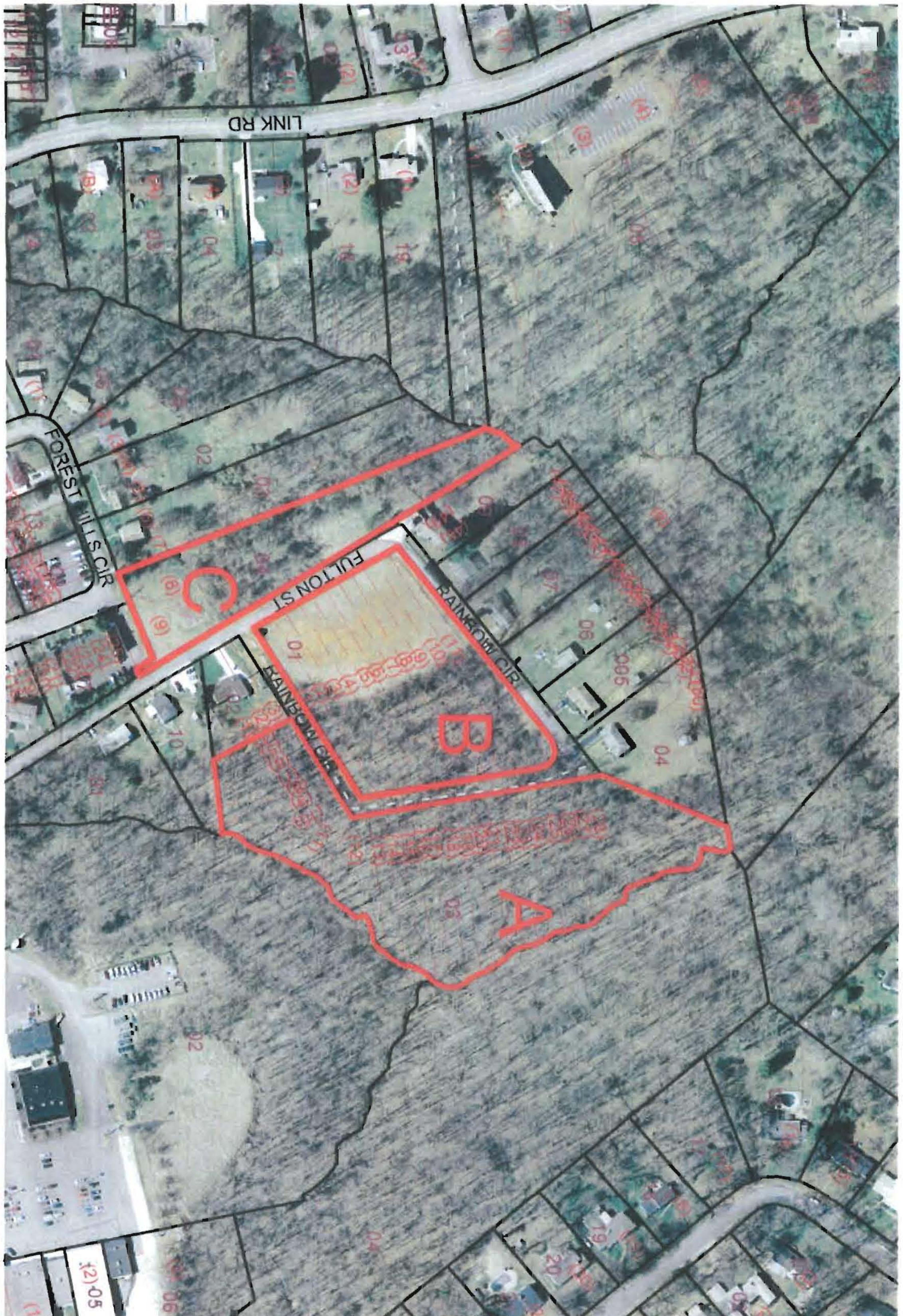
AMHERST OFFICE:
357 SOUTH MAIN STREET
AMHERST, VA 24521
OFFICE: (434) 946-0770
FAX: (434) 946-7942

CONCEPT PLAN SHOWING
PROPOSED RESUBDIVISION OF
PART OF LOTS 9 & 9, BLOCK 4, MAP OF FOREST HILL
& LOTS 1-28, BLOCK 1 & LOTS 4-28 BLOCK 2, W.D. FOSTER SUBDIVISION

Stonehaven

LYNCHBURG, VIRGINIA

SCALE: 1"=60' DATE: OCTOBER 16, 2008
COMM.NO. 081087/COLOR3-081087-SERVER-NEWJOB2008
COPYRIGHT


LINK RD
FOREST HILLS CIR
FULTON ST
RAINBOW CIR
A
B
C

LINK RD
FOREST HILLS CIR
OLD FOREST RD
LINKHORNE DR
RAVENWOOD DR
INTERLINK RD
CARDINAL PL
R-1
R-3
R-4
B-1C
07-12-83
B-5C
11-12-85
B-3
B-1

JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT (this "Agreement") is made as of the ____ day of , 2009, by and between THE CITY OF LYNCHBURG, VIRGINIA, a political subdivision of the Commonwealth of Virginia, (the "City"); and LONG MEADOWS, INC., a Virginia Corporation,("Long Meadows").

WITNESSETH

WHEREAS, the City is the owner of three parcels of property, to-wit: 3104 Fulton Street (Tax Map Number 169-07-001), 3036 Forest Hills Circle (Tax Map Number 169-06-004) and 2600 Rainbow Circle (Tax Map Number 169-08-003), which are hereinafter collectively referred to as the "Property."

WHEREAS, Long Meadows wishes to purchase the above described property form the City for the sum of $70,000 and to develop the property as provided in this Joint Development Agreement. Upon the execution of this Agreement, Long Meadows will pay the City a $500.00 deposit which will be held by the City and will be applied towards the purchase price of the property at closing. Closing will take place within fourteen (14) days after the Lynchburg City Council adopts a proposed zoning ordinance amendment that will allow lots in R-3 Medium Density Residential Districts to be subdivided into two lots with a zero foot setback for attached two family dwellings or at another at a date that is mutually agreeable to both parties. Appropriate restrictive covenants will be placed in the deed of conveyance to Long Meadows in order to ensure compliance with the provisions of this Joint Development Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Long Meadows hereby agree, as follows:

1. Subject to the Development Proposal.

The property will be developed in accordance with the Development Proposal dated September 1, 2008, that Long Meadows submitted to the City in response to the City's Request for Proposals, a copy of which is attached to this Joint Development Agreement as "Attachment 1" and by this reference made a part hereof.

2. Additional Development Conditions.

The property will be developed in accordance with the Subdivision Plat entitled "Stonehaven," dated October 18,2008, and prepared by Acres of Virginia, Inc., a copy of which is attached to this Joint Development Agreement as "Attachment 2" and by this reference made a part hereof. In order to provide the City with a neighborhood that is both environmentally responsible and which furthers the City's goals of promoting cohesive, quality new neighborhoods, Long Meadows agrees as follows:

(a) Long Meadows agrees to purchase and install street lights from AEP like the street lights used in the New Towne development. The City agrees that it will be responsible for the ongoing operating costs of such street lights.

(b) In lieu of CG-6 (curb and gutter), Long Meadows agrees to construct face-down style sidewalks throughout the project unless the topography of the property (such as lots 22-28 in Phase II) or other site issues make the construction of face-down style sidewalks impractical. In the event the construction of face-down style sidewalks is impractical, Long Meadows would use a more feasible curb and gutter application. Face-down walks are not required by City ordinances, but Long Meadows believes such sidewalks are an upgrade that will better link the existing neighborhood with the new one. In accordance with the City's construction guidelines, the City and Long Meadows will share 50% of the cost of constructing face-down sidewalks or CG-6 curb and gutter, whichever is installed.

(c) Long Meadows will dedicate a portion of the Phase II property to the City of Lynchburg for a potential future walking trail. Long Meadows will create access via an easement to it along the western property line of Lot 28 as shown on the "Stonehaven" Subdivision Plat.

(d) Long Meadows will build a new connector street, at its on cost and expense according and to City standards as part of Phase II of "Stonehaven."

3. <u>Mutual</u> <u>Duties</u> <u>and</u> <u>Responsibilities.</u>

(a) The City will install/upgrade the waterline for the existing lots fronting on Rainbow Circle from the existing 2" line to a 6 or 8 inch line. Additionally, The Phase I water services (laterals, yolks and boxes) will be installed at the time of the waterline upgrade/installation. The individual water meters will be installed at the time of permit acquisition.

(b) The City will leave the existing Fulton Street water line where it currently exists (to avoid complications with widening the road). Any upgrades or partial/complete replacement of the Fulton Street waterline will be at the City's expense. The upgrades or replacements to the waterline will need to be done before Long Meadows can begin construction of the face-down sidewalks.

(c) Long Meadows will be responsible for widening Fulton Street (Phase I of Stonehaven) to accommodate the 40 foot public right-of-way which includes the typical 25 feet of improved street. The widening of Fulton Street is not a full overlay, but simply adding pavement to fill between existing pavement and the new face-down sidewalks. Rainbow Circle will not have any curbing or walks added to the previously developed side of the street, but only on the upper/new side (lots 10-13 of Phase I). Long Meadows will also widen the Rainbow Circle to accommodate the City'S right-of-way requirements in the same manner that Fulton Street will be widened.

(d) The City'S landscaping ordinance requires street trees every 40 feet. Long Meadows will shift the trees out of the City'S right-of-way in order to better accommodate the face-down sidewalks and the placement of utility lines. A property owners association will be established for "Stonehaven" to oversee the maintenance of the trees and to deal with any ongoing issues the location of the trees on private property may cause the individual property owners.

(e) To assist Long Meadows obtain building permits in a timely manner, Long Meadows will need quick approval of Tommy Brooks' subdivision plat of both Phases I and II of "Stonehaven." This will require that the bulk of the improvements show on the subdivision plat, including the new street as well as the new connector street to be treated as part of Phase II (the 17 lot section) of "Stonehaven," which will take more time for Long Meadows to engineer and develop. Long Meadows will need subdivision approval by the City's Technical Review Committee and subsequent recordation of the subdivision plan in order for Long Meadows to obtain the building permits on the Phase I (the 13 lot section) of "Stonehaven." Long Meadows agrees that it will install the face down-sidewalks before selling the lots in Phase I to the ultimate buyers.

4. <u>General</u> <u>Conditions.</u>

(a) Except as modified by this Joint Development Agreement the property must be developed in accordance with the provisions ofthe City's subdivision ordinance and all other applicable City ordinances, policies and regulations.

(b) Prior to the commencement of any of the improvements required under this Joint Development Agreement by Long Meadows, Long Meadows agrees that it will provide to the City a performance bond in the amount of the cost to construct such improvements. All work by Long Meadows will be done in a good and workmanlike manner, in accordance with the site plans and in compliance with all applicable laws, statutes, codes, rules and regulations governing such construction. If the Long Meadows fails to construct any of the improvements or fails to construct such improvements to the applicable standards, the City will call the bond. Long Meadows understands and agrees that no occupancy permits will be issued for any of the dwelling units until the improvements required for each Phase of "Stonehaven" have been constructed. Once all of the Phase I improvements have been completed the City will issue occupancy permits for the Phase I dwelling units. Once all of the Phase II improvements have been completed the City will issue occupancy permits for the Phase II dwelling units. The water and sewer lines that must be installed by Long Meadows as part of "Stonehaven" must be installed as part of Phase 1.

(c) This Joint Development Agreement is binding upon the respective heirs, successors, administrators, executors, and assigns of the parties hereto.

(d) No modification of this Joint Development Agreement shall be valid or binding unless such modification is in writing, duly dated and signed by both parties.

(d) This Joint Development Agreement is conditioned upon the approval of the sale of the property described herein by the Lynchburg City Council as required by Section 15.2-1800 of the Code of Virginia.

IN WITNESS WHEREOF, the parties hereto have executed this Joint Development Agreement as of the day and year first above written.

CITY OF LYNCHBURG

By _

L. Kimball Payne, City Manager

LONG MEADOWS, INC.

By _

Chris Morey, President

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IN WITNESS WHEREOF, the parties hereto have executed this Joint Development Agreement as of the day and year first above written.

CITY OF LYNCHBURG

By _

1. Kimball Payne, City Manager

LONG MEADOWS, INC.

By _

Chris Morey, President

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 13

CONSENT: REGULAR: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Zoning Ordinance Amendment – Section 35.1-31, Medium Density Residential District**

RECOMMENDATION: Approval of Zoning Ordinance Amendment.

SUMMARY: On March 10, 2009 the City Council conducted a public hearing concerning amending Section 35.1-31, Medium Density Residential District of the Zoning Ordinance, to allow a duplex lot to be subdivided along a party wall by right in the Residential 3 (R-3) District. At that time, concerns were raised about the feasibility of splitting existing duplexes, particularly large buildings that had originally been build as single family dwellings and later divided, the potential impact on historic districts, and issues related to the applicability of building code requirements. Council asked that these matters be explored and placed the item on the April 14, 2009 agenda for further discussion.

In the meantime, staff has learned several things. First of all, the Building Code will not allow a property to be subdivided along a party wall unless strict requirements are met. This would include a fire-rated separation between the two dwelling units and separate utility connections. While some of the newer duplexes in the City might be able to meet the Building Code requirements, older structures would not be able to and therefore could not be subdivided for separate ownership.

More significantly, staff discovered a currently unused definition in the Zoning Ordinance for "Semi-Detached Dwellings." The Zoning Ordinance currently defines a Semi-Detached Dwelling as "One (1) of two (2) buildings, arranged or designed as dwellings located on abutting lots, separated from each other by a party wall, without openings, extending from the cellar floor to the highest point of the roof along the dividing lot line, and separated from any other building or structures by space on all sides". Staff believes that this definition meets exactly the intent of the proposed ordinance amendment, to allow Semi-Detached Dwellings within R-3, Districts. Accordingly, the proposed language has been changed to show "Semi-Detached Dwellings" as a by right use in the R-3 Districts.

PRIOR ACTION(S):

December 9, 2008:	Planning Commission initiated amendment to Section 35.1-31 of the Zoning Ordinance.
January 28, 2009:	Planning Division recommended approval of Zoning Ordinance Amendment
January 28, 2009:	Planning Commission recommended approval (6-0, with one member absent, Oglesby) of the Zoning Ordinance amendment
March 10, 2009:	City Council conducted public hearing on Zoning Ordinance Amendment.

BUDGET IMPACT: None

CONTACT(S): Charlene Montford – 455-3902; Tom Martin 455-3990

ATTACHMENT(S): Ordinance; Excerpt from the Original 03/10/09 Council Report; Planning Commission Minutes

REVIEWED BY: lkp

ORDINANCE
AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-31, MEDIUM DENSITY RESIDENTIAL DISTRICTS (R-3), TWO FAMILY, OF THE CODE OF THE CITY OF LYNCHBURG, 1981, AS AMENDED, THE AMENDED SECTION RELATING TO SEMI-DETACHED DWELLINGS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LYNCHBURG:
1. In order to promote the public necessity, convenience, general welfare, and good zoning practice, Section 35.1-31, Medium Density Residential Districts (R-3), Two Family, of the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted as follows:

Sec. 35.1-31. Medium density residential districts (R-3), two (2) family.

(a) Intent. These districts are intended to provide for residential and other compatible uses at medium densities in areas with a high level of road access and other public and commercial services and with topography and soils suitable for such development.

(b) Prohibited uses. Within any medium density residential district (R-3). as indicated on the official zoning map, no lot, building or structure shall be used and no building or structure shall be erected which is intended or designed to be used, in whole or in part, for any industrial, manufacturing, trade or commercial purposes.

(c) Uses permitted by right. The following uses will be permitted by right subject to the regulations of the zoning ordinance, including Section 35.1-14 “Site Plan Review:”

(1) Dwellings of any structure type not prohibited by city or state law, except individual mobile homes.

(2) Single-family dwellings.

(3) Two (2) family dwellings of all types.

(4) Semi-Detached Dwellings

Semi-Detached Dwelling - 4000 sf lot

~~(4)~~ (5) Public libraries, public museums and art galleries.

~~(5)~~ (6) The office of an architect, draftsman, planner, attorney-at-law, physician, osteopath, healer, conveyancer, dentist, surveyor, professional engineer (civil, electrical, mechanical or other), public accountant, minister or teacher residing in the dwelling or dwelling unit in which the office is located.

~~(6)~~ (7) Agriculture (see Section 35.1-28).

(d) Permitted accessory uses. The following uses will be permitted as accessories to principal permitted uses in medium density residential districts subject to the regulations of Section 35.1-24, “Accessory buildings and uses.”

(1) Home occupations [see Section 35.1-28(d)].

(2) Garages for the use of occupants of the property.

(3) Private recreational facilities.

(4) Family day home (As provided in Section 35.1-28d(4).

(e) Uses permitted by conditional use permit. The following uses shall be permitted in medium density residential districts as conditional use, subject to the regulations of Section 35.1-15 and Article X of the zoning ordinance:

(1) Uses permitted as conditional use in low and low-medium density residential districts except those uses that are permitted by right in medium density residential districts [see Section 35.1-31(c)].

(2) Off-street parking lots serving:

a. Permitted uses in medium density residential districts located within two hundred (200) feet of the lot to be used for off-street parking.

b. Commercial uses in a business district where the said commercial use is adjacent to the lot to be used for off-street parking.

(3) Schools for specific educational purposes such as for technical or vocational training; provided, all operations must be conducted within an enclosed building; and provided further, that all such buildings must be at least one hundred (100) feet from any adjoining property line or street.

(4) Townhouse units for sale (see Section 35.1-56).

(5) Rooming houses.

(f) Standards. Buildings and structures in medium density residential districts shall meet the following standards, except as specified for conditional permit uses in Article X of the zoning ordinance:

	R-3
Maximum net density	
(dwellings per acre)	5.45
(dwelling units per acre)	10.89
Minimum front yard (feet)	30
Minimum side yard (feet)	8
Minimum rear yard (feet)	30
Minimum lot size (square feet)	8,000
Minimum street frontage at the street right-of-way line (feet)	60
Minimum lot width at building line (feet)	60
Maximum ground coverage (percent)	30
Semi-Detached Dwellings	
Minimum front yard (feet)	30
Minimum side yard (feet)	8
Minimum rear yard (feet)	30
Minimum lot size (square feet)	4000
Minimum street frontage at the street right-of-way line (feet)	30
Minimum lot width at building line (feet)	30

Maximum height: the maximum within setback lines shall be forty (40) feet except that, where the lot size permits, maximum height shall be one-half (1/2) the distance to the nearest lot line.

(1) Area regulations. Each dwelling, boardinghouse or lodging house, together with its accessory buildings, shall be located on a lot having an area of not less than four thousand (4,000) square feet for each family unit,

boarder, or roomer, except that the minimum area for any such lot shall be eight thousand (8,000) square feet; provided, however, that a lot having less area or less width than herein required, and of record at the time of the effective date of this section on December 12, 1978, may be occupied by a single-family dwelling only. Further, if a lot of record at the effective date of this section has less width than required, a new single-family dwelling or an addition to an existing single-family dwelling could be built and the side yard setback requirement can be reduced by fifty percent (50%) and the rear yard setback can be reduced by twenty-five (25%), provided the lot of record previously had a dwelling situated thereon.

(2) Area regulations for townhouse units for sale. For applicable regulations see Section 35.1-56 of the zoning ordinance.

Townhouse units for sale in an R-3 district shall not exceed the maximum net density permitted in an R-3 district.

(g) Signs. (As provided in Sections 35.1-26 through 35.1-26.16)

(h) Parking requirements. Off-street parking and loading space shall be provided as required in Section 35.1-25 of the zoning ordinance.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: ________________________________

Clerk of Council

032L

MINUTES OF THE JANUARY 28, 2009 PLANNING COMMISSION MEETING (MINUTES HAVE BEEN APPROVED):

a. Consideration of amending Section 35.1-31, Medium Density, Two-Family Residential_District to allow the division of a duplex into two (2) separate units for sale. Section 35.1-31, Medium Density, Two Family Residential District currently permits duplexes as a matter of right; however, the sale of the individual units is prohibited.

Mr. Martin addressed the commissioners with the following comment. He indicated that this proposed amendment was initiated by the Planning Commission on December 10, 2008. The R-3 district primarily promotes rental units; it does not promote home ownership in a duplex situation. Mr. Martin indicated that the commissioners need to make one change to the ordinance. The sentence which reads **"<u>(3) Two (2) family dwellings may be subdivided and share a party wall with a zero (0) foot setback provided the fire resistive requirements of the building code and all other area and setback requirements are met.</u>"** needs to have the words "with thirty (30) feet of street frontage and" added before "a zero (0) foot setback." Planning staff does recommend approval of the proposed amendment.

Chair Hamilton asked for anyone else present to speak in favor of the petition. No one came forward. She asked if there was anyone else present to speak in opposition to the petition to the petition. Ms. Frances Calhoun of 400 Madison Street came forward to speak on behalf of the Garland Hill Neighborhood Association.

Ms. Calhoun stated that when she saw the notice of this hearing, she reread the section of the *Zoning Ordinance* dealing with R-3 districts. She could not find any prohibition on the sale of duplex units to different owners. Ms. Calhoun spoke with Mr. Martin and he indicated that the setback requirements found in subsection (f) preclude the sale of a duplex unit separately. Ms. Calhoun pointed out that the opening paragraph of the R-3 section infers that those provisions are for development rather than applicable to existing structures. Ms. Calhoun stated that the vast majority of the existing structures in R-3 districts will fail to meet some or all of the standards that are outlined in subsection (f).

Mr. Martin also indicated to her that this amendment would not affect Garland Hill because of its R-2 zoning. However, at the Garland Hill Association meeting, it was the consensus of the members that they do not just live in Garland Hill, and they are concerned with the city as a whole. Some of Lynchburg's other local designated historic districts are currently zoned R-3. Many of the duplex structures are in areas which have previously been identified as possible future historic districts. New duplex units would probably be located on vacant lots that are scattered about throughout the city.

Ms. Calhoun stated that the Garland Hill members foresee several potential problems with having different ownership of the halves of a duplex such as different exterior materials and color schemes and particularly different levels of maintenance. The supporting material that Ms. Calhoun obtained from the Community Development department showed that the subdivider will be expected to set up an association of the owners. It is a little unclear how this association would work when you have scattered duplexes scattered about the R-3 districts. For example, who would collect the association fees? Who would hold an accounting of the money? Who would determine the needed maintenance? Who would provide for the maintenance? What if the homeowner kept up his mortgage payments but failed to pay his association fees? For various reasons, the initial buyer of such a unit may decide to subsequently sell it or it could be foreclosed on by a lender. Subsequent owners might not be bound by the initial association provisions. Enforcement would be extremely cumbersome or impossible. She pointed out that there could be a resident owner who lives next to a non-resident owner. The non-resident owner might rent the unit without screening the tenants carefully or lets the unit fall into disrepair. The resident owner would suffer a reduction in their property value. If the unit happened to be owned by an out-of-state owner, it has long been demonstrated that the city is powerless to enforce any kind of maintenance. Garland Hill has experienced this, as well as other neighborhoods in the city. It is likely that the covenants of a proposed association would likely be unenforceable if the unit was owned by someone out of state.

Ms. Calhoun found after doing a minimal amount of research that there are eight individual duplex units that are owned by different individuals with no apparent legal problems. She provided a list of these units to the commissioners. She asked them to note that four of the units have out-of-state owner addresses and one is from another city in Virginia. This seems to suggest that offering individual duplex units attracts a non-local buyer which leads to probable rental and difficulty in enforcing maintenance. Even though individual duplex units have been and are being sold separately, the members of Garland Hill believe it is best not to actively promote such sales. With existing structures, the chief beneficiaries would appear to be the initial seller who may want to sell a problem property and the realtor. Ms. Calhoun stated that since it is apparent that separate ownership already exists, the Garland Hill Association recommends that the Planning Commission either leave this section as is or make it applicable only to new development.

Chair Hamilton asked if there was anyone else present to speak in opposition to the petition. Another person was present and acknowledged his objection by raising his hand, but he did not come forward to speak.

Chair Hamilton asked Mr. Martin if he had any response to Ms. Calhoun's comments. Mr. Martin commented on Ms. Calhoun's concern that there are areas zoned R-3 and duplexes may be built there or existing houses may be converted to duplexes. Mr. Martin feels that the difference is what the appropriate zoning is for a piece of property versus what is permitted in an R-3 district. A few years ago, Garland Hill was rezoned from R-3 to R-2 because the Planning Commission and City Council agreed that it was more appropriate for those historic homes left as single family. Federal Hill is also zoned R-2, as well as a lot of the other historic districts. If there is an area of the city that might be proposed for a historic district, then they should be looked at on a case-by-case basis and consider the appropriate zoning for that area.

Mr. Martin commented on the list that Ms. Calhoun had provided to the commissioners. He did a little research on them. The properties on Pearl Street date back to the 1940's, prior to our existing *Zoning Ordinance.* Mr. Martin commented that we have a *Comprehensive Plan* that promotes home ownership and the City is trying to provide a variety of different housing types. The City has one particular zoning district (R-3) that promotes primarily rental properties.

In terms of maintenance and those types of issues, that is really no different than anywhere else in the city. The city cannot control through a zoning ordinance what color someone wants to paint their property except in historic districts. The commissioners should look at this the same way they look at townhouses. You have the same type of problems that Ms. Calhoun referenced in a townhouse development. We really cannot control if someone buys a property and chooses to rent it. What we can control is whether we are promoting primarily just renting over home ownership. That is what this zoning amendment is trying to address.

In terms of existing structures, there are existing duplexes where this probably would be appropriate if they met lot size requirements and fire ratings. Mr. Martin does not see any reason why we should want to prohibit that. It is a way of promoting a different type of housing stock.

Ms. Calhoun came back to make some more comments. She asked how the homeowner association would work when these duplexes are scattered throughout the R-3 districts. It appears that it would be so unwieldy. In a townhouse development, you have an association of owners who are all contiguous, and they manage to control that somehow. But if you have low income people in scattered situations, they are probably not going to be in a position to manage such an association. Who is going to collect the money and account for it and so forth?

Mr. Martin remarked that the City Manager and City Attorney had made the recommendation that the homeowner's association requirement not be put in the ordinance. They felt that it would be cumbersome. Mr. Martin had left it in because that was the way it was discussed at the last Planning Commission meeting. Mr. Martin commented that the homeowner association requirement is something they need to discuss as a body. However, Mr. Martin pointed out that this provision should not pertain to whether someone is rich or poor. It is a matter of whether they have the ability to own a piece of property. If they do, why should we be preventing someone from being able to own? Typically, when someone owns a unit and lives in it, they are going to take more pride in it. Once a homeowner association is approved, that is purely a civil matter between those two parties. The City is not involved in it anymore.

Chair Hamilton closed the public hearing portion of the petition and asked for questions from the commissioners.

Commissioner Swienton commented that the concept of home ownership and increasing the ability for that is a very worthwhile goal. There are some items that he might need some clarification on before voting on this petition. Commissioner Swienton noticed that in the *Zoning Ordinance* there is no definition for two-family dwellings. He did not know if there was a universally accepted legal definition of that term or if the City should have its own that rigidly defines what we call a two-family dwelling.

Mr. Martin answered that the way they have always defined and interpreted it was that a two-family dwelling is a duplex. The *Zoning Ordinance* also allows in R-1 and R-2 districts that if it is owner occupied, they could rent out a bottom unit, but we still look at that as a single-family dwelling. That was thought out in this amendment because if there are two separate units and someone owned each side, we didn't really think it was appropriate for someone to be able to rent out the bottom unit. That would really be increasing the density beyond what an R-3 district's intent. That is why the ordinance says "All other area regulations are met." They would have to have a much larger lot size to be able to do that.

Chair Hamilton asked for a clarification because when they had reviewed the Grand Oaks project, she was under the impression that those particular units were not called duplexes because they were single-family attached dwellings. Mr. Martin added that duplexes are also considered to be rental units, whereas the units in Grand Oaks were going to be listed for sale. In the end, the density and the type of structures are the same, but it is a matter of how you look at it.

Commissioner Swienton said that he would be comfortable if they could work in some kind of definition. He would also like to hear Commissioner Hannon's opinion with his real estate background to see whether or not that is worthwhile.

Commissioner Swienton asked about the fire resistive requirements. He is curious to know if the City has duplexes that do not meet fire resistive requirements. Mr. Martin stated that is a building code issue. It would have to happen anyway. They have to have a fire separated wall between the buildings. It is a matter of reiterating those requirements. Commissioner Swienton commented that most likely it has been approved with a certificate of occupancy and Mr. Martin said that was correct.

Commissioner Swienton commented that he is trying to envision how the property is treated with the way this is written. They own the building and once they step out of the building, whose property are they on? Mr. Martin said they would be stepping onto their property. He explained to them that as it is now, the units cannot be sold individually because you have an eight-foot side yard setback. This amendment would allow a line to be drawn right down the property. He drew them a picture as an example. Commissioner Swienton pointed out that maybe they should put something in the wording that says the land may be subdivided as well. Chair Hamilton asked Mr. Martin if someone could put an outbuilding right on that property line behind the house. Mr. Martin said that you can put an outbuilding right on a property line now, so that is really not an issue. Chair Hamilton asked what else would be different, and Mr. Martin said you would be allowing a lot with 30 feet of frontage instead of 60 feet. The densities are not changing.

Commissioner Swienton asked if the City Attorney routinely reviews all homeowner's association documents, and Mr. Martin said he does if they are required by the *Zoning Ordinance.*

Commissioner Swienton asked if there is a way to undo what has been done. Let's say that someone goes through this process. Can they revert back to the way it was before without it being too cumbersome? Would they have the ability to go back to a true duplex and do away with the homeowner's association? Mr. Martin did not think that would be a problem, but he would defer to Commissioner Hannon's expertise on this matter. Commissioner Hannon thought that the question was whether there should be a homeowner's association. He did not think that made sense, but he could wait to comment until after Commissioner Swienton finishes his questions.

Commissioner Swienton commented that he could see the pros and cons of a homeowners association. If the two people do not get along, how will they deal with a one to one tie? Mr. Martin thought that maybe they were going beyond what they needed to in regulating social behavior. What we are trying to do is regulate ownership opportunities and land use patterns. Mr. Martin is not sure how much they need to talk about whether or not neighbors will get along. Commissioner Swienton said that he is looking at someone who buys a piece of property and perhaps does not have the legal resources to fully know all the requirements that come with the place and then find out after closing that they are locked into a homeowners association. By default, this creates the scenario where both owners have to agree in order to get something done. Commissioner Swienton commented that if there were no homeowners association, that would solve a lot of issues in his opinion.

Commissioner Sale remarked that he understood where the people of Garland Hill were coming from; they have experienced battles with big homes being broken down into multiple family units. He asked Mr. Martin if this addition had been looked at with regard to historic district standards that are already on the books with regard to frontage and setbacks. Mr. Martin said that if the structures are in a historic district and the City does not think that those structures should be divided, then it should not be zoned R-3 in the first place. It should be downzoned to R-2 like Garland Hill and Federal Hill were. Commissioner Sale asked if the standards of the historic district are more restrictive or in conflict with what is being proposed. Mr. Martin said that the historic district regulations stand on their own and would be above and beyond this amendment. Historic district regulations mainly deal with outside appearances, not lot lines. Mr. Martin reiterated that if there are historic properties that the City feels should not be divided into multiple units, the City and the neighborhood should take the initiative to go through a rezoning process to change the zoning. All of the duplexes that are existing are grandfathered and they are not going to go away. There is really not a lot we can do about them. This amendment will not pertain to the properties that are zoned R-3. Commissioner Sale stated that it sounds like the argument is that historic districts should be looking actively at R-2 zoning designation to protect from this kind of activity. Commissioner Sale said there are other historic districts that may not see this kind of effect coming upon them and need to be encouraged to undertake a rezoning. Mr. Martin offered that there is a Historic District Coalition and that this matter should be talked about there.

Commissioner Hannon added that this is a vertical division not a horizontal division. You would not be creating a duplex with an upstairs entrance and a downstairs entrance. Commissioner Hannon also mentioned that he lives on Pearl Street and is familiar with the history of the townhomes on Pearl Street. When they first moved to Diamond Hill, both sides of 605 and 607 Pearl Street were in an unrestored condition. Had someone been required to buy the whole property, it would have been a very daunting task to restore both sides. By recognizing its architectural design, each side is a doable half. The half that was purchased in August 2005 has been restored. Commissioner Hannon does not think that would have been possible had he not been able to divide that property. Commissioner Hannon pointed out that there are several duplexes on Washington Street that are wholly owned. In informal discussions with the Diamond Hill Historic Society, it is hoped that they can be divided so that they can be two doable projects instead of one impossible one.

As far as the homeowner's association is concerned, that is a very unwieldy mechanism to use. Homeowner's associations are typically ordered in order to maintain common areas and there would not be any common area in your typical duplex situation with a zero lot line. There have been many duplexes in Honolulu to maximize development infill. You can always get into a situation where a homeowner does not do his work, but by and large, he has not seen a problem. There are common law legal remedies to address the maintenance issues. Commissioner Hannon commented that he thinks it is a great idea. It is better to have duplexes than these townhome developments, which are kind of impersonal. He thinks that we have a lot of property in the City that could benefit by this type of development. Other than thinking that the homeowner's association is not wise, he definitely supports it.

Commissioner Worthington commented that he understands the desire for home ownership. Unfortunately, in these days and times, it is going to be more difficult for home ownership than what we have experienced in the last five to ten years. There are going to be cases where some of these units are going to be turned into rental. He does not know how you can avoid that and the problems that come with that, but other than that, he supports the proposal.

Commissioner Barnes commented that if the intent of this is to encourage home ownership in R-3 areas, he thinks that can be done without the requirement of the homeowner's association. As Commissioner Hannon pointed out, there are other legal remedies. Commissioner Barnes moved that they remove the sentences that refer to a homeowner's association. Commissioner Sale seconded that motion. Those sentences are found in subsection (f) and are as follows: **The subdivider shall establish a homeowner's association or corporation of all individuals or corporations owning adjoining dwellings to ensure the maintenance of all properties, dwellings and facilities. Homeowner's association or corporation documents shall be reviewed and approved by the City Attorney.**

Commissioner Sale remarked that the argument for putting these sentences in there was to address maintenance issues. Mr. Martin said that was the intent, but that Commissioner Hannon had a very valid point that there are common law remedies for the same type of situation. A homeowner's association is probably more cumbersome than necessary to accomplish the same thing.

The motion passed by the following vote:

AYES:	Barnes, Hamilton, Hannon, Sale, Swienton and Worthington	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Oglesby	1

The following language was then suggested for (3) in subsection (f): **A lot may be subdivided into two (2) family dwelling units which share a party wall with a zero (0) foot setback and a thirty (30) foot street frontage each provided the fire resistive requirements of the building code and all other setback requirements are met as well.**

There was some discussion about whether or not they needed to clarify the vertical division as opposed to a horizontal division. Commissioner Hannon did not think that needed to be written in; Mr. Martin stated that the only way a horizontal division is allowed is in a condominium.

The motion to amend that sentence was made by Commissioner Swienton and seconded by Commissioner Sale. The motion then passed by the following vote:

AYES:	Barnes, Hamilton, Hannon, Sale, Swienton and Worthington	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Oglesby	1

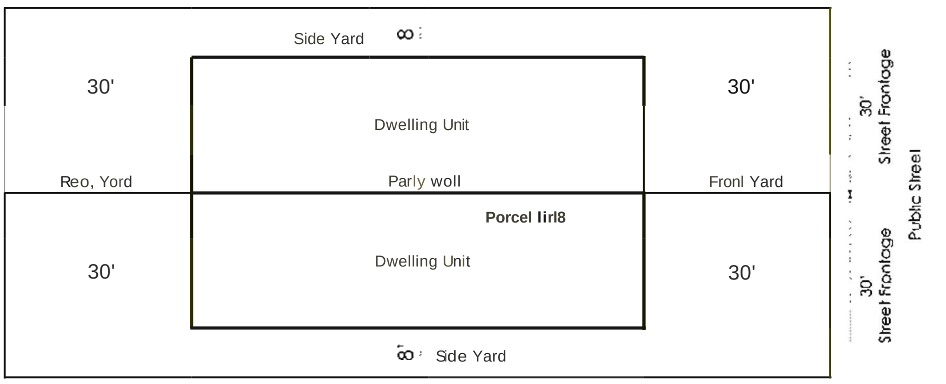
Commissioner Worthington made a motion to recommend this proposal to City Council, which was seconded by Commissioner Sale. The motion then passed by the following vote:

AYES:	Barnes, Hamilton, Hannon, Sale, Swienton and Worthington	6
NOES:		0
ABSTENTIONS:		0
ABSENT:	Oglesby	1

EXCERPT FROM THE MARCH 10,2009 CITY COUNCIL REPORT:

<u>RECOMMENDATION:</u> Approval of Zoning Ordinance Amendment.

<u>SUMMARY</u>:
On December 9, 2008, the Planning Commission initiated an amendment to Section 35.1-31, Medium Density Residential District, R-3, Two (2) Family of the Zoning Ordinance. The Zoning Ordinance currently allows duplexes as a matter of right in an R-3, District, but does not allow the sale of individual units due to setback requirements. The result is a zoning district which promotes rental units. The proposed amendment would allow a duplex to be subdivided into individual units for sale which would promote homeownership opportunities. City staff suggests that the City Council consider including the following graphic in the proposed Ordinance for clarity:



Subdivided *Duplex*

<u>PRIOR ACTIONCS)</u>:

December 9,2008:	Planning Commission initiated amendment to Section 35.1-31 of the Zoning Ordinance.
January 28, 2009:	Planning Division recommended approval of Zoning Ordinance Amendment
January 28, 2009:	Planning Commission recommended approval (6-0, with one member absent, Oglesby) of the Zoning Ordinance amendment

LYNCHBURG CITY COUNCIL
Agenda Item Summary

MEETING DATE: **April 14, 2009** AGENDA ITEM NO.: 14

CONSENT: REGULAR: **X** CLOSED SESSION: (Confidential)

ACTION: **X** INFORMATION:

ITEM TITLE: **Recovery of the Costs the City Incurs When Boarding Impounded Animals**

RECOMMENDATION: Adopt an ordinance adding Section 7-7.2 to the City Code

SUMMARY: The Animal Warden recommends the City adopt an ordinance requiring the owner of an animal that has been impounded as a result of having been abandoned or abused by the owner or which is alleged to be a dangerous or vicious dog to post a bond to cover the costs incurred by the City for boarding the animal. During the discussion of this matter at its March 24 meeting, City Council requested that additional language be added to the proposed ordinance to provide that the owner is not required to pay the costs of boarding the animal if no charges are placed against the owner, or if the charges are subsequently dismissed or if the owner is found not guilty. The requested language has been added to the proposed ordinance. This is the same language that is used in the State Code in regard to the payment of legal expenses for public employees and officials that are charged with criminal offenses arising out of the performance of their duties.

The Animal Warden also recommends that additional language be included in the proposed ordinance making it clear the standard fees that apply when an animal is seized and impounded for running at large, for the failure to obtain a license or for the failure to have the animal vaccinated for rabies, also apply when an animal is seized and impounded because it has been cruelly treated or abandoned or is alleged to be a dangerous or vicious dog,

PRIOR ACTION(S): Previously discussed at the March 24 Council meeting

FISCAL IMPACT: Will help the City recover some of the costs incurred for boarding abandoned or abused animals and dangerous or vicious dogs.

CONTACT(S): Louis H. Faust, Lynchburg Animal Warden, 455-6105

ATTACHMENT(S): An ordinance adding Section 7-7.2 to the City Code

REVIEWED BY: lkp

<u>ORDINANCE</u>

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHGURG, 1981, BY ADDING THERETO A NEW SECTION NUMBERED 7-7.2, RELATING TO THE RECOVERY OF THE COSTS INCURRED BY THE CITY FOR BOARDING IMPOUNDED ANIMALS.

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

1. That the Code of the City of Lynchburg, 1981, be and the same is hereby amended and reenacted by adding thereto Section 7-7.2 as follows:

Sec. 7-7.2. Recovery of costs for impounded animals.

Whenever the animal warden or the deputy animal wardens seize and impound any animal that has been abandoned, has been cruelly treated, is suffering from an apparent violation of the Virginia Comprehensive Animal Care Act that has rendered the animal in such a condition as to constitute a direct and immediate threat to its life, safety or health, or is alleged to be a dangerous or vicious dog, the owner of the animal <u>shall be responsible for paying the impoundment fees set forth in article III, of chapter 7 of the city code. The animal shall not be released to the owner until the impoundment fees have been paid.</u> If the animal is seized and impounded for a period of more than thirty days the owner of the animal shall post a bond in surety with the city for the cost of boarding the animal for a period of nine months. If the animal is not boarded for the entire nine months, the city will refund the unused portion of the bond to the owner. The failure of an owner to post the required bond shall be an unlawful act and punishable as a class 4 misdemeanor. In any legal proceeding involving an animal that has been seized or impounded, the court may order the owner of such animal to reimburse the city for the cost of boarding the animal. <u>The owner of any animal that is seized and impounded shall not be required to pay the cost of boarding the animal if no charges are brought against the owner, or the charges are subsequently dismissed, or upon trial the owner is found not guilty.</u>

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: ______________________________
Clerk of Council

030L