UNAPPROVED MINUTES
PLANNING COMMISSION

August 11, 2010

A regular meeting of the Planning Commission of the City of Salem, Virginia, was held in Council Chambers, City Hall, 114 North Broad Street, at 7:00 p.m., on August 11, 2010, there being present the following members of said Commission, to wit: Terrance D. Murphy, Vicki G. Daulton, Bruce N. Thomasson, and Samuel R. Carter III (Jimmy W. Robertson – absent); with Terrance D. Murphy, Vice Chairman, presiding; together with Melinda J. Payne, Director of Planning and Development; Charles VanAllman, City Engineer; Charles B. Aldridge, Sr., Acting Building Official and Zoning Administrator; Benjamin W. Tripp, Planner; Judy L. Hough, Planner; and William C. Maxwell, Assistant City Attorney; and the following business was transacted:

WHEREAS, Vice Chairman Murphy acknowledged former Chairman Gardner Smith for his many years of service on the Planning Commission; he noted that the citizens have received outstanding representation from Mr. Smith, and the Commission is saddened by his resignation; further, he welcomed Sam Carter as the newest member of the Commission.

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, due to the absence of the Executive Secretary and Assistant Executive Secretary, Judy L. Hough, is hereby appointed Executive Secretary Pro Tem for this meeting of the City of Salem Planning Commission – the roll call vote: all present – aye.

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the minutes of the regular meeting and work session held on February 10, 2010, were approved as written – the roll call vote: all present – aye.

In re: Request of L. Richard Jr. & Debra S. Padgett, property owners, for rezoning the property located at 521 Boulevard-Roanoke (Tax Map #146-6-10) from RMF Residential Multi-Family District to RB Residential Business District. This R-B rezoning request also includes the following properties: Sprinkle & Sprinkle, 501 Boulevard-Roanoke (Tax Map #146-6-12); Sprinkle & Ayyildiz, 511 Boulevard-Roanoke (Tax Map #146-6-11); Sprinkle & Ayyildiz, 500 blk. Boulevard-Roanoke (Tax Map #146-6-10.1); and Cynthia D. Jennings, 529 Boulevard-Roanoke (Tax Map #146-6-9)

The Executive Secretary Pro Tem reported that this date and time had been set to hold

a public hearing to consider the request of L. Richard Jr. & Debra S. Padgett, property owners, for rezoning the property located at 521 Boulevard-Roanoke (Tax Map #146-6-10) from RMF Residential Multi-Family District to RB Residential Business District. This R-B rezoning request also includes the following properties: Sprinkle & Sprinkle, 501 Boulevard-Roanoke (Tax Map #146-6-12); Sprinkle & Ayyildiz, 511 Boulevard-Roanoke (Tax Map #146-6-11); Sprinkle & Ayyildiz, 500 block of Boulevard-Roanoke (Tax Map #146-6-10.1); and Cynthia D. Jennings, 529 Boulevard-Roanoke (Tax Map #146-6-9); and

WHEREAS, the Executive Secretary Pro Tem further reported that notice of such hearing had been published in the July 29 and August 5, 2010, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed August 2, 2010; and

WHEREAS, staff noted the following: the subject properties consist of five parcels, located on the north side of Boulevard-Roanoke; the properties are mostly former residential lots, ranging from .14 acres to .43 acres; the non-vacant properties are currently occupied by several single family homes and an office building; this request is to rezone these properties to allow a law practice (521), as well as bring the zoning of the office building (511) into compliance with the land use; prior to the current zoning ordinance, these properties were zoned R-2 and R-4, some of which allowed professional and medical offices; the office building was constructed in1970; when the new zoning ordinance went into effect in 2003, the properties were changed to their current zoning; in order to improve on future land use throughout Salem, staff requested the applicants seek support from their adjacent neighbors to include their properties in the request; if approved, these five properties will become Residential Business District providing a higher land use as outlined in the comprehensive plan; in accordance with Section 106-400, applicants may be required to submit a site plan to the city for review prior to receiving a certificate of occupancy; in addition, applicants may also be required to pave any unpaved parking areas, install landscaping, and potentially install storm water management on the site; and

WHEREAS, L. Richard Padgett, Jr., property owner, appeared before the Commission in support of the rezoning request; he noted that his wife, Debra, was also in attendance in support; he stated that they have owned and lived at this address for 30 years and just recently moved to a new residence; he noted that they raised their two children in this residence, and

he also had his law practice in this dwelling from 1980 to 1985; during the period of time when he was operating his business there, he believed that the property was zoned R-4 Residential Multi-Family, which allowed professional offices; the law office was operated downstairs, and they lived upstairs; he noted when they purchased the property it was in shambles, and they have completely remodeled and continued to make improvements since they purchased it; since they have purchased a new residence, he would like to move his law practice back to this location; it is currently located at 300 Second Street; he and his wife are very fond of the dwelling and would like to keep the structure; they want to maintain the structure and keep it attractive for the neighborhood; he noted that the property is currently zoned for multi-family, but they are not interested in renting out the dwelling for that use; he just wants to maintain the structure and occupy it for his law practice until he retires; he noted that if we were to survey all the properties in this area, we would find that the neighborhood is rapidly changing; a lot of the properties are not being maintained due to the cost; in addition, to put it politely, there is an invasion of Roanoke College students, and he has nothing against college students; he graduated from Roanoke College; however, the problem is that investors buy up the houses and do a minimal amount of cosmetic work to them and then rent them; but the long and short of it is properties are not being kept up; he presented a poster board with pictures showing several houses on Third Street and College Avenue that have been converted into professional offices; he noted that Boulevard is a beautiful tree-lined neighborhood and we would like to see it maintained as a residential neighborhood, but the reality is that it is not at all that way anymore; he stated that Mr. and Mrs. Sprinkle own the dentist office next door to his property and surprisingly the property is zoned Residential Single Family; but ever since he moved here in 1980 it has been used as either a doctor's office or dentist's office and he believes that the property is grandfathered; on the other side of the dental office is a white house that the Sprinkles purchased and is using for rental; on the opposite side of his property is a brick home owned by Cynthia Jennings; the Sprinkles and Ms. Jennings are joining him in this rezoning request; the last house in this block is owned by Judy Lawrence Shuman, and that property is already zoned Residential Business; in fact at one time, Mrs. Shuman operated a retail craft shop at her property for a number of years; Mrs. Shuman has always maintained her property, and the business was conducted in such a way that it was not obtrusive to the neighborhood; if

he were to sell his property today, it would probably have to be sold for multi-family use; he seriously doubts it would be used for a single family residence; he further discussed other properties in this area saying it makes sense to him that Boulevard being in the transitional state that it is needs to be zoned to conform to the changing neighborhood; Residential Business District zoning is an appropriate zoning for this whole block of structures located in the 500 block; he submits that the highest and best use of these properties from Spruce Street to Walnut Street is RB; he further discussed the photographs noting the properties with professional offices and several properties on Pennsylvania and College Avenue that currently have Roanoke College students residing in them; and

WHEREAS, Mr. Padgett further discussed Section 106-208.1 Statement of intent for RB Residential Business District; he noted they already have the "mixed character" that the zoning refers to and all they are asking the Commission to do is simply approve what is already there and to allow them to enhance the community by permitting the rezoning; he further discussed the permitted commercial uses for the RB zoning and noted that certain conditions must be met before some uses can locate in this zoning; and

WHEREAS, Dr. Grant "G" Sprinkle, property owner at 501, 511, & parcel in the 500 block of Boulevard-Roanoke, appeared before the Commission in support of the rezoning request; he noted that he and his wife are in support of the rezoning petition; he stated that they were not aware that their office was not zoned correctly; he understands that if they were to have a fire, the building could not be rebuilt without rezoning so they would like to rezone the property to permit the existing use; with regards to the house they own at 501 Boulevard, he believes that this dwelling would also make a nice business location; and

WHEREAS, Cynthia Jennings of 529 Boulevard, property owner, appeared before the Commission in support of the request; she lives next door to the Padgetts and is a fairly new resident of Salem, just six years, and while she does not have any intentions of selling her property at this time, she would like the flexibility as a property owner to have it rezoned, and she believes that it makes perfect sense; part of the charm of the neighborhood is that it is a mix of business and residential, and this is one of the reasons she bought her home; she realized that it was a major thoroughfare from College Avenue to Fourth Street; further, most people within the City and outside already think of this as a business district; and

WHEREAS, Frank Munley of 425 Boulevard, right across the street from 501 Boulevard, which is one of the properties under consideration for rezoning, appeared before the Commission in opposition to the rezoning request; he noted that Boulevard is very beautiful with the tree-lined median and the beautiful homes; he and his wife have put an awful lot of effort into their home, and this part of the Boulevard is a beautiful entrance to our downtown areas; he noted that their neighborhood is not uniformly residential as was mentioned but has an acceptable mix of residential and commercial consistent with the intent of the Residential Business section of the zoning code; to date this mix has not disrupted the stability of their neighborhood; he noted that one neighbor mentioned to him that the neighborhood has had its ups and downs and in fact, before the Padgetts bought their house it was not as nice an area as it is now; he would like to keep the area the way it is now and he understands that rezoning the doctor/dentist office is a clear necessity since it is zoned incorrectly; he noted that student houses in the neighborhood are a problem and in particular, he and his neighbor have had problems with the one that Mr. Padgett referred to with the chair up on the porch roof; he does not object to the former Padgett residence being used as a law office nor does he object to Dr. Sprinkle's house at 501 being used that way but he certainly objects to using the RB zoning category to do that; he feels that RB is too broad in scope; unfortunately the zoning code is not fine tuned enough to address a request like this one; he noted that the zoning code is up for a five year revision and review this year, and he hopes that the City will sharpen and narrow zoning categories dealing with residences so that people wanting offices in residential-type buildings will not have to rely on the R-B "blunderbuss;" surely the City can find some way to legally accommodate Mr. Padgett in an expedient but temporary manner until a more appropriate zoning category is established for his and similar needs; he further noted that the addition of three additional properties to this R-B proposal reminds him of the U. S. Congress; when a bill that is proposed that is absolutely necessary to pass, the necessity is exploited by various members who will tack on a number of unrelated amendments, some good but most just bridges to nowhere; the necessity in the zoning proposal at hand is the doctor/dental office and the Padgett office request is imminently reasonable, but not by using R-B; he noted
that it his understanding that City Manager Boggess prefers to see whole blocks uniformly zoned, but it makes no sense to him to make uniform block zoning an end in itself; he hopes the

Commission will not be like the U.S. Congress and vote for everything in one fell swoop, and that they will not take any action on the three additional properties; and

WHEREAS, Cynthia Munley of 425 Boulevard appeared before the Commission in opposition to the request; she noted that they have lived in their house for 24 years and have considered this to be a residential community in the years they have lived here; they have not seen that much of a change like Mr. Padgett referred to; she believes that Mr. Padgett is trying to make a case that the Boulevard is going down; it has not changed that much except for the two student houses, which are creating a lot of noise, trash, etc.; she believes that as a whole the Boulevard is pretty well maintained and that people keep up their property; she feels that the whole argument of maintaining the Boulevard as a beautiful entrance to our downtown area is sort of undercut by sticking an entire block of RB right in the middle; she believes that the Commission needs to think seriously about individually dealing with each of the properties; if we rezone the whole block, this will probably be the tipping point, and this will be what makes her come before the Commission and ask for her house to be rezoned to R-B too because she will not be able to sell it as a residential property; she urged the Commission to deal with the properties individually and also think about the need for more fine-tuned zoning categories to deal with cases like this one; and

WHEREAS, Rebecca Horton, owner of properties at 419 and 555 Boulevard, appeared before the Commission noting that she was not in opposition; she wants to maintain the neighborhood just like everyone else who has spoken; she noted that she was not familiar with politics in the City but like Mr. Munley mentioned, she thinks it is important that the City come up with a solution that would resolve situations such as this one; she noted when she read the "General Grant of Powers" (Sec. 2.1) under the City Code she has not seen anything that would preclude either the Planning Commission or the City Council from issuing a standard interpretation of policy that would allow them to perhaps create subsets of the RB zone; she asked if it would be necessary to wait for formal rulemaking or can this not be addressed under a standard interpretation of policy; and

WHEREAS, Bill Maxwell, Assistant City Attorney, noted that the request before the Commission requires the action that is being taken; he does not believe that this can be

elucidated by City Council; rather it does require a full-blown rezoning with or without conditions, and there are no conditions that have been proffered for this request; and

WHEREAS, Commission Member Thomasson noted for clarification that the Commission must make a motion for approval or denial based on the facts before the Commission, the zoning, and the petition; Mr. Maxwell noted that the request as submitted requires action on it as a zoning matter not as a declaration of policy; and

WHEREAS, Vice Chairman Murphy noted he wanted to make sure that everyone knew the Planning Commission does not make the final decision; the Commission makes a recommendation to City Council, and Council makes the final decision pertaining to the request; and

WHEREAS, Dr. Grant "G" Sprinkle noted that his offices face the house located next door at 501; the house came up for auction in 1998, and he did not want to have to look at a bunch of trash next door so they decided to purchase the home; they have since spent almost $200,000 dollars to fix up the house including jacking up the floors, etc.; they have had some success in renting it to some families and professors; but as time has gone on, they have had more and more trouble; he further related a story about a tenant that was wanted by the ATF; now, they are renting it to Roanoke College female students, and they seem to have a little more control of the situation; the irony of the situation is that they bought the property to keep it away from college students and now they are renting it to college students; and this is reason he feels it would be better to change the zoning to allow offices; and

WHEREAS, L. Richard Padgett appeared again stating he believes that Dr. Sprinkle summed it up – what they are asking for is the flexibility of owning their property and maybe marketing it as either residential or business; he tends to disagree with Mr. Munley, with all due respect, regarding the permitted uses in the RB zoning; some of those uses require certain conditions to be met before a property can be used for that type of use; to him this means that the City Planning Commission and City Council would still be able to have control over those commercial uses; and

WHEREAS, Mr. Munley noted that under permitted uses for R-B zoning antique shops are allowed without having to come before the Commission or Council, and he would interpret this to be a retail operation; he further discussed student housing and the definition for multi-

family; he feels that student housing can be considered multi-family; and he does not think that the rezoning is going to solve the problem that Mr. Padgett thinks it will related to student housing; and

WHEREAS, Commission Member Carter asked if a single family residence is rented or leased to college students, does it still retain its zoning as residential single family; Mr. Aldridge noted that as long as there are four or less unrelated persons living there, it is still considered a single household unit, and it does retain the RSF zoning;

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of L. Richard Jr. & Debra S. Padgett, property owners, for rezoning the property located at 521 Boulevard-Roanoke (Tax Map #146-6-10) from RMF Residential Multi-Family District to RB Residential Business District be approved – the roll call vote: all present – aye.

ON MOTION MADE BY COMMISSION MEMBER DAULTON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Sprinkle & Sprinkle, property owners, for rezoning the property located at 501 Boulevard-Roanoke (Tax Map #146-6-12) from RSF Residential Single Family District to RB Residential Business District be approved – the roll call vote: all present – aye.

ON MOTION MADE BY COMMISSION MEMBER DAULTON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Sprinkle & Ayyildiz, property owners, for rezoning the property located at 511 Boulevard-Roanoke (Tax Map #146-6-11) from RSF Residential Single Family District to RB Residential Business District be approved – the roll call vote: all present – aye.

ON MOTION MADE BY COMMISSION MEMBER DAULTON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Sprinkle & Ayyildiz, property owners, for rezoning the property located in the 500 block of Boulevard-Roanoke (Tax Map #146-6-10.1) from RMF Residential Multi-Family District to RB Residential Business District be approved – the roll call vote: all present – aye.

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Cynthia D. Jennings, property owner, for rezoning the property located at

529 Boulevard-Roanoke (Tax Map #146-6-9) from RSF Residential Single Family District to RB Residential Business District be approved – the roll call vote: all present – aye.

In re: Request of Mel Wheeler Inc., property owner, for rezoning the properties located at 1002 and 1108 Newman Drive (Tax Map #s 58-1-1 & 58-1-2) from RSF Residential Single Family District to LM Light Manufacturing District; also consider the issuance of a Special Exception Permit to allow the construction of a new AM radio tower

The Executive Secretary Pro Tem reported that this date and time had been set to hold a public hearing to consider the request of Mel Wheeler Inc., property owner, for rezoning the properties located at 1002 and 1108 Newman Drive (Tax Map #s 58-1-1 & 58-1-2) from RSF Residential Single Family District to LM Light Manufacturing District; also consider the issuance of a Special Exception Permit to allow the construction of a new AM radio tower; and

WHEREAS, the Executive Secretary Pro Tem further reported that notice of such hearing had been published in the July 29 and August 5, 2010, issues of The Roanoke Times, and adjoining property owners were notified by letter mailed August 2, 2010; and

WHEREAS, staff noted the following: the subject properties consist of two parcels located at the intersection of Newman Drive and Doyle Street; the property is approximately 40 acres and is mostly vacant except for the radio station facilities and the five existing towers; this request is to rezone these properties to bring the zoning into compliance with the land use; towers are not a permitted use in RSF, and the existing ones on site are grandfathered; the request for a Special Exception Permit would allow for the construction of a sixth tower on the site, near the Gish Branch creek, to the west of the existing towers; it would also allow for the relocation of existing Tower # 5 slightly to the southeast; this realignment will improve the signal of the antenna array; the petitioner has proffered the following: permitted uses for the subject property shall be limited to broadcast towers; office uses/structures associated with the use and/or operation of the broadcast towers; accessory uses/structures associated with the use and/or operation of the broadcast towers; and general and professional office uses shall be permitted in the existing structure; the proposed new antenna is located within the 100 year flood zone for Gish Branch; and the applicant has provided "Determination of No Hazard to Air Navigation" letters from the FAA; and

WHEREAS, Commission Member Thomasson noted that he would need to excuse himself from this request as he has a conflict of interest; and

WHEREAS, Ben Crewe of Balzer & Associates, Inc., representing Mel Wheeler Inc., appeared before the Commission in support to the rezoning/Special Exception Permit request; he noted that Sean Horne of Balzer & Associates, Inc., Leonard Wheeler of Mel Wheeler Inc., and Josh Arritt of Mel Wheeler, Inc., were also in attendance; he noted that there are approximately 40 acres currently zoned RSF Residential Single Family, and the petitioners are requesting to put one additional AM radio tower on the parcel; the petitioner is currently operating as a grandfathered use in this zoning, and this rezoning request from RSF Residential Single Family to LM Light Manufacturing will bring the use into conformance with the zoning ordinance; there is no intent to do any type of manufacturing on the property; the reason for the Light Manufacturing zoning is that this is the lowest intensity use that will allow towers with a Special Exception Permit; he further explained that the petitioner is co-locating WFIR & WVBE signals at this location, and in order to be able to transmit those together, it requires an additional tower; he further explained the location of the new tower, which will be in a remote area of the site; the tower will be located in the flood plain but the footings will be designed appropriately for any floods that may occur; the tower will be similar to the existing towers and will be the same height, etc. ; he noted one important thing about the co-location is that both of the providers are part of the Emergency Alert System (EAS) so when something is happening in the community that is an emergency then the information is broadcast to the community; the current signal for WFIR at Towers Mall does not have a generator so if power goes out they are unable to send out alerts; there is a generator at the Newman Drive location so if the power goes out the station is able to send alerts to listeners in the area; prior to applying for this request, Mel Wheeler received “Determination of No Hazard to Air Navigation” letters from the Federal Aviation Administration, and they have done extensive study with the Federal Communications Commission (FCC) indicating that there will not be any environmental impacts; and

WHEREAS, Commission Member Carter noted that the Commission had received a letter with proffered conditions from the petitioner and stated that they had a question regarding a

statement in the proffers; Mr. Crewe noted that the petitioner had struck the last item in the letter, and Mr. Crewe read the letter with the proffered conditions for the record; and

WHEREAS, Leonard Wheeler of Mel Wheeler Inc. appeared before the Commission in support of the request; he noted they want to be able to use the property as it has always been used, i.e. as a tower site and an office & transfer building; they do not want to do anything different with the property; he noted that if he were a neighbor and he heard that it was going to be rezoned to Light Manufacturing, then he would be at the meeting, too; he stated that he wanted to emphasize that they are not intending to do anything different than it has been used in the past; and

WHEREAS, Vice Chairman Murphy asked for the sake of clarification if someone from staff could give an explanation about grandfathered uses; Mr. Aldridge noted that with a grandfathered use the property could continue to be used as it currently exists; however, if one of the towers were to fall, then it could not be put back; also, just because the other towers are grandfathered, it does not permit a new tower to be erected; Vice Chairman Murphy asked if the rezoning would remove the grandfather clause from the property, and Mr. Maxwell noted that it would be removed with the rezoning; Mr. Maxwell noted that to clarify things the rezoning will bring what is currently there into conformance with the zoning ordinance; and

WHEREAS, there was a comment from the audience asking if the petitioner could put in ten more towers if the property is rezoned; Mr. Aldridge noted that any new towers would be required to have a Special Exception Permit, which would mean they would have to come back before the Commission and City Council; and

WHEREAS, Jeff Rose of 719 Doyle Street appeared before the Commission asking about additional towers and also if the petitioners were planning to build other office buildings to support the towers; and

WHEREAS, Mr. Crewe explained the master plan presented with the request; he noted the five existing towers, office building, and parking currently located on the site; he further noted the relocation of one tower and the proposed new tower; he stated that there are no new office buildings being proposed; the only new construction will be the single tower; and

WHEREAS, Mr. Rose appeared again and asked if the rezoning is approved will the zoning allow additional office buildings or structures of any kind; Mr. Maxwell noted that the

proffered conditions would not permit any additional buildings; and

WHEREAS, Commission Member Daulton noted that proffered conditions remain with the property; this would mean that the petitioner or any future property owner would have to come back before the Commission and City Council to make any changes to those proffers; and

WHEREAS, Christy Straight of 1114 Newman Drive, adjacent to 1108 Newman Drive, appeared before the Commission in regards to the request; she noted that Mr. Crewe referred to the request as one parcel, but there are two parcels involved; she stated that she had submitted a letter to Ms. Payne regarding her concerns; she noted that her main concern is to preserve the integrity of the neighborhood as residential single family; she stated she hopes there is a way we can do that and find a way to let the petitioner do what has been requested with the property; she further stated that she hopes the floodplain issue has been studied so that we can make sure there is not any damage to downstream properties; the proffer letter has taken away some of her reservations about the request, but she is concerned about the impact to property values; in addition to these concerns, she really has a problem with the proposed rezoning of the 1.37 acre parcel; she does not see any reason to rezone this parcel and hopes the Commission will not rezone this one; and

WHEREAS, Jocelyn Fraser of 518 Doyle Street appeared before the Commission noting that she was there representing herself and her husband; she noted that she had contacted the Planning & Economic Development office to inquire about the rezoning; she noted that she was aware of the radio towers when she moved there and does not have a problem with them; but she wonders why do we have to rezone the property to add something new; she has concerns about changing the zoning to Light Manufacturing and asked if there is another solution for the proposed request; and

WHEREAS, Vice Chairman Murphy noted that the current zoning does not permit the existing use; Ms. Payne noted as was related earlier by the Vice Chairman and City Attorney, the petitioner cannot put up a new tower on the property because the existing use is a grandfathered use; with a grandfathered use, the property owner can repair the current equipment, but it does not give them the right to put up a new structure or tower; according to the City's zoning ordinance towers are only permitted in HBD, BCD, LM, and HM; so when staff looked at the adjoining zoning to this property to make a decision on what to recommend,

there is Light Manufacturing zoning that adjoins this property so this was the reason Light Manufacturing was chosen; currently VDOT and Integrated Textile Solutions are zoned LM Light Manufacturing, and these parcels adjoin the Mel Wheeler Inc. parcels; she further explained if the petitioner decides in the future to put up additional towers, they would have to go through the same process to get a Special Exception Permit; Ms. Payne further noted that the proffers definitely limit what can be done with the property; and

WHEREAS, Reverend Joseph Roudebush of 1124 Newman Drive appeared before the Commission noting that he and his wife just moved to the City from Roanoke County; he noted that they are so happy to be living in Salem and love the fact that there in nothing located behind their house; he noted that their property and Ms. Straight's property are adjacent to the smaller parcel included in the request; he asked why the smaller parcel is being included if the tower is not located on this parcel; and

WHEREAS, Mr. Rose appeared again and asked if the property were ever sold, could the new owner use the property for some other light manufacturing use; Vice Chairman Murphy noted that a new owner could not use it for any other use because of the proffered condition; Mr. Rose also asked what would be the duration of the construction traffic assembling the tower; and

WHEREAS, Vice Chairman Murphy noted that he would take any others who had additional questions or concerns before Mr. Crewe came back to address the questions; and

WHEREAS, Raymond Bright of 518 Parkdale Drive appeared before the Commission stating that he had concerns about the LM Light Manufacturing zoning; he asked why it could not be rezoned to BCD Business Commerce District rather than the LM zoning; he noted that it really concerns him about the light manufacturing in the middle of the neighborhood; he mentioned the Conrock request several years ago on Kesler Mill Road; he also noted that he is having some interference on his cable television and asked if the new tower would have any effect on the cable; and

WHEREAS, Denise Rose of 719 Doyle Street appeared before the Commission noting that this is a really quiet neighborhood with very little traffic, and she does not want to see this change; she asked how many additional employees would be coming to the property and also, she asked how would the new tower affect her satellite reception; and

WHEREAS, Mrs. Fraser noted that they have had problems with their phone service, and she also wondered if the new tower would interfere with the phone or cable service; and

WHEREAS, Steve Dodd of 1149 Forest Lawn Drive appeared noting that he had some of the same concerns as the others who have spoken; he noted that Ms. Payne had mentioned spot zoning, and he wondered what would be wrong with granting the petitioners a rezoning for a very specific footprint for the proposed tower and leaving the rest of the property zoned Residential Single Family; he believes that this would be better than making this massive area light manufacturing; and

WHEREAS, Mr. Crewe noted with regards to the duration of the construction the tower is fairly simple to erect so this will probably only take about two weeks; with regards to traffic impact, there is not anyone who currently works from this location, and the only person who goes up there is Josh Arritt, who has to make sure that everything is functioning properly; there is limited office space that could be leased so this would not generate much traffic either; Ms. Straight and Reverend Roudebush asked why the smaller parcel is included in the request; he noted that there is some underground utilities that serve the towers so that is the reason for including that parcel; he noted that Josh Arritt, systems engineer, would address those concerns related to the phone and cable TV interference; and

WHEREAS, Christy Straight appeared again and noted that she understands about the underground utilities; she noted apparently the utilities were there before the house was built on this property because she has only lived in her house for five years, and the house was vacant when she moved in and was just torn down about two years ago; she asked if there might be some kind of easement access for those utilities; Mr. Crewe noted that a property owner does not generally put an easement access on their own property; if a person owns a property, then they would not need an easement to access their own property; further, the utilities are private not public utilities; and

WHEREAS, Reverend Roudebush appeared again and stated he still did not understand why the smaller parcel needed to be rezoned; and

WHEREAS, Commission Member Daulton asked if new landscaping and storm water would be required for this project; Ben Tripp, Planner, noted that for one tower and no other development, it would be very minimal requirements for new landscaping and storm water

management; Mr. Tripp noted that there are probably natural buffers in place that may fulfill the same objectives; and

WHEREAS, Josh Arritt, RF Systems Engineer with Mel Wheeler Inc., appeared before the Commission to address the questions and concerns; he noted that interference is always a tricky issue; utilities such as cable, telephone, etc. are subject to interference, and if they are taking interference, it is up to the petitioner to mitigate that; he stated that if the neighbors who are experiencing interference would get in touch with him, he would do his best to help with the situation; with regards to the underground utilities located on the small parcel, he noted that the towers are only part of the system involved in the process; he noted that from each of the existing towers in place there are approximately 120 little copper wires that are about 6 to 12 inches under the ground; this is an integral part of the antenna component, and the smaller parcel also includes several of the ends of those ground radials or wires that are running through the ground; with the rezoning of this parcel this would allow them the same rights to modifications on the tower system; and

WHEREAS, Mrs. Rose noted she was still not clear about the interference; she asked if adding an additional tower would increase the probability of interference; and

WHEREAS, Mr. Arritt noted that by adding another signal there is a probability of interference; he stated that depending on the characteristics of specific telephone and utility services they could be receptive to that signal in ways that could be called interference; he further noted that there are other modifications that could help improve interference issues in the neighborhood; and

WHEREAS, Mrs. Fraser asked about the safety of the tower in terms of the environment and the public's health, etc.; Mr. Arritt noted that the most dangerous part of the installation is the tower itself, and the danger of the tower is a burn hazard while it is energized and they are transmitting from it; the FCC recognizes that hazard and enforces several regulations guaranteeing the safety of the general public; even though they may consider it a controlled area with fencing around it, they would still require them to fence those areas again where such a burn hazard would exist; he noted that this is an area about 12' around the tower where they will fence; and

WHEREAS, Mr. Wheeler asked about the zoning categories and the five year review of the zoning ordinance; he asked if a zoning category could be established for a broadcast business; this is what the property has been used for and they will continue to use the property for this use; he understands the concern of neighbors related to another use in the light manufacturing zoning; if such a category could be established, he would be happy to make a reapplication to change from light manufacturing to that category at any point in time that might be an option; Vice Chairman Murphy noted that currently the Comprehensive Plan is under review and it is incumbent upon everyone in attendance to bear in mind that this is the time to voice their concerns and questions; Mr. Murphy further discussed the previous update of the comprehensive plan, and he stressed that it is important for them to give their input; Mr. Wheeler noted again that if such a category were established they would certainly go through the process and expense to be classified in that category; and

WHEREAS, Mr. Wheeler noted that there was some discussion about them adding more towers to the property; he noted that they would have to come back to the Commission and make the case for any new towers; he stated that the process is extraordinarily expensive with regards to engineering studies, etc. and they have no intent and certainly have no interest to add more towers on this property; and

WHEREAS, Commission Member Daulton discussed the copper lines running across the smaller parcel; she asked if it would be a danger to sell that property for a residential structure; Mr. Wheeler noted that they would not sell off the property with all the copper lines running underneath; he stated if anything disturbed those lines then it impacts the signal; further, as Mr. Arritt discussed earlier, there has been such deterioration over the past 50 years and that is probably one of the reasons the radio frequency interference is not much worse; and

WHEREAS, Mr. Maxwell noted that the point is that those wires are all part of the tower system and so they are using the parcel even though there is nothing above the surface; since they are using the parcel for that purpose, it has to be rezoned in order to accomplish the current use; Mr. Wheeler noted that this was correct;

ON MOTION MADE BY COMMISSION MEMBER CARTER, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Mel Wheeler Inc., property owner, for rezoning the properties located at

1002 and 1108 Newman Drive (Tax Map #s 58-1-1 & 58-1-2) from RSF Residential Single Family District to LM Light Manufacturing District be approved with the following proffered condition: permitted uses for City of Salem Tax Parcels #58-1-1 and 58-1-2 shall be limited to towers; office uses/structures associated with the use and/or operation of the towers; accessory uses/structures associated with the use and/or operation of the towers; and general and professional office uses shall be permitted in the existing structure – the roll call vote: Mr. Carter – aye; Mr. Thomasson – abstaining; Mrs. Daulton – aye; and Mr. Murphy – aye.

ON MOTION MADE BY COMMISSION MEMBER CARTER, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that the request of Mel Wheeler Inc., property owner, for the issuance of a Special Exception Permit to allow the construction of a new AM radio tower be approved -- the roll call vote: Mr. Carter – aye; Mr. Thomasson – abstaining; Mrs. Daulton – aye; and Mr. Murphy – aye.

In re: Consider amending Chapter 106, Article II District Regulations, Section 106-208, 106-210.2, 106-212.2, 106-214.2, and 106-216.2; Article III Use and Design Standards, Section 106-308 Office uses; and Article VI Definitions and Use Types, Section 106-602.7 of THE CODE OF THE CITY OF SALEM, VIRGINIA pertaining to medical offices/clinics and outpatient mental health and substance abuse clinics

WHEREAS, The Executive Secretary Pro Tem reported that this date and time had been set to hold a public hearing to consider amending Chapter 106, Article II District Regulations, Section 106-208, 106-210.2, 106-212.2, 106-214.2, and 106-216.2; Article III Use and Design Standards, Section 106-308 Office uses; and Article VI Definitions and Use Types, Section 106-602.7 of THE CODE OF THE CITY OF SALEM, VIRGINIA pertaining to medical offices/clinics and outpatient mental health and substance abuse clinics; and

WHEREAS, the Executive Secretary Pro Tem further reported that notice of such hearing had been published in the July 29 and August 5, 2010, issues of The Roanoke Times; and

WHEREAS, staff noted the following: this request is to amend Chapter 106, Article II, District Regulations, Article III Use and Design Standards, and Article VI Definitions and Use Types related to medical offices/clinics and outpatient mental health and substance abuse clinics; currently, medical offices/clinics of any specialty are required to have a special

exception permit; staff has researched definitions for both of these uses, and new definitions are being proposed; with the proposed changes, medical offices/clinics would be permitted by right in RB, DBD, TBD, HBD, and BCD zoning districts, and outpatient mental health and substance abuse clinics would be permitted by special exception in the same zoning designations; and, also proposed are use and design standards for outpatient mental health and substance abuse clinics; the following changes are proposed:

Article II District Regulations

Sections 106-208.2. Permitted uses. (Residential Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106.210.2. Permitted uses. (Downtown Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106.212.2. Permitted uses. (Transitional Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106-214.2. Permitted uses. (Highway Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106-216.2. Permitted uses. (Business Commerce District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Article III Use and Design Standards

Section 106.308. Office Uses

Section 106.308.1 Outpatient mental health and substance abuse clinics.

(A) General Standards:

1. **No outpatient mental health and substance abuse clinic may be constructed, developed or operated within one thousand (1,000) feet of any other such outpatient mental health and substance abuse clinic.**

2. **No outpatient mental health and substance abuse clinic may be constructed, developed or operated within five hundred (500) feet of a residentially zoned district, or within five hundred (500) feet of property occupied or used for an educational facility, place of religious assembly, public park and recreation area or day care center.**

3. **A special exception permit, granted by City Council shall be required prior to the construction, development, or operation of any outpatient mental health and substance abuse clinic.**

4. **The "establishment" of a outpatient mental health and substance abuse clinic as referred to in this section includes the opening of such business as a new business, the relocation of such business, the enlargement of such business in either scope or area, or the conversion, in whole or part, of an existing business to a outpatient mental health and substance abuse clinic.**

Article VI Definitions and Use Types

Section 106-602.7. Office use types

~~*Medical office/clinic.* Use of a site for facilities which provide diagnoses, minor surgical care and outpatient care on a routine basis, but which does not provide overnight care or serve as a base for an ambulance service. Included in this definition shall be facilities operated for the treatment of drug addiction and substance abuse. Medical offices/clinics are operated by doctors, dentists, or similar practitioners licensed by the Commonwealth of Virginia.~~

Medical office/clinic. **A facility used for human health care, such as medical, dental, therapeutic, chiropractic or similar consultation, diagnosis, and treatment by one or more practitioners licensed by the Commonwealth of Virginia. Medical offices/clinics provide outpatient care on a routine basis, and may offer minor surgical care, but do not provide overnight care or serve as a base for an ambulance service.**

Outpatient mental health and substance abuse clinic. **An establishment which provides outpatient services primarily related to the diagnosis and treatment of mental health disorders, alcohol, or other drug or substance abuse disorders. Services may include the dispensing and administering of controlled substances and pharmaceutical products by professional medical practitioners licensed by the Commonwealth of Virginia. Examples may include but are not limited to outpatient alcohol treatment centers, outpatient detoxification centers, outpatient drug and substance abuse centers, and outpatient mental health centers.**

ON MOTION MADE BY COMMISSION MEMBER THOMASSON, AND DULY CARRIED, the Planning Commission of the City of Salem doth recommend to the Council of the City of Salem that Chapter 106, Article II District Regulations, Section 106-208, 106-210.2, 106-212.2, 106-214.2, and 106-216.2; Article III Use and Design Standards, Section 106-308 Office uses; and Article VI Definitions and Use Types, Section 106-602.7 of THE CODE OF THE CITY OF SALEM, VIRGINIA pertaining to medical offices/clinics and outpatient mental health and substance abuse clinics be amended as follows:

Article II District Regulations

Sections 106-208.2. Permitted uses. (Residential Business District)

(A) (4) *Office Use Types*
Financial Institutions

General Offices
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106.210.2. Permitted uses. (Downtown Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106.212.2. Permitted uses. (Transitional Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106-214.2. Permitted uses. (Highway Business District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Section 106-216.2. Permitted uses. (Business Commerce District)

(A) (4) *Office Use Types*
Financial Institutions
General Offices
Laboratories
Medical Offices/Clinics

(B) (4) *Office Use Types*
~~Medical Offices/Clinics~~ **Outpatient mental health and substance abuse clinics***

Article III Use and Design Standards

Section 106.308. Office Uses

Section 106.308.1 Outpatient mental health and substance abuse clinics.

(A) General Standards:

1. **No outpatient mental health and substance abuse clinic may be constructed, developed or operated within one thousand (1,000) feet of any other such outpatient mental health and substance abuse clinic.**

2. **No outpatient mental health and substance abuse clinic may be constructed, developed or operated within five hundred (500) feet of a residentially zoned district, or within five hundred (500) feet of property occupied or used for an educational facility, place of religious assembly, public park and recreation area or day care center.**

3. **A special exception permit, granted by City Council shall be required prior to the construction, development, or operation of any outpatient mental health and substance abuse clinic.**

4. **The "establishment" of a outpatient mental health and substance abuse clinic as referred to in this section includes the opening of such business as a new business, the relocation of such business, the enlargement of such business in either scope or area, or the conversion, in whole or part, of an existing business to a outpatient mental health and substance abuse clinic.**

Article VI Definitions and Use Types

Section 106-602.7. Office use types

~~*Medical office/clinic.* Use of a site for facilities which provide diagnoses, minor surgical care and outpatient care on a routine basis, but which does not provide overnight care or serve as a base for an ambulance service. Included in this definition shall be facilities operated for the treatment of drug addiction and substance abuse. Medical offices/clinics are operated by doctors, dentists, or similar practitioners licensed by the Commonwealth of Virginia.~~

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– the roll call vote: all present –aye.

There being no further business to come before the Commission, the same on motion adjourned at 9:05 p.m.

_____
Executive Secretary

_____
Vice Chairman