

**Town of Bluefield
Town Council
Minutes
April 10, 2018**

The Bluefield, Virginia Town Council held a regularly scheduled Town Council Meeting on Tuesday, April 10, 2018 at 7:30 p.m. in the Council Chambers of the Town Hall located at 112 Huffard Drive, Bluefield, Virginia.

PRESENT

Don Harris, Mayor
Jimmy Jones, Councilmember
Ron Holt, Councilmember
Chuck Presley, Councilmember
Anglis Trigg Jr., Councilmember
Lee Riffe, Vice-Mayor

ALSO PRESENT

Mike Watson, Town Manager
Billie Roberts, Comm. Dev. Coordinator
Kim Hernandez, Executive Assistant
Matt Freedman, Town Attorney
Shane Gunter, Police Chief
Lesley Catron, Town Clerk
14 Members of Public

CALL TO ORDER

Mayor Harris called the meeting to order at 7:32 p.m.

INVOCATION AND PLEDGE

Pastor Raymond McHone, Words of Deliverance Church led the Invocation. Mayor Harris led the Pledge of Allegiance.

APPROVAL OF AGENDA

Councilmember Holt made a motion to approve the agenda. Councilmember Jones seconded the motion. The motion passed unanimously by voice vote.

CONSENT AGENDA

Councilmember Jones made a motion to approve the consent agenda. Councilmember Holt seconded the motion. The motion passed unanimously by voice vote.

CITIZEN REQUESTS & SPECIAL PRESENTATIONS

None.

COMMITTEE REPORTS

Field Fest Update – Billie Roberts

Mrs. Roberts stated that this would be the 3rd year of Field Fest and it ran June-August on the 2nd Thursday of each month. She stated that they would be adding in another one in May. She stated that she had been working with Erik Robinson and singer Ray Scott would be coming through the area so they added another Field Fest to get him in the area.

Mr. Holt asked the date.

Mrs. Roberts stated Friday, May 5th.

Mr. Watson asked her to discuss the August Field Fest.

Mrs. Roberts stated that it was in early discussions right now but they were looking at doing a Field Fest the night of the Graham-Beaver game.

Mr. Jones asked what time it would be.

Mrs. Roberts stated that she had contacted the Great American Rivalry and was told that we could stream it on our outdoor movie screen. She stated that this would accommodate those tailgaters and class reunions in a legal way. She stated that a shuttle would shuttle those wanting to attend the game to the stadium.

Mr. Riffe asked if that would cancel the August Field Fest.

Mrs. Roberts stated this would probably be an additional one and they would need a lot of volunteers.

Mr. Holt stated that there would have to be a time to shut down the alcohol with that big of a crowd.

Mrs. Roberts stated that all of the details still needed to be worked out and that the May 4th event would be a test run.

Mayor Harris stated that Evening Shade was on Friday evenings.

Mrs. Roberts stated that staff would work with them.

Mr. Riffe stated that he did not think Evening Shade would do it on Football Friday.

Mr. Presley stated that he believed Bluefield, WV was getting an alcohol license this year.

UNFINISHED BUSINESS & REPORTS

None.

NEW BUSINESS & REPORTS

Cemetery Commission Member, VOTE – Lesley Catron

Mrs. Catron stated that during the March 19, 2018 Cemetery Commission Meeting that the Cemetery Commission recommended Linda Thompson to serve on the Commission for a 3 year term beginning April 1, 2018 to March 31, 2021.

Mr. Holt made a motion to appoint Linda Thompson to serve on the Cemetery Commission. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

Budget Amendment, VOTE – Lesley Catron

Mrs. Catron stated that the following Police Department Budget Amendments needed to be approved:

PURPOSE: Security Services Pay for Highlands Fellowship

Revenue

Line Item		Original Budget	Amended Budget	Change
0400-0413	Misc. Law	<u>\$101,597.97</u>	<u>\$103,355.22</u>	<u>\$1,757.25</u>
	Enforcement	<u>\$101,597.97</u>	<u>\$103,355.22</u>	<u>\$1,757.25</u>

Expenditure

Line Item		Original Budget	Amended Budget	Change
3110-1200	Salaries-Overtime	<u>\$23,457.39</u>	<u>\$25,214.64</u>	<u>\$1,757.25</u>
		<u>\$23,457.39</u>	<u>\$25,214.64</u>	<u>\$1,757.25</u>

Mr. Trigg made a motion to approve the Budget Amendments. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

CITIZENS COMMENTS

David Wohlford stated that during the recent snow storm, some tree branches were hanging low in Sedgewood and tractor trailers coming in that area would hit them. He stated that they needed to be cut back. He stated that Mercer County Commission was pushing to allow for kayaking in the Bluestone River. He stated that he had talked with Mr. Cundiff and there was raw sewage going into it on our side. He stated that the Town would have to deal with some financial issues when this started and would be pushed to clean it up. He asked that they start thinking about it. He stated that he had talked to Mr. Archer and their biggest issue was getting the \$150k grant to do it.

TOWN MANAGER'S REPORT

Mobile Visitors Center Request

Mr. Watson stated that the Visitors Center had requested one of the Town's old buses to have a Mobile Visitors Center. He stated that the Town was on a 4 year cycle to replace buses and could transfer a bus to the Town to use for anything other than Transit. He stated that right now we 4 buses in stock and we would keep 2 and take all of the stickers off of them. He stated that one would be going to Recreation for their summer park program and the other would be auctioned off. He stated that the Visitors Center was working on a grant to be able to strip the inside of the bus for their mobile center to put in pamphlets, etc. allowing them to take it to events. He stated that the Town would transfer it to them for them to insure with Tazewell County. He recommended donating a bus to them which would allow our area to be marketed to others.

Mr. Holt made a motion to approve donating a bus to the Visitors Center. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

GHS Educational Dinner

Mr. Watson stated that the GHS Educational Dinner would be held at Fincastle on the Mountain on Thursday, April 26th at 6 p.m.

Rezoning

Mr. Watson stated that staff was looking to rezone a couple of areas in Town. He stated that Spring Street was not zoned for the area it was in and was currently zoned B2. He stated that South College included an insurance agency, Classic Coal, etc. and there was a possibility of putting in businesses there and was not a residential road. He stated that he was looking to have an informational meeting. He stated that Planning Commission had voted to go to a Public Hearing but he wanted to wait and have an informational meeting first.

Mr. Presley asked if B2 was convenience.

Mr. Watson stated no that B1 was convenience and residential. He stated that the downtown was B2. He stated that staff would contact the residents and business owners to come in to see if they wanted it. He stated that it would go to a Public Hearing after the informational meeting.

COUNCIL COMMENTS

Mr. Trigg had none.

Mr. Presley stated that he had talked to the Sexton Hill citizens and they asked that the speed limit be changed from 35 mph to 25 mph because of them having to pull out of their driveway. He stated that he had a citizen on Jefferson Street complaining about paving. He said as always the Police Department was awesome.

Mr. Holt stated Rocky had complained about a coyote in Sedgewood. He stated that this was a serious issue and suggested they hire a trapper.

Mr. Wohlford stated that it was at the old Ramey's house 3 weeks ago.

Mr. Watson stated that some cameras were put up but they couldn't find it.

Mr. Jones had none.

Mr. Riffe stated that he had attended his first Planning Commission meeting the night before and it was very involved. He stated that they had a lot ahead of them but their biggest concern was keeping communication between them and Council. He stated that one asked for them all to sit down and see who was doing what and introducing new members. He stated that the PIC Award for Otis would be sent to his son in Beckley and asked that Resolutions and PIC Awards be placed on the Town's social media page.

Mayor Harris stated that Mike Swatts was the only one he could find in the area related to Cotton Smith. He stated that he was running for something in West Virginia and asked staff to look into it more.

Mrs. Catron stated that she would.

Mayor Harris stated that he had received a call from a resident near the cemetery about a big tree being down but when he went to look at it, it had already been taken care of. He stated that there was a resident who had one of our old buses who lived near the cemetery who had the engine out of it and it looked terrible.

Mr. Presley stated it belonged to Matt Perry.

Mayor Harris stated that it looked bad. He stated that a few years ago, the Town had a Spring Cleanup where staff came in and helped clean up an area. He stated

afterwards council donated money to do hotdogs and hamburgers and asked council to think about doing it again this year.

Mr. Watson stated that it was done around May.

Mr. Holt stated that with spring sports, the only date he had available in May was the 26th.

ATTORNEY REPORT

Telecommunications Franchise Update (attached at the end of the minutes)

Mr. Freedman stated that a draft of the Telecommunications Franchise was in council's packet. He stated that staff had worked with Lumas on the renewal and if council was ok with it, then he would advertise it for bids.

Mr. Trigg made a motion to approve the Telecommunications Franchise. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

Gullion Deed (attached at the end of the minutes)

Mr. Freedman stated that the Gullion Deed was associated with High Street and asked for a vote to accept the property and authorize the mayor to sign.

Mr. Holt made a motion to accept the property and authorize the mayor to sign. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

Mr. Watson stated that we purchased the property for \$550 along with some other fees.

Sedgewood Recreation Association, Inc. Deed, VOTE (attached at the end of the minutes)

Mr. Freedman stated the Sedgewood Recreation Association wanted to donate a piece of property to the Town if council was willing to take it. He stated that the only condition he included was the right of first refusal. He stated that he had spoken with Mr. Watson concerning their delinquent personal property taxes with the Town and the County and that Mr. Stacy or the board would be clearing off the county taxes. He asked for a motion to accept the property and authorize the mayor to sign it.

Mr. Trigg made a motion to accept the property and authorize the mayor to sign it. Mr. Presley seconded the motion.

Mr. Jones suggested they put up posts to keep the cars off of the property.

Mr. Presley asked if the building would be torn down.

Mr. Watson stated that they were looking at tearing the building down, possibly putting up a flag pole, putting up protection around it and putting in 2 red benches that the Town had left over.

Mr. Holt asked if they felt certain the taxes would be taken care of.

Mr. Freedman stated that he had received an email from Ms. Tyson but had not talked to Charlie yet.

Mr. Watson stated that his understanding was that Charlie would be donating it from his district fund.

The motion passed unanimously by voice vote.

EXECUTIVE SESSION

Councilmember Holt made a motion to enter into Executive Session pursuant to *Code of Virginia Section 2.2-3711-A-1.3* and Mrs. Catron read:

Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

Councilmember Presley seconded the motion. The motion passed unanimously by voice vote.

Council entered into Executive Session at 8:11 p.m.

Councilmember Holt made a motion to enter out of Executive Session. Councilmember Presley seconded the motion. The motion passed unanimously by voice vote.

Councilmember Holt made a motion to adopt the following resolution certifying the Executive Session and Mrs. Catron read:

WHEREAS, the Town Council of Bluefield, Virginia has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with provisions of the Virginia Freedom of Information Act; and WHEREAS, Section 2.2-3712-D of The Code of Virginia requires a certification by the Town Council of Bluefield, Virginia that such session was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Bluefield, Virginia hereby certifies that, to the best of each members knowledge, (I) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the Town Council.

Adopted this 10th day of April.

Councilmember Presley seconded the motion.

ROLL CALL VOTE

Councilmember Trigg:	Yes
Councilmember Presley:	Yes
Councilmember Holt:	Yes
Mayor Harris:	Yes
Councilmember Jones:	Yes
Vice-Mayor Riffe:	Yes

The motion passed unanimously by Roll Call Vote.

ADJOURN

Mr. Holt made a motion to adjourn the meeting at 8:58 p.m. Mr. Presley seconded the motion. The motion passed unanimously by voice vote.

Don Harris, Mayor

Lesley Catron, Town Clerk

VIRGINIA: AT A REGULAR MEETING OF THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA HELD AT THE COUNCIL CHAMBERS OF THE TOWN HALL IN BLUEFIELD, VIRGINIA ON THE _____ DAY OF _____, 2018.

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO _____ FOR THE PURPOSE OF PERMITTING SUCH GRANTEE THE ABILITY TO CONSTRUCT, MAINTAIN, AND OPERATE A TELECOMMUNICATIONS SYSTEM WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE TOWN OF BLUEFIELD, VIRGINIA, AND TO FURTHER PERMIT SUCH GRANTEE THE ABILITY TO PROVIDE TELECOMMUNICATIONS SERVICES OVER SUCH TELECOMMUNICATIONS SYSTEM

WHEREAS, the Town of Bluefield has the authority to grant franchises and other authorizations for the use and occupancy of the Public Rights-of-Way (as hereinafter defined) within its corporate limits; and

WHEREAS, _____ desires to obtain a non-exclusive Telecommunications Franchise from the Town of Bluefield to use and occupy the Public Rights-of-Way of the Town of Bluefield for the purpose of placing and maintaining a Telecommunications System within its corporate limits; and

WHEREAS, the Town of Bluefield intends to exercise, to the fullest extent permitted by applicable law, and in accordance with sections 15.2-2100 and 56-462 of the Code of Virginia, its authority with respect to the regulation of the occupation and use of the Public Rights-of-Way in connection with the construction, maintenance, and repair of a Telecommunications System within its corporate limits; and

WHEREAS, notice of this ordinance, and an invitation for bids regarding the franchise described herein, were duly published on the _____ day of _____, _____, and on the _____ day of _____, _____, in the Bluefield Daily Telegraph, a newspaper having general circulation in Bluefield, Virginia; and

WHEREAS, on the _____ day of _____, _____, the Council of the Town of Bluefield, Virginia, by an affirmative majority vote, accepted a bid from _____ for a non-exclusive telecommunications franchise, which was submitted in a form acceptable to the Town of Bluefield; and

WHEREAS, a public hearing regarding the adoption of this ordinance was held on the _____ day of _____, _____, before the Council of the Town of Bluefield, Virginia, after notice was duly published on the _____ day of _____, _____, and on the _____ day of _____, _____, in the Bluefield Daily Telegraph, a newspaper having general circulation in Bluefield, Virginia.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA:

1. Definitions. The following terms, as used in this Ordinance, have the following meanings, with all terms defined in the singular to have the correlative meaning when used in the plural and vice versa:

(a) "Cable Services" means "cable services" as defined in section 602(6) of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996 and as may be further amended from time to time (the "Cable Act"). In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

(b) "Code of Virginia" means the 1950 Code of Virginia, as amended.

(c) "Construction" means to install, construct, maintain, upgrade, repair, or remove Facilities.

(d) "Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential Telecommunications Services.

(e) "Facilities" means the cables, optical fiber, poles, wires, customer service connections, electrical conductors, conduits, ducts, manholes, fixtures, appliances, and appurtenances that are Placed or Maintained within the Public Rights-of-Way.

(f) "FCC" means the Federal Communications Commission.

(g) "Franchise" has the meaning set forth in this Ordinance.

(h) "Grantee", or its possessive form, means _____, a _____, and its lawful successors, transferees, and assigns.

(i) "Like-for-Like" means the installation or relocation of Facilities in a like or similar manner of construction when compared to previously installed Facilities. For example, placement of Facilities above ground using aerial construction in locations where existing Facilities are constructed above ground (aerial-to-aerial) or the placement of Facilities underground, either direct bury or within conduit, in locations where existing Facilities are constructed underground (underground-to-underground).

(j) "Ordinance" means this Ordinance, as amended, modified or supplemented from time to time.

(k) "Person" means an individual, corporation, partnership, association, trust, or any other entity or organization, including a governmental or political subdivision, including the Town, or an agency or instrumentality thereof.

(l) "Place" or "Place and Maintain" or "Placement and Maintenance" or "Placed and Maintained" or "Placed or Maintained" means to install, place, construct, maintain, operate, upgrade, expand, repair, replace, or remove Facilities.

(m) "PROW Use Fee" means the Public Rights-of-Way Use Fee that the Town is authorized to impose pursuant to section 56-468.1 of the Code of Virginia.

(n) "Public Rights-of-Way" means the surface and area across, in, over, along, upon, and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including utility easements, waterways, or other public places used as public rights-of-way, as the same now or may hereafter exist, which are under the jurisdiction or control of the Town of Bluefield. The term Public Rights-of-Way excludes private property and private easements. Public Rights-of-Way does not include the airways above a right-of-way used for broadcast, cellular mobile radio service, satellite, or other wireless services.

(o) "Relocation Cost" or "Cost to Relocate" shall mean the total cost to remove, alter, connect, or relocate Facilities and shall include the cost to install and connect Facilities at a new location, the cost to remove Facilities at the old location, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish any removal, alteration, or relocation of the Grantee's Facilities. The cost of relocation shall include the entire amount incurred or paid by the Grantee after deducting any increase in the value of a new Facility (betterment) and any salvage value derived from the old Facility.

(p) "Structures" includes buildings, signs, fences, tanks, poles, lines, fixtures, Facilities, and appurtenances of the Town.

(q) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received by or through any electronic, cable, optical, microwave, or other medium or method in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.

(r) "Telecommunications Services" means the offering of Telecommunications for a fee, regardless of the Facilities used. The term "Telecommunications Services" shall not include Cable Services.

(s) "Telecommunications System" means the plant, Facilities, real property (including interests in real property), tangible and intangible personal property, cable, wires, optical fibers, amplifier, antenna, and all other electronic devices, equipment and Facilities of a telecommunications provider located in, on, over, or under the Public Rights-of-Way.

(t) "Term" has the meaning set forth in this Ordinance.

(u) "Town", or its possessive form, means the Town of Bluefield, a Virginia Municipal Corporation.

2. Grant of Franchise. The Town grants to the Grantee a non-exclusive Telecommunications Franchise ("Franchise") to Place and Maintain Facilities of a Telecommunications System within the Public Rights-of-Way subject to the terms, conditions, and provisions of this Ordinance. The Town further grants authority to the Grantee to provide Telecommunications Services within the corporate limits of the Town over such Telecommunications System as may be lawfully allowed. This Ordinance does not grant authority to the Grantee to provide Cable Services within the corporate limits of the Town. This Ordinance does not grant authority to the Grantee to Place and Maintain Facilities on private property. The Grantee shall be solely responsible for obtaining any required consents from private parties to the extent that its operations affect private property. The Grantee shall be solely responsible for obtaining any required consents from any federal, state, or county agencies to the extent that its operations affect any federal, state, or county agencies. The Grantee is not authorized to sublicense or sublease to any Person the right to Place and Maintain Facilities in the Public Rights-of-Way for any purpose. This Ordinance is not a grant by the Town of any fee simple or other property interest except as expressly contemplated by this Ordinance and is made subject to and subordinate to the prior and continuing right of the Town to use the Public Rights-of-Way occupied by the Grantee for the purpose of laying, installing, maintaining, repairing, protecting, replacing, and removing sanitary sewers, water mains, storm drains, gas mains, poles and other equipment and for other municipal uses and with the rights of ingress and egress, along, above, over, across, and in the Public Rights-of-Way.
3. Term of Franchise. The term of the Franchise granted by this Ordinance shall be for an initial term of ten (10) years which shall commence on the effective date outlined in this Ordinance ("Initial Term"). The period of time that the Franchise granted by this Ordinance remains in effect is referred to herein as the "Term."
4. Renewal. Unless the Town or the Grantee gives ninety (90) days written notice of its intention to terminate the Franchise granted by this Ordinance prior to the end of the Initial Term, then the Franchise granted herein shall automatically renew and continue on an annual basis from year-to-year; provided, however, the Town or the Grantee may, upon giving ninety (90) days written notice prior to the end of a yearly renewal period, terminate the Franchise. In no event shall the Term of the Franchise granted by this Ordinance be for a total period of time greater than twenty (20) years. Upon the termination or expiration of the Franchise granted by this Ordinance, including any renewal period, if any portion of the Grantee's Facilities are abandoned, the Grantee shall remove such Facilities at its own expense; provided, however, that if directed by the Town in writing, the Grantee may abandon some or all of its Facilities in place, and such Facilities will become the property of the Town upon their abandonment. If in the event the Grantee fails to remove its Facilities within sixty (60) days after abandonment or termination, except such Facilities abandoned in place at the direction of, or with the consent of the Town, the Town may cause such Facilities to be removed, without further notice, and charge the cost of removal to the Grantee, which shall be paid by the Grantee within sixty (60) days of a written demand by the Town. Upon the termination of the Franchise granted by this Ordinance, the Grantee shall be prohibited from further access to the Public Rights-of-Way.

5. Non-Exclusive Franchise. Nothing in this Ordinance affects the right of the Town to grant any Person a Franchise to occupy and use the Public Rights-of-Way to Place and Maintain such Person's Facilities for the purpose of providing Telecommunications Services or to engage in any other activity in the Public Rights-of-Way, provided that the exercise of such right will not require any of the Grantee's existing Facilities to be unreasonably interfered with or relocated.
6. Transfer of Franchise. The Franchise granted by this Ordinance shall not be transferred, assigned, or subleased by the Grantee to third parties without the written consent of the Town, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the Grantee may, upon ninety (90) days written notice to the Town, assign or transfer its rights, privileges, and obligations hereunder to a subsidiary or affiliate of the Grantee, or to any successor entity in connection with a merger, reorganization, consolidation, change of control, or sale of all or substantially all of the Grantee's assets, so long as the said assignment or transfer is made subject to this Ordinance.
7. Right of Town to Use Public Rights-Of-Way. Nothing in this Ordinance affects the right of the Town to occupy and use the Public Rights-of-Way for their intended purposes, nor does it affect the Town's right to Place and Maintain its Facilities or Structures or to engage in any other activity in the Public Rights-of-Way, provided that the exercise of such right will not require any of the Grantee's existing Facilities to be unreasonably interfered with or relocated.
8. Public Rights-of-Way Closings. Nothing in this Ordinance waives or releases the right of the Town in and to its Public Rights-of-Way. If all or part of a Public Right-of-Way is eliminated, discontinued, closed, or demapped in accordance with applicable law, then this Franchise shall cease with respect to the affected portion(s) of such Public Right-of-Way.
9. Compliance with Laws. The Grantee shall comply with all federal, state, and local laws, regulations, and ordinances. The Grantee shall comply with all directives or orders of the Town issued pursuant to this Ordinance or with respect to the Town's management of its Public Rights-of-Way provided they are in compliance with applicable law.
10. Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural vegetative growth encroaching upon its Telecommunications System within the corporate limits of the Town so as to prevent contact with the Grantee's wires, cables, or other equipment. All such trimming shall be done at the Grantee's sole cost and expense. The Grantee shall be responsible for any collateral property damage caused by such trimming. The Grantee shall be responsible for all clean-up of debris caused by such trimming.
11. Safety Precautions. The Grantee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at, or on the Public Rights-of-Way, including the placing and maintenance of proper guards, fences, barricades, watchmen, and suitable and sufficient lighting, in accordance with all applicable federal and state laws. All work undertaken on the Telecommunications System by the Grantee within the corporate limits of the Town shall be performed in substantial accordance with all applicable state and federal regulations, and shall further not endanger or interfere with the safety of any Person or property within the corporate limits of the Town.

12. Quality. All work involved in the Placement and Maintenance of Facilities shall be performed in a safe, thorough, and reliable manner in accordance with industry, professional, state, and federal mandated standards and using materials of good and durable quality.
13. Right-of-Way Permits. Except during an Emergency and routine maintenance and repair as hereinafter defined, prior to commencing construction activities, the Grantee will secure all permits as are normally required by the Town for construction work within the Public Rights-of-Way. The Grantee shall file with the Town plans showing the type and location of its proposed Facilities. The location of the proposed Facilities shall be subject to review by the Town Manager of the Town, or their designee, who may impose additional reasonable requirements regarding the placement of Facilities in the Public Rights-of-Way. Routine maintenance and repair activities shall include the Placement and Maintenance of customer service connections (drops), but not including any drop that involves cutting into or boring under the surface of a paved right-of-way, and the routine placement of Facilities within existing conduit or upon existing poles so long as such activity does not involve the cutting or breaking of the surface of any paved street or roadway, and so long as such activity does not block a lane of vehicular traffic for more than one (1) hour.
14. No Obstruction. Except for an Emergency or routine maintenance and repair activities, as defined in paragraph 13, that are not reasonably expected to block traffic for more than one (1) hour, the Grantee shall not obstruct traffic to any street, road, or other Public Rights-of-Way within the corporate limits of the Town without the prior consent of the Town. The Grantee's Facilities in the Public Rights-of-Way shall be located so as to cause minimal interference with any use of the Public Rights-of-Way and adjoining property. As soon as practicable, the Grantee shall notify the Town Manager of the Town, or their designee, of any Emergency necessitating an obstruction under this paragraph. The Grantee shall coordinate its activities in responding to an Emergency with the Town Manager of the Town or their designee. During an Emergency, the Grantee may take all reasonable measures to restore service and alter its Facilities as necessary to ensure the safety of the residents of the Town.
15. Restoration. The Grantee shall, at its own cost and expense, replace, repair, or restore any damaged property as close as reasonably possible to its prior condition. The Grantee shall be liable, at its own cost and expense, to reasonably replace or repair, within a reasonable time, to the condition that existed prior to the commencement of the Grantee's activities, any street, Structure, Public Right-of-Way, or other property within the corporate limits of the Town which is disturbed or damaged as a direct result of the Grantee's activities. If the Grantee does not commence replacement or repair within a reasonable time period as agreed to by the parties after notice by the Town to the Grantee, then the Town may make such replacement or repair and the Grantee shall pay the actual cost of the same within sixty (60) days the Town's written demand.
16. Facility Installation. Where financially and technically feasible, the Grantee shall endeavor to place its Facilities underground in locations serving new residential and commercial developments or redevelopments so long as the Town requires other similarly situated users of the Public Rights-of-Way to likewise place their Facilities underground in areas serving such new developments or redevelopments. Unless otherwise required by other provisions of this Ordinance, and for the avoidance of any doubt, the Grantee shall be permitted to place aerial

Facilities, and to thereafter maintain, repair, replace, upgrade, or increase in capacity such aerial Facilities in any area located outside of the boundaries of any new developments or redevelopments wherein similarly situated public utility entities currently maintain reasonably comparable aerial Facilities.

17. Construction by Town in Public Rights-of-Way; Relocation of Facilities. The Grantee shall relocate its Facilities in the Public Rights-of-Way upon written notification from the Town that the Town has a reasonable need for the area in which the Grantee's Facilities are located for a public improvement project. The Grantee shall also relocate its Facilities as soon as possible when notified by the Town that an Emergency exists which jeopardizes the health, safety, or welfare of the general public. Reimbursement of costs for removal or relocation of such Facilities incurred by the Grantee, if any, shall be governed by section 56-468.2 of the Code of Virginia, subject to the Town's reservation of a right to challenge the constitutionality of such under the Virginia Constitution, Article 1, Section 11 and the Fifth Amendment of the United States Constitution. During other situations, relocation shall be completed within sixty (60) days of the date of notification, unless the Town Manager of the Town, or their designee, agrees to a longer period in writing. The Town shall provide room within relocated Public Rights-of-Way for the Grantee to Place its Facilities.
18. Requested Relocation of Grantee Facilities. Except for the relocation of Facilities as specified above, if any Person, other than the Town, requests the Grantee to remove, alter, or relocate its Facilities, then the Person requesting the removal, alteration, or relocation shall reimburse the Grantee for all such removal, alteration, or Relocation Costs. The Grantee may impose charges to recover its Cost to Relocate its Facilities for the benefit of a third party, such as a private developer, or for the benefit of the Town to compete as a Telecommunications service provider.
19. Public Rights-of-Way Use Fee and Permit Fees.
 - A. The Grantee shall comply with the provisions of sections 58.1-645 *et seq.* of the Code of Virginia, pertaining to the Virginia Communications Sales and Use Tax as amended.
 - B. The Town reserves the right, as authorized by state and federal law, to impose at any time on the Grantee (a) a Public Rights-of-Way Use Fee in accordance with section 56-468.1 of the Code of Virginia, and/or (b) any other fee or payment as may be allowed by federal or state law for the occupation and use of the Public Rights-of-Way. Where applicable, the Town shall provide the Grantee notice of the Public Rights-of-Way Use Fee as required by section 56-468.1 of the Code of Virginia.
 - C. Upon commencement of service using its Facilities constructed in the Public Rights-of-Way, the Grantee shall pay to the Town, for its share of managing the Public Rights-of-Way, the following fee for all aerial and/or underground Facilities Placed or Maintained in the Public Rights-of-Way: \$0.25 per linear foot of aerial or underground fiber optic cable per annum.
 - D. The Grantee shall pay all standard and nominal permit and user fees to the Town in accordance with applicable ordinances and laws.

20. Use of Town Structures. This Ordinance does not grant to the Grantee use of Town-owned Structures. The terms and conditions of the Grantee's use of any Town-owned Structures shall be set forth in a separate ordinance, agreement, lease, or other document, as appropriate.
21. Use of Grantee's Facilities. This Ordinance does not grant to the Town free use of any of the Grantee's Facilities. The Grantee may enter into joint-use, pole attachment, or conduit lease agreements with any party, including the Town, regarding the use of the Grantee's Facilities.
22. No Credits or Deductions. The compensation and other payments to be made to the Town: (a) shall not be deemed to be in the nature of a tax, and (b) except as may be otherwise provided by section 56-468.1 of the Code of Virginia, shall be in addition to any and all amounts, fees, or other charges that the Grantee is required to pay to the Town.
23. Insurance Specifications. Throughout the Term of this Franchise, the Grantee shall, at its own expense, maintain a liability insurance policy or policies, in a form reasonably acceptable to the Town. Upon request, the Grantee shall provide the Town with a certificate of liability insurance demonstrating that the Grantee is maintaining the insurance requirements of this section. Each certificate shall include the Town as an additional insured as their interest may appear. Such policy or policies shall be issued by companies duly authorized or permitted to conduct business in the Commonwealth of Virginia. Such policy or policies shall insure the Grantee, and excluding Workers' Compensation and Employer's Liability, include the Town and its officials, boards, commissions, councils, elected officials, agents, and employees as additional insureds as their interest may appear; and include:
- a. Commercial General Liability Insurance (including, but not limited to, premises-operations, products/completed operations, contractual liability, independent contractors, and personal injury) with limits of not less than one million dollars (\$1,000,000) combined single limit for each occurrence for bodily injury and property damage (Limits may be satisfied with primary and/or excess coverage.);
 - b. Commercial Automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000) combined single limit for each accident for bodily injury and property damage;
 - c. Workers' Compensation Insurance meeting all statutory requirements of the Commonwealth of Virginia;
 - d. Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000) each accident/disease/policy limit; and
 - e. Umbrella Liability Insurance shall be maintained above the primary Commercial General Liability, Commercial Automobile Liability, and Employers' Liability policies required herein. The limit of such Umbrella Liability Insurance shall not be less than two million dollars (\$2,000,000) for each occurrence and in the aggregate.

The foregoing minimum limitations shall not prohibit the Grantee from obtaining a liability insurance policy or policies in excess of such limitations.

24. Surety Bond. The Grantee shall furnish the Town with a Surety Bond to ensure faithful performance under this Ordinance in an amount of fifty thousand dollars (\$50,000.00). The required Surety Bond shall be written by a corporate surety or bank authorized to do business in the Commonwealth of Virginia, and shall remain in full force and effect throughout the Term of the Franchise granted by this Ordinance. The Grantee shall provide such Surety Bond to the Town within thirty (30) days of the effective date of this Ordinance.
25. Public Safety. In case of fire, disaster, or other emergency, or to correct an unsafe work condition, as determined by the Town in its sole discretion, the Town may cut or move the Grantee's Facilities as reasonably necessary to protect public health or safety. The Town will make every reasonable effort to consult with the Grantee prior to any such cutting or movement of Facilities and the Grantee shall be given the opportunity to perform such work itself. The Town shall have the obligation to protect the Grantee's Facilities to the maximum extent reasonable under the circumstances. Absent gross negligence or willful misconduct of the Town, all costs to repair or replace such Facilities shall be borne by the Grantee.
26. Oversight of Franchise. The Town shall have the right to, at its sole cost and expense, and upon reasonable prior written notice and in the presence of the Grantee's employee, periodically inspect the construction and maintenance of the Telecommunications System within the corporate limits of the Town as necessary to monitor the Grantee's compliance with the provisions of this Ordinance. Furthermore, the Grantee shall comply with all applicable technical standards specific to the Grantee's industry. To the extent those standards are altered, modified, or amended during the Term of this Franchise, the Grantee shall comply with such altered, modified, or amended standards within a reasonable time after such standards become effective.
27. Liability of Town. Neither the Town nor its officials, employees, agents, attorneys, consultants, or independent contractors shall be responsible to the Grantee for any damage or liability that occurs as a result of or in connection with the protection, breaking through, movement, removal, alteration, relocation, or maintenance of the Grantee's Facilities or Telecommunications System by the Grantee or the Town, its employees, its agents, or its independent contractors. Furthermore, neither the Town nor its officials, employees, agents, attorneys, consultants, or independent contractors shall be responsible to the Grantee for any damage or liability to the Grantee's Facilities or Telecommunications System that occurs as a result of or in connection with the Town, its employees, its agents, or its independent contractors digging or working in their official capacity with the Town. Additionally, in no event shall the Town, its officials, employees, agents, attorneys, consultants, or independent contractors be liable to the Grantee, its employees, subcontractors, affiliates, agents, or any third party for any indirect, incidental, special, consequential, or punitive damages, lost profits for any claims, or actions of any nature or kind, arising out of, or in connection with this Ordinance or the performance or breach thereof. To the extent permitted by law, nothing in this section shall waive any rights that the Grantee otherwise has against the Town for any willful misconduct or grossly negligent acts.

28. Liability of Grantee. To the extent permitted by law, the Grantee shall have no liability to the Town, its officials, employees, agents, attorneys, consultants, or independent contractors for any special, incidental, consequential, punitive, or other damages that occur as a result of the lawful exercise of any right of the Grantee granted pursuant to this Ordinance or applicable law. However, this waiver shall not apply to damages in tort resulting from the gross negligence or willful misconduct of the Grantee or any officer, agent, or employee of the Grantee, nor shall it absolve the Grantee from its duty to indemnify as provided in this Ordinance.
29. Indemnification of Town. The Grantee shall defend, indemnify, and hold harmless the Town, its officials, employees, agents, attorneys, consultants, and independent contractors from and against all liabilities, whether special, incidental, or consequential and all other damages, costs, and expenses arising solely out of or in connection with the existence, installation, maintenance, upgrade, repair, or removal of the Grantee's Facilities by the Town or the Grantee. The Grantee shall further defend, indemnify, and hold harmless the Town, its officials, employees, agents, attorneys, consultants, and independent contractors from and against all liabilities, whether special, incidental, or consequential and all other damages, costs, and expenses arising solely out of or in connection with the following:
- a. any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses, and consultants), which may be imposed or asserted by reason of any act or omission of the Grantee, its personnel, employees, agents, contractors, or subcontractors resulting in personal injury, bodily injury, sickness, disease, or death to any person or damage to, loss of, or destruction of tangible or intangible property, libel, slander, invasion of privacy, and unauthorized use of any trademark, trade name, copyright, patent, service mark, or any other right of any Person which may arise out of or be in any way connected with the construction, installation, operation, maintenance, removal, use, or condition of the Grantee's Telecommunications System caused by the Grantee, its contractors, subcontractors, or agents or the Grantee's failure to comply with any law or regulation;
 - b. any and all third-party claims for liabilities, obligations, damages, penalties, liens, costs, charges, losses, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses, and consultants), which are imposed upon, incurred by, or asserted by reason of any claim or lien arising out of work, labor, materials, or supplies provided or supplied to the Grantee, its contractors, or subcontractors for the installation, construction, operation, removal, or maintenance of the Grantee's Telecommunications System;
 - c. Any and all worker's compensation claims to which the Grantee may become subject during the Term of this Franchise.

The Town shall notify the Grantee within forty-five (45) days of any claims, demands, or actions covered hereunder after which time the Grantee shall defend such claims, demands, or actions. The Grantee shall be entitled to have sole control over the defense of any such claims, demands,

or actions through counsel of its own choosing and over settlement of such claims, demands, or actions. The Town shall cooperate in the defense of such claims, demands, or actions.

The Town may waive the applicability of these indemnification provisions in their entirety if the Town elects to conduct its own defense against such claims, demands, or actions.

The foregoing indemnity obligations shall not apply to claims, demands, or actions arising from gross negligence or willful misconduct of the Town.

The Grantee undertakes and assumes for its officers, agents, contractors, subcontractors, and employees all risk of dangerous conditions, if any, on or about any property owned or controlled by the Town, including the Public Rights-of-Way.

30. Termination Events. The Town, at its option, may terminate this Ordinance upon any material breach of this Ordinance by the Grantee should the Grantee fail to correct such breach within ninety (90) days after receiving specific written notice of such material breach from the Town or, if the breach cannot reasonably be corrected within ninety (90) days or within a reasonable time as agreed to by the Town and the Grantee.
31. Delays and Failures Beyond Control of Grantee. Notwithstanding any other provision of this Ordinance, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Ordinance due to strike, war, or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, terrorism, sabotage, or other events, where the Grantee has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the Grantee. If such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Grantee agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a manner as possible.
32. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, designations, or other direction or communication hereunder by any party to another shall be in writing sent to the following addresses:

Town: Town of Bluefield
Attention: Town Manager
112 Huffard Drive
P.O. Box 1026
Bluefield, Virginia 24605

With a copy to: Town of Bluefield
Attention: Town Attorney
112 Huffard Drive
P.O. Box 1026
Bluefield, Virginia 24605

Town: Town of Bluefield
Attention: Mayor
112 Huffard Drive
P.O. Box 1026
Bluefield, Virginia 24605

Grantee:

33. Organization, Standing, Power, Authorization, and Enforceability. The Grantee is a Public Service Corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia, and is duly authorized to do business within the corporate limits of the Town. The Grantee has all requisite power and authority to execute, deliver, and perform the requirements of this Ordinance and all other agreements entered into or delivered in connection with or as contemplated hereby.
34. Binding Effect. This Ordinance shall be binding upon and inure to the benefit of the Town and the Grantee and their respective successors and permitted transferees and assigns.
35. Headings; Other Terms. The headings contained in this Ordinance are to facilitate reference only, do not form a part of this Ordinance, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby", "herein", "hereof", "hereinafter", "hereunder", and "hereto" refer to this Ordinance as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; the terms "shall" and "will" are mandatory, not merely directive. All references to any gender shall be deemed to include all others, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires.
36. No Third Party Beneficiary Rights. Nothing in this Ordinance is intended to interfere with any tariffs, contracts, or other arrangements between the Grantee and a third party, or to create any third party beneficiary rights.
37. Entire Ordinance. This Ordinance embodies the entire understanding of the Town and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Town and the Grantee with respect to the subject matter hereof, including, without limitation, all prior drafts of this Ordinance and any and all written or oral statements/representations by any official, employee, agent, attorney, consultant, or independent contractor of the Town or the Grantee.
38. Non-Waiver. The waiver of any breach or violation of any provision of this Ordinance shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of the Franchise granted by this Ordinance.
39. Governing Law and Venue. The Franchise granted by this Ordinance shall be governed and construed by and in accordance with the laws of the Commonwealth of Virginia. If suit is brought by the Town or the Grantee concerning this Ordinance, then it is understood and agreed that trial of such action shall be exclusively in the state courts located in Tazewell County, Virginia, or in the United States District Court for the Western District of Virginia, Abingdon Division, if independent federal jurisdiction can be established.
40. Amendment of Franchise. The Franchise granted by this Ordinance may not be amended except pursuant to a written instrument signed by both the Town and the Grantee. In the event, the Commonwealth of Virginia or federal government require the Town or the Grantee to perform or refrain from performing any act the performance or non-performance of which is inconsistent with any provisions herein, the Grantee and the Town will thereupon, if they determine that a

material provision herein is affected, modify any of the provisions herein to reflect such government action.

41. Nondiscrimination. The Grantee shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, handicap, or national origin. The Grantee, shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, shall state that the Grantee is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purposes of meeting the requirements herein.
42. Annexation. Upon ninety (90) days written notice from the Town, any additions of territory to the Town, by annexation or other legal means, the portion of any of the Grantee's Facilities that may be located or operated within said territory shall thereafter be subject to all the terms of this Ordinance as though it were an extension made hereunder.
43. Calculation of Time. Where the performance or doing of any act, duty, matter, payment, or operation is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first day and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation.
44. Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, then such portion shall be deemed a separate, distinct, and independent portion and severable. Such declaration shall not affect the validity of the remaining portions hereof as such other portions shall continue in full force and effect.
45. No Waiver of Rights. Nothing in this Ordinance shall be construed as a waiver of any rights, substantive or procedural, which the Town or the Grantee may have under federal or state law unless such waiver is expressly stated herein. Nothing in this Ordinance shall be construed to expressly or impliedly waive any rights, privileges, and immunities the Town may have under the Code of Virginia, the Constitution of Virginia, or the Constitution of the United States of America as exists presently or as may be increased from time to time. Furthermore, nothing in this Ordinance shall be deemed to constitute a waiver of the Town's sovereign immunity.
46. Incorporation by Reference. All presently and hereafter applicable requirements of federal, state, and local laws, regulations, and guidelines, including but not limited to those of the FCC and the Commonwealth of Virginia, are incorporated herein by reference.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that the Council of the Town of Bluefield, Virginia adopts this ordinance on this _____ day of _____, 2018.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that this ordinance shall be effective on the _____ day of _____, 2018.

BE IT FURTHER ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA that the Council of the Town of Bluefield, Virginia authorizes Donald R. Harris, the Mayor of the Town of Bluefield, Virginia, to execute this ordinance on behalf of said Council.

IT IS SO ORDAINED BY THE COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA on this _____ day of _____, 2018.

PUBLIC HEARING:

FIRST READING:

SECOND READING:

ADOPTION DATE:

EFFECTIVE DATE:

FINAL RECORDED VOTE: _____

MEMBERS PRESENT: _____

MEMBERS ABSENT: _____

RESULT OF VOTE:

AYES

NAYES

ABSTENTIONS

COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA

BY: _____

DONALD R. HARRIS, MAYOR

DATE

TOWN OF BLUEFIELD, A VIRGINIA MUNICIPAL CORPORATION

ATTEST:

LESLEY CATRON, TOWN CLERK

DATE

TOWN OF BLUEFIELD, A VIRGINIA MUNICIPAL CORPORATION

By joining in this Ordinance through signature of its authorized agent or representative, the Grantee agrees to all the covenants, terms, conditions, and provisions of this Ordinance:

BY: _____

DATE: _____

ITS: _____

STATE/Commonwealth of _____
City/County of _____, to wit:

The foregoing instrument was acknowledged before me on behalf of _____, a _____, by _____, its _____, on this _____ day of _____, 2018.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
REGISTRATION NUMBER: _____

AFFIX NOTAY SEAL:

DEED OF NONJUDICIAL SALE OF TAX DELINQUENT REAL PROPERTY

GRANTOR:

TREASURER OF TAZEWEEL COUNTY, VIRGINIA
135 Court Street, Suite 207
Tazewell, VA 24651

GRANTORS (FOR RECORDATION PURPOSES):

SAMUEL B. GULLION & PARADINE R. GULLION
Route 2, Box 262
Hurricane, WV 25526

GRANTEE:

TOWN OF BLUEFIELD, a Virginia Municipal Corporation
112 Huffard Drive
Bluefield, VA 24605

TAX MAP NO.: 024A203-0005

CONSIDERATION: \$550.00

ASSESSED VALUE: \$2,000.00

This instrument is exempt from Grantee recordation taxes pursuant to Section 58.1-811(A)(3) of the Code of Virginia (1950), as amended.

This **DEED OF NONJUDICIAL SALE OF TAX DELINQUENT REAL PROPERTY** is entered into this 23rd day of March, 2018, by and between the TREASURER OF TAZEWEEL COUNTY, VIRGINIA (hereafter, "Grantor"); SAMUEL B. GULLION & PARADINE R. GULLION (Grantors herein for recordation purposes); and the TOWN OF BLUEFIELD, a Virginia Municipal Corporation (hereafter, "Grantee").

Prepared By:
Chase D. Collins, Esq. (VSB #83766)
Tazewell County Attorney's Office
197 Main Street
Tazewell, VA 24651
Phone: (276) 385-1208
Fax: (276) 988-4246
chase.collins@tazewellcounty.org

WITNESSETH:

WHEREAS, the subject property was acquired by Samuel B. Gullion & Paradine R. Gullion in fee simple via Deed dated May 4, 1943, from Home Owners' Loan Corporation, as described in Deed Book 155, Page 79, of record in the Tazewell County Circuit Court Clerk's Office; and

WHEREAS, Samuel B. Gullion & Paradine R. Gullion are the persons appearing to have interest in the subject property within the meaning of Section 58.1-3975 of the Code of Virginia (1950), as amended; and

WHEREAS, Samuel B. Gullion & Paradine R. Gullion have failed to satisfy real estate taxes due and owing to Tazewell County, Virginia such that said taxes are delinquent on December 31 following the third anniversary of the date on which such taxes have become due; and

WHEREAS, the subject property appraises for a value of Two Thousand Dollars (\$2,000.00) and is listed as unimproved in the records of the Tazewell County Commissioner of Revenue; and

WHEREAS, Section 58.1-3975(A) of the Code of Virginia (1950), as amended, permits Grantor to sell such delinquent real property at public auction whose assessed value is less than Five Thousand Dollars (\$5,000.00) and is considered unimproved; and

WHEREAS, Grantor elected to exercise his rights under Section 58.1-3975 of the Code of Virginia (1950), as amended, and sent notice by certified mail to the record

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owners of the subject property, including Samuel B. Gullion & Paradine R. Gullion, and anyone appearing to have an interest in the property at their last known address on February 20, 2018, which was greater than thirty (30) days prior to public auction, a copy of said notice being attached hereto as Exhibit A; and

WHEREAS, Grantor posted notice of such auction at the property location and at the Tazewell County Circuit Courthouse; and

WHEREAS, Grantor caused a Notice of Sale to be published in the legal classified section of the Clinch Valley News, a newspaper of general circulation in Tazewell County, Virginia, on March 7, 2018, and March 14, 2018, which are greater than seven (7) and no greater than twenty-one (21) days prior to such auction, a copy of the Affidavit of such publication being attached hereto as Exhibit B; and

WHEREAS, Grantor did offer the subject property for sale on March 23, 2018, on the front steps of the Main Street entrance of the Tazewell County Courthouse, located at 135 Court Street, Tazewell, Virginia 24651, and did sell the same at public auction to the Town of Bluefield, a Virginia Municipal Corporation, Grantee, for Five Hundred Fifty Dollars (\$550.00).

NOW THEREFORE, that for and in consideration of the sum of Five Hundred Fifty Dollars (\$550.00) paid unto Grantor by Grantee, Grantor does hereby grant, bargain, sell, and convey unto Grantee, with **COVENANTS OF SPECIAL WARRANTY OF TITLE**, the real property situated in the Town of Bluefield, Tazewell County, Virginia, generally known

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as Lot 5 located between High Street and Highland Avenue, being Tax Map No. 024A203-0005, with all rights, ways, easements, improvements, and appurtenances thereunto belonging, described as follows:

BEGINNING AT A STAKE in the northerly line of Highland Avenue, same being in the division of line of Lots 4 and 5; thence, with said line of Highland Avenue S 66 00 W 54.0 feet to a stake; thence N 18 34 W 79.0 feet, with the division line of Lots 5 and 6, to a stake, in the southerly line of Alton Place; thence, with said line of Alton Place, N. 68 13 E 51.0 feet to a stake, thence S 20 45 E 77.0 feet, with the division line of Lots 4 and 5 to the point of BEGINNING.

'Excepting and reserving, nevertheless, to public use out of the above described premises, a strip of land 30 feet wide, running through said premises for a distance of 150 feet, and known as the "Falls Mills Road" leading from Graham to Falls Mills, Va.: Said strip containing 4500 sq. ft.'


This property is the same property deeded to Samuel B. Gullion and Paradine R. Gullion by Home Owners' Loan Corporation on May 4, 1943, referenced in the Tazewell County Circuit Court Clerk's Office in Deed Book 155, Page 79.

This conveyance is made expressly subject to restrictions, conditions, rights-of-way, and easements, if any, contained in the instruments constituting the chain of title to the subject property, and to matters visible upon inspection.

Grantee, by an affirmative majority vote of the Council of the Town of Bluefield, Virginia on April 10, 2018, and by joining in this deed through signature of its authorized representative, accepts this deed and the interest in real estate conveyed by this deed pursuant to section 15.2-1803 of the Code of Virginia (1950) as amended.

Prepared By:
Chase D. Collins, Esq. (VSB #83766)
Tazewell County Attorney's Office
197 Main Street
Tazewell, VA 24651
Phone: (276) 385-1208
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chase.collins@tazewellcounty.org

WITNESS the following signatures and seals.

 (SEAL)
DAVID T. LARIMER, II
Treasurer of Tazewell County, Virginia

**COMMONWEALTH of VIRGINIA,
COUNTY of TAZEWELL, to-wit:**

The foregoing instrument was acknowledged before me, the undersigned Notary Public, in and for the jurisdiction aforesaid by David T. Larimer, II, Treasurer of Tazewell County, Virginia, whose identity was satisfactorily proven before me, on this 26th day of March, 2018.

My Commission Expires:
My Notary Registration No.:

5/31/2019
7683568

Notary Public

AFFIX NOTARY SEAL:



(ADDITIONAL SIGNATURES SHOWN ON THE FOLLOWING PAGES)

Prepared By:
Chase D. Collins, Esq. (VSB #83766)
Tazewell County Attorney's Office
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chase.collins@tazewellcounty.org

TOWN OF BLUEFIELD
A VIRGINIA MUNICIPAL CORPORATION

BY: _____ (SEAL)
DONALD R. HARRIS

ITS: MAYOR

COMMONWEALTH OF VIRGINIA
COUNTY OF TAZEWELL, to wit:

The foregoing instrument was acknowledged before me by Donald R. Harris, the Mayor of the Town of Bluefield, a Virginia Municipal Corporation, on this ____ day of _____, 2018.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
REGISTRATION NUMBER: _____

ATTEST:

LESLEY CATRON, TOWN CLERK

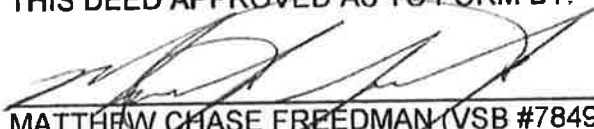
COMMONWEALTH OF VIRGINIA
COUNTY OF TAZEWELL, to wit:

The foregoing instrument was acknowledged before me by Lesley Catron, the Town Clerk of the Town of Bluefield, a Virginia Municipal Corporation, on this ____ day of _____, 2018.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
REGISTRATION NUMBER: _____

Prepared By:
Chase D. Collins, Esq. (VSB #83766)
Tazewell County Attorney's Office
197 Main Street
Tazewell, VA 24651
Phone: (276) 385-1208
Fax: (276) 988-4246
chase.collins@tazewellcounty.org

THIS DEED APPROVED AS TO FORM BY:


MATTHEW CHASE FREEDMAN (VSB #78496)
TOWN ATTORNEY
TOWN OF BLUEFIELD
112 HUFFARD DRIVE
P.O. BOX 1026
BLUEFIELD, VA 24605

COMMONWEALTH OF VIRGINIA
COUNTY OF TAZEWELL, to wit:

The foregoing instrument was acknowledged before me by Matthew Chase Freedman, the Town Attorney of the Town of Bluefield, a Virginia Municipal Corporation, on this 27th day of March, 2018.



Brittnie C. Hubbard
NOTARY PUBLIC
MY COMMISSION EXPIRES: January 31, 2019
REGISTRATION NUMBER: 7658697

Prepared By:
Chase D. Collins, Esq. (VSB #83766)
Tazewell County Attorney's Office
197 Main Street
Tazewell, VA 24651
Phone: (276) 385-1208
Fax: (276) 988-4246
chase.collins@tazewellcounty.org

Exhibit A

Tazewell County Attorney's Office

**C. Eric Young, Tazewell County Attorney
Chase D. Collins, Asst. County Attorney**

197 Main Street
Tazewell, Virginia 24651
(276) 385-1208

February 20, 2018

Darren Gullion
242 Paul Road
Hurricane, WV 25526

Jacqueline Payne
2113 Third Avenue
Nitro, WV 25143

Town of Bluefield, Virginia
PO Box 1206
Bluefield, VA 24605

Re: *Non-judicial Sale of Real Property for Delinquent Taxes - Parcel No.: 024A203-0005*
Record Owner(s): Samuel B. Gullion and Paradine R. Gullion

To all interested parties:

I write on behalf of Tazewell County regarding delinquent taxes on Parcel No. 024A203-0005, located at Stony Ridge, Town of Bluefield, in Tazewell County, Virginia. According to information supplied by the Treasurer of Tazewell County, real estate taxes on the property mentioned above were delinquent on December 31, 2017. It is now three (3) years or greater from the date such taxes were due. The tax rolls of Tazewell County identify you as having an ownership interest in the property.

This property is being sold pursuant to Virginia Code §58.1-3975

- (a) The treasurer or other officer responsible for collecting taxes may sell, at public auction, any unimproved parcel of real property that is assessed at less than \$5000, provided that the taxes on such parcel are delinquent on December 31 following the third anniversary of the date on which such taxes have become due.

On March 23, 2018, the following parcel(s) will be sold at public auction under the authority of §58.1-3975 *et seq.* of the Code of Virginia for payment of delinquent taxes: Lot Stony Ridge in Tazewell County, Virginia, a copy of which deed is recorded in Deed Book 155, Page 79 in the

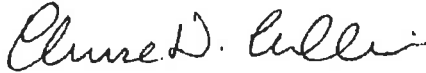
*Board of Supervisors • Industrial Development Authority • Public Service Authority • Airport Authority •
School Board • Planning Commission • Department of Social Services • Wireless Service Authority*

Tazewell County Circuit Court Clerk's Office. The total payoff on delinquent taxes through March 31, 2018 is Four Hundred Seventy Four Dollars and Eighty One Cents (\$474.81) for Parcel No. 024A203-0005.

You may request from the Treasurer's Office that you be allow to enter into a payment agreement that permits payment of the delinquent taxes, interest, penalties and reasonable attorney's fees over a period not to exceed thirty-six (36) months. However, it is within the discretion of the Treasurer's Office whether such request will be granted.

You have the option of redeeming the delinquent property taxes in full at any time before the date of the sale by paying all accumulated taxes, penalties, interest, attorney's fees and the costs of publication, if applicable. If you have any questions regarding this matter, please do not hesitate to contact me at (276) 385-1551.

Sincerely,



Chase D. Collins, Esq.
Assistant Tazewell County Attorney

cc: David T. Larimer, II-Treasurer of Tazewell County

**Tri-Cities/Southwest Virginia
Regional Group**

Advertising Affidavit

P.O Box 609
Bristol, VA 24203
(276) 669-2181

Account Number

2159292

Date

March 14, 2018

TAZEWELL CO BD OF SUPERVISORS
197 W. MAIN ST
TAZEWELL, VA 24651

Date	Category	Description	Ad Size	Total Cost
03/14/2018	LEGAL NOTICES	NOTICE OF NON-JUDICIAL SALE	2 X 7.75 IN	\$672.10

**Publisher of the
RICHLANDS - CLINCH**

This is to certify that the attached was published in the In the
Commonwealth
of Virginia, on the following dates: 03/07, 03/14/2018

The First insertion being given ... 03/07/2018

Newspaper reference: 0000712640

Sworn to and subscribed before me this

March 14, 2018

Tyler Odle
Notary Public

Kevin Greer
Accounting Clerk

State of Virginia

My Commission expires 09-31-2021



THIS IS NOT A BILL. PLEASE PAY FROM INVOICE. THANK YOU

Prepared by: David M. Kersey, P. O. Box 529, Bluefield, WV 24701
Consideration: \$0.00
Assessed Value: \$56,640.00
Tax Map No. 024B1A 0013B
Exempt Virginia Code: §58.1-811(A)(3) and §58.1-811(D)

THIS DEED OF GIFT, made this 28th day of March, 2018, by and between
SEDGEWOOD RECREATIONAL ASSOCIATION, INCORPORATED, a Virginia
Corporation, party of the first part, hereinafter referred to as "Grantor" and the TOWN
OF BLUEFIELD, a Virginia Municipal Corporation, party of the second part, hereinafter
referred to as "Grantee", whose address is: 112 Huffard Drive, Bluefield, Virginia 24605;

WITNESSETH:

That for and in consideration of the covenants contained herein and
without monetary consideration, Grantor does hereby give, grant, and convey, with
Covenants of General Warranty of Title, unto Grantee, all that certain parcel of property
situate in the Town of Bluefield, Tazewell County, Virginia, which property is a portion
of what is referred to as the "Swimming Pool property" located near the Sedgewood
Subdivision, and which property is more particularly bounded and described as follows:

PARCEL 1:

BEGINNING at a point situate in the northern edge of the right of way line
of Summit Drive which beginning point is situate S. 75° 08' 00" W. 5.62 feet
from a tie in point which tie in point is in turn situate N. 14° 52' 00" W. 50.00
feet from a ¾ inch iron pipe located in the northeast most corner of Lot 1,
Section C of the Sedgewood Subdivision; thence, in a line which intersects
a portion of the existing pool N. 21° 17' 00" W. 128.43 feet to a point; thence,
S. 76° 19' 16" W. 130.77 feet to an iron pin; thence, S. 18° 57' 45" E. 130.67
feet to an iron pin situate in the northern edge of the right of way line of
Summit Drive; thence, with the northern edge of the right of way line of
Summit Drive N. 75° 08' 00" E. 135.77 feet to the point of BEGINNING,
containing .394 acres more or less, being a portion of the property shown
and designated on that map or plat entitled "PLAT OF SURVEY OF

SEDGEWOOD POOL LOT", which plat is of record in Plat Book 24, page 110, Plat Card #5635.

And being the same real estate conveyed to Sedgewood Recreational Association, Incorporated, by quitclaim deed of Dominion Bank, National Association, dated July 9, 1987, of record in the Office of the Clerk of the Circuit Court of Tazewell County, Virginia, in Deed Book 565, at page 700.

PARCEL 2:

BEGINNING at a point situate in the north side of the right of way of Summit Drive which beginning point is also the southeastern most corner of that property conveyed to the Sedgewood Recreational Association, Incorporated by Dominion Bank, National Association by deed dated July 9, 1987; thence, with the northern right of way line of Summit Drive N. $75^{\circ} 08' 00''$ E. 196.23 feet to the intersecting points between the right of way lines of Summit Drive and Fairway Street; thence, with the western right of way line of Fairway Street N. $21^{\circ} 17' 00''$ W. 124.33 feet to a point; thence, leaving Fairway Drive S. $76^{\circ} 19' 16''$ W. 196.73 feet to a point; thence, in a line being the eastern most line of that parcel conveyed to Sedgewood Recreational Association, Incorporated by Dominion Bank, National Association, S. $21^{\circ} 17' 00''$ E. 128.43 feet to the point of BEGINNING, containing 0.57 acres more or less.

And being the same real estate conveyed to Sedgewood Recreational Association, Incorporated, by deed of Delano Compton and Margaret R. Compton, dated July 9, 1987, of record in the Office of the Clerk of the Circuit Court of Tazewell County in Deed Book 592, at page 741.

This conveyance is subject to all pertinent easements, restrictions, and reservations of record in the Office of the Clerk of the Circuit Court of Tazewell County.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Grantee and Grantor agree that in the event Grantee desires to convey the real estate described in this deed in the future, then David William Perdue, Jr., Sandra Scott Tyson, and Christopher Alan Thompson, all of Bluefield, Virginia, shall jointly be given the right of first refusal to the real estate. Grantee and Grantor further agree that in the event David William Perdue, Jr., Sandra Scott Tyson, or Christopher Alan Thompson is deceased at the time Grantee desires to convey the real estate, then that deceased person's right of first refusal shall be deemed terminated. Grantee and Grantor further agree that Grantee, prior to any conveyance of the real estate, shall advertise the proposed conveyance of the real estate at least once in a newspaper having general circulation within Bluefield, Virginia. The failure of David William Perdue, Jr., Sandra Scott Tyson, or Christopher Alan Thompson to respond in writing to the Town Manager of Grantee within thirty (30) days of the said advertisement's publication date shall constitute an absolute waiver of the right of first refusal granted herein.

TO HAVE AND TO HOLD the real estate as hereinabove described, together with all of the improvements, rights, privileges, easements, and appurtenances thereunto belonging or in anywise appertaining, unto Grantee and its successors and assigns.

Grantee, by an affirmative majority vote of the Council of the Town of Bluefield, Virginia on April 10, 2018, and by joining in this deed through signature of its authorized representative, accepts this deed and the interest in real estate conveyed by this deed pursuant to the authority described under section 15.2-1803 of the Code of Virginia (1950) as amended.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

Under penalties as provided by law, Grantor declares this conveyance is exempt from taxation under Virginia Code §58.1-811(A)(3) and §58.1-811(D).

WITNESS the following signatures and seals.

SEDGEWOOD RECREATIONAL ASSOCIATION, INCORPORATED
A VIRGINIA CORPORATION

BY: *David William Perdue, Jr.* (SEAL)
DAVID WILLIAM PERDUE, JR.

ITS: PRESIDENT

STATE OF Virginia
COUNTY OF Tazewell, TO-WIT:

I, Brittanie C. Hubbard, a Notary Public in and for the County and State aforesaid, do hereby certify that David William Perdue, Jr., the President of Sedgewood Recreational Association, Incorporated, a Virginia Corporation, who signed the foregoing and hereto annexed deed bearing date the 28th day of March, 2018, for Sedgewood Recreational Association, Incorporated, a Virginia Corporation, has this day before me in my said County acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and seal this 5th day of April, 2018.

Brittanie C. Hubbard
Notary Public

My Commission Expires: January 31, 2019
Registration #: 7658697

(NOTARIAL SEAL)



SEDGEWOOD RECREATIONAL ASSOCIATION, INCORPORATED
A VIRGINIA CORPORATION

BY: Sandra Scott Tyson (SEAL)
SANDRA SCOTT TYSON

ITS: Board member

STATE OF West Virginia
COUNTY OF Mercer, TO-WIT:

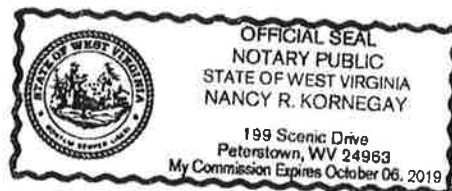
I, Nancy R. Kornegay, a Notary Public in and for the County
and State aforesaid, do hereby certify that Sandra Scott Tyson, the
Board member of Sedgewood Recreational Association,
Incorporated, a Virginia Corporation, who signed the foregoing and hereto annexed deed
bearing date the 28th day of ~~March~~, 2018, for Sedgewood Recreational Association,
Incorporated, a Virginia Corporation, has this day before me in my said County
acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and seal this 4th day of April, 2018.

Nancy R. Kornegay
Notary Public

My Commission Expires: 10/6/2019

(NOTARIAL SEAL)



(ADDITIONAL SIGNATURES SHOWN ON THE FOLLOWING PAGES)

SEDGEWOOD RECREATIONAL ASSOCIATION, INCORPORATED
A VIRGINIA CORPORATION

BY: [Signature] (SEAL)
CHRISTOPHER ALAN THOMPSON

ITS: Board member

STATE OF West Virginia
COUNTY OF Mercer, TO-WIT:

I, F. Kaye Bowman, a Notary Public in and for the County
and State aforesaid, do hereby certify that Christopher Alan Thompson, the
Board member of Sedgewood Recreational Association,
Incorporated, a Virginia Corporation, who signed the foregoing and hereto annexed deed
bearing date the 28th day of March, 2018, for Sedgewood Recreational Association,
Incorporated, a Virginia Corporation, has this day before me in my said County
acknowledged the said writing to be the act and deed of said corporation.

Given under my hand and seal this 5th day of April, 2018.

[Signature]
Notary Public

My Commission Expires: April 18, 2020



(ADDITIONAL SIGNATURES SHOWN ON THE FOLLOWING PAGES)

TOWN OF BLUEFIELD
A VIRGINIA MUNICIPAL CORPORATION

BY: _____ (SEAL)
DONALD R. HARRIS

ITS: MAYOR

COMMONWEALTH OF VIRGINIA
COUNTY OF TAZEWELL, to wit:

The foregoing instrument was acknowledged before me by Donald R. Harris, the Mayor of the Town of Bluefield, a Virginia Municipal Corporation, on this ____ day of _____, 2018.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
REGISTRATION NUMBER: _____

ATTEST:

LESLEY CATRON, TOWN CLERK

COMMONWEALTH OF VIRGINIA
COUNTY OF TAZEWELL, to wit:

The foregoing instrument was acknowledged before me by Lesley Catron, the Town Clerk of the Town of Bluefield, a Virginia Municipal Corporation, on this ____ day of _____, 2018.

NOTARY PUBLIC
MY COMMISSION EXPIRES: _____
REGISTRATION NUMBER: _____

THIS DEED APPROVED AS TO FORM BY:


MATTHEW CHASE FREEDMAN (VSB #78496)

TOWN ATTORNEY
TOWN OF BLUEFIELD
112 HUFFARD DRIVE
P.O. BOX 1026
BLUEFIELD, VA 24605

COMMONWEALTH OF VIRGINIA
COUNTY OF TAZEWELL, to wit:

The foregoing instrument was acknowledged before me by Matthew Chase Freedman, the Town Attorney of the Town of Bluefield, a Virginia Municipal Corporation, on this 5th day of April, 2018.



Brittnee C. Hubbard

NOTARY PUBLIC

MY COMMISSION EXPIRES:

REGISTRATION NUMBER:

January 31, 2019
7658697

This instrument was prepared by David M. Kersey, Attorney at Law, Bluefield, West Virginia 24701, without benefit of title examination.