

## MINUTES

The Lexington City Council held its regular meeting in the City Hall Building Community Meeting Room on December 16, 2005.

**PRESIDING:** J. W. Knapp

**OFFICERS:** T. Jon Ellestad, City Manager  
L. A. Mann, City Attorney  
S. Edwards, Clerk

**MEMBERS:** J. H. Page  
J. E. Gianniny  
T. P. Golden  
M. M. Elrod

**ABSENT:** L. W. Broomall  
R. W. Smith

There were seven people present.

### REGULAR MEETING

Mayor Knapp called the meeting to order at 5:00 pm.

### APPROVAL OF MINUTES

Upon motion of Councilman Gianniny, seconded by Councilman Golden, the minutes of the December 1, 2005 meeting were approved. The following vote was recorded.

L. W. Broomall	Absent	T. P. Golden	Aye
J. H. Page	Aye	R. W. Smith	Absent
J. E. Gianniny	Aye	M. M. Elrod	Aye

### CITIZENS' REMARKS AND COMMENTS ON MATTERS NOT ON AGENDA

Will Arthur addressed Council and presented them with copies of petitions containing approximately 1,300 signatures of people from Buena Vista, Lexington and Rockbridge County who still remain in favor of Mead WestVaco locating a distribution center in Buena Vista. It is felt by these individuals that the area is in need of the jobs that this company would bring. His purpose was to make Council aware that every area would benefit and that it is not too late to fix what his group considers a "wrong" by not approving for this company to move to the Buena Vista site. No action was taken.

### Presentation and request for funding of America's 400 Wagon Train

Will be presented at the Council meeting on January 5, 2006.

### REPORTS AND COMMUNICATIONS

## **City Council Committees**

### **FINANCE COMMITTEE**

#### **Schedule meeting with auditor to review FY 2005 Financial Report**

Councilman Broomall was not present for the meeting but the Finance Committee will meet on January 5, 2005 at 7:00 pm prior to the regular Council meeting.

### **PHYSICAL SERVICES COMMITTEE**

Councilman Gianniny reported that this committee met on December 6<sup>th</sup> to talk about traffic calming measures on different streets in the City. It was noted that the radar machine that had been placed on Jackson Avenue did not work properly; however local residents in that area felt that the presence of the machine had affected the traffic speed. The committee felt that they needed to gather additional information on the traffic on Jackson Avenue and Houston Street before making any decisions. They also discussed Ross Road but seemed to feel that the situation there was a little different because of the location of a driveway and sight line. A tree has been removed and this has seemed to help this situation. The Committee talked about guidelines to use to determine where traffic calming is needed. There are five criteria that they will now look at to determine the course of action. They are: 1) pedestrian/vehicular conflict, 2) speed data, 3) collector roads, 4) residential neighborhood and 5) sight distance. They also discussed speed bumps and speed humps. Some of the solutions cannot be implemented until the weather warms up so data will be collected until that time. They also discussed and noted that the staff is working on traffic flow patterns on Nelson Street when the bridge is closed for maintenance work.

### **SOCIAL AND ECONOMIC SERVICES COMMITTEE**

Councilwoman Elrod reported that this Committee had not met. The ordinance on the keeping of chickens and laying hens will be going back to the Committee. It was also decided that this Committee will meet again on January 5<sup>th</sup> at 7:30 pm prior to the Council meeting.

## **Boards and Commissions**

### **PLANNING COMMISSION**

Councilman Smith was not present to make a report.

### **RAEDC**

Councilman Golden reported that RAEDC had not met since the last Council meeting; however, they will be meeting on December 19<sup>th</sup> at 7:00 pm. The agenda does show that Mead WestVaco is on the agenda under Old Business.

### **CENTRAL SHENANDOAH PLANNING DISTRICT COMMISSION**

Mayor Knapp reported that there was a meeting on December 5<sup>th</sup>. He noted that he presented the Annual Planning Commissioner of the Year Award to Kitra Shiflett from Augusta County.

He further noted that they had a good report from Darrell Crawford on elements of smart growth. They also received copies of the yearly calendar provided by Project Impact that have been distributed to Council members.

## **ROCKBRIDGE REGIONAL COMMUNITY SERVICES BOARD**

City Manager Ellestad reported that this Board did meet. He noted that the various properties owned by the Mental Health and Retardation Advisory Board had been transferred into the hands of the Community Service Board with the exception of one piece of property. The new building is within budget and on time for opening.

City Manager Ellestad also referred to a memo that he had sent to Council regarding two appointments to this Board. He stated that he feels that CSB needs someone from Council to fill one of these appointments. No recommendations were made at this time.

## **REGIONAL TOURISM BOARD**

Councilman Page reported that this Board did meet. The majority of discussion was centered on three items. They were:

1. Letter to the County Planning Commission expressing concern for signs along I-81.
2. Plans to take suggestions from the marketing study and turn them into action.
3. Discussion of the America's 400 Wagon Train

City Manager Ellestad also addressed the current discussions that are ongoing about the current County Sign Ordinance. He feels that the discussion on the I-64 interchange is a subject that is of concern to the City and he feels that Council may want to pass their concerns along to the County before the public hearing process. After discussion among Council it was decided that the City Manager and the Mayor would work on developing a letter before the January 11, 2006 public hearing.

## **MAYOR**

### **Appointments to Boards and Commissions**

Mayor Knapp noted that the Community Services Board still needs an appointment.

City Manager Ellestad indicated that Fred Johnson had been recommended by Jerry Roane as a possible appointment to the Cemetery Advisory Board as his replacement. Upon

motion of Councilman Gianniny, seconded by Councilwoman Elrod, Mr. Johnson was appointed to the Cemetery Advisory Board for a full term. The following vote was recorded:

L. W. Broomall	Absent	T. P. Golden	Aye
J. H. Page	Aye	R. W. Smith	Absent
J. E. Gianniny	Aye	M. M. Elrod	Aye

Councilman Page made the recommendation that Elizabeth L. Knapp also be appointed to serve on the Cemetery Advisory Board for a full term. Councilman Gianniny seconded the motion. The following vote was recorded:

L. W. Broomall	Absent	T. P. Golden	Aye
J. H. Page	Aye	R. W. Smith	Absent
J. E. Gianniny	Aye	M. M. Elrod	Aye

Mayor Knapp reminded Council that he will be attending Sammy Moore's Annual State of the Region Breakfast on January 4<sup>th</sup>. He made the Council members aware that he would be speaking at that breakfast and if they had anything that they wished to have brought up to please get in contact with him prior to the January 4<sup>th</sup> breakfast meeting.

#### **CITY MANAGER**

#### **Consideration of Resolution 2005-14 consenting to the assignment and change of control of the cable television franchise from Adelphia Cable to Comcast.**

Upon motion of Councilman Gianniny, seconded by Councilwoman Elrod, this Resolution was approved. The following vote was recorded:

L. W. Broomall	Absent	T. P. Golden	Aye
J. H. Page	Aye	R. W. Smith	Absent
J. E. Gianniny	Aye	M. M. Elrod	Aye

#### **RESOLUTION NO. 2005-14**

#### **CONSENT TO ASSIGNMENT AND CHANGE OF CONTROL**

**WHEREAS**, on November 3, 2005 a cable television franchise was granted by the City of Lexington, VA ("Franchise Authority") to Global Acquisition Partners, L.P. d/b/a Adelphia Cable Communications ("Franchisee" or "Adelphia"); and

**WHEREAS**, Adelphia is presently in Chapter 11 bankruptcy proceedings; and

**WHEREAS**, pursuant to an Asset Purchase Agreement dated April 20, 2005 between Adelphia and Time Warner NY Cable LLC ("TWNKY"), the right to purchase the Franchisee cable system

will be assigned by TWNY to a wholly owned subsidiary of TWNY, Cable Holdco Exchange III, LLC which will purchase the cable system and franchise (the “Adelphia Transaction”); and

**WHEREAS**, pursuant to an Exchange Agreement dated April 20, 2005 between Time Warner Cable Inc. and Comcast Corporation (“Comcast”), 100% of the equity securities in the Comcast subsidiary C-Native Exchange I, LLC will be exchanged for 100 percent of the equity securities of Cable Holdco Exchange III, LLC whereby that entity will become a 100 percent indirect subsidiary of Comcast (the “Exchange Transaction”); and

**WHEREAS**, the Franchise Authority has concluded its approval is necessary for the above described Adelphia Transaction and Exchange Transaction and has been provided an FCC Form 394 and related information for such Transactions; and

**WHEREAS**, the Franchise Authority is willing to consent to the Adelphia Transaction and the Exchange Transaction described above.

**NOW, THEREFORE, IT IS RESOLVED AS FOLLOWS:**

**SECTION 1.** The foregoing recitals are approved and incorporated herein by reference.

**SECTION 2.** The Franchise Authority consents to the Adelphia Transaction described herein.

**SECTION 3.** The Franchise Authority consents to the Exchange Transaction described herein.

**SECTION 4.** This Resolution shall be deemed effective upon adoption.

**SECTION 5.** This Resolution shall have the force of a continuing agreement with the Franchisee and the Franchise Authority shall not amend or otherwise alter this Resolution without the consent of the Franchisee.

**SECTION 6.** The City hereby consents and approves of the Adelphia Transaction resulting in Cable Holdco Exchange III, LLC becoming the franchisee of the Franchise granted Adelphia on November 3, 2005 and the Exchange Transaction transferring control of C-Native Exchange I, LLC, subject to:

- a. Adelphia executing the Franchise Acceptance provision of the Franchise Agreement within thirty (30) calendar days from the date of this Resolution.
- b. Cable Holdco Exchange III, LLC, within thirty (30) calendar days of the date of closing the Adelphia Transaction shall notify the City in writing of the completion of the Adelphia Transaction.
- c. Cable Holdco Exchange III, LLC, within thirty (30) calendar days of the date of closing the Exchange Transaction, shall notify the City in writing of the completion of the Exchange Transaction.

- d. Cable Holdco Exchange III, LLC, within thirty (30) calendar days of the date of closing, providing the City with a Certificate of Authority to conduct business in the Commonwealth of Virginia.
- e. Cable Holdco Exchange III, LLC, within thirty (30) calendar days of the date of closing, provide the City with a signed acceptance of this Resolution in the form attached hereto and incorporated by reference.

**SECTION 7.** In the event Franchise Acceptance is not executed by Adelphia, the City's consent provided hereunder shall be rescinded.

**SECTION 8.** In the event the Adelphia Transaction is not completed for any reason, or is modified in any material manner, the City's consent to the transaction provided hereunder shall be rescinded.

**SECTION 9.** In the event the Exchange Transaction is not completed for any reason or is modified in any material manner, the City's consent to the transaction provided hereunder shall be rescinded.

**SECTION 10.** This Resolution shall take effect and continue and remain in effect from and after the date of its passage, approval, and adoption.

**Passed And Adopted By The City Council For The City Of Lexington, Virginia This The 15<sup>th</sup> Day Of December 2005.**

ATTEST:

CITY OF LEXINGTON, VIRGINIA

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mayor

**ACCEPTANCE AND AGREEMENT**

Holdco Exchange III, LLC hereby accepts this Resolution (“Resolution”) and agrees to be bound by the terms and conditions of this Resolution and the lawful terms and conditions of the Franchise referenced herein.

Dated this the \_\_\_\_\_ day of \_\_\_\_\_ of 200\_\_.

CABLE HOLDCO EXCHANGE III, LLC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_)

) ss.

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_ day of \_\_\_\_\_ 200\_\_ , before me a Notary Public in and for the County and State aforesaid, personally appeared \_\_\_\_\_, the \_\_\_\_\_, Cable Holdco Exchange III, LLC and on behalf of said Company, acknowledges signing and executing of the foregoing instrument.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed by notarial seal on the day and year first above written.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

**CITY ATTORNEY**

Attorney Mann reported that he had met with representatives of Washington and Lee University and they are looking at the final footprint for the courthouse and they are trying to arrive at a monetary value for the property that will be needed. Several issues remain unresolved before the appraisal can take place on the property but he feels progress is being made.

He also discussed the decision that was rendered from Judge Irvine concerning the Freedom of Information Request to the Police Department. Attorney Mann will be meeting with Chief Beard to review this decision.

**UNFINISHED BUSINESS**

None

## **NEW BUSINESS**

Councilman Gianniny expressed that the Public Works Department be thanked for the job they had done with cleanup during recent storms.

## **ADJOURNMENT**

There being no further business the Mayor adjourned the meeting at 5:50 pm.