

**TOWN OF HERNDON, VIRGINIA
TOWN COUNCIL STRATEGIC PLANNING MEETING
HERNDON POLICE DEPARTMENT - COMMUNITY ROOM
397 HERNDON PARKWAY
DECEMBER 2, 2021
07:00 P.M.**

CALL TO ORDER

1. Roll Call & Determination of Quorum

DISCUSSION ABOUT PRIORITIZATION & STATUTORY LIMITATIONS

INITIATIVES ADVANCED AT AUGUST 5, 2021, MEETING Update

2. ADVANCED - Traffic Calming Solution - Vice Mayor del Aguila / Scott Robinson
3. ADVANCED (needs work) - Housing Allowance for Town Employees - Vice Mayor del Aguila / Tanya Kendrick
4. ADVANCED - Regional Cut-Through Traffic & Improvements to Parking & Light Timing - Councilmember Regan / Lisa Gilleran
5. ADVANCED (needs work) - Recording Closed Meetings - Councilmember Singh / Lesa Yeatts
6. ADVANCED - Make Downtown Development Records Public - Councilmember Singh / Lisa Gilleran

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

7. Increase in Council Salary - Councilmember Singh
8. Real Estate Taxes - Councilmember Singh
9. Single Lot Development Plans - Councilmember Singh

10. Prohibit Technical Work by the Town Manager - Councilmember Singh
11. Town Staff Presentations need to be more Professional - Councilmember Singh
12. Create Transcripts of Council Work Sessions & Public Sessions - Councilmember Singh
13. Recording Closed Meetings - Councilmember Singh
14. Fulfilling FOIA at Little or No Cost - Councilmember Singh
15. Make Downtown Records Public - Councilmember Singh

NEW INITIATIVES FOR CONSIDERATION

16. Water Towers - Councilmember Singh
17. Revised ADU - Councilmember Singh
18. Community Noise - Councilmembers Singh & Alam
19. Modernize Town Staff Presentations - Councilmember Regan
20. Bringing DMV Services to Herndon - Councilmember Alam

PRIORITIZATION

PRESENTATION

**TOWN OF HERNDON, VIRGINIA
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Vice Mayor del Aguila | Scott Robinson |
| 3. ADVANCED (needs work) - Housing Allowance for Town Employees
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to Parking & Light Timing - Councilmember Regan | Lisa Gilleran |
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Councilmember Singh | Lesia Yeatts |
| 6. ADVANCED - Make Downtown Development
Records Public – Councilmember Singh | Lisa Gilleran |

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

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PRIORITIZATION

Town of Herndon

UPDATE on INITIATIVES ADVANCED
at AUGUST 5, 2021 MEETING

Traffic Calming Solution

Traffic Calming Initiative

Status

December 2, 2021

Goals

- Improve bicycle and pedestrian safety
- Improve multi-modal transportation

Completed

- Bicycle Network Masterplan
- Pedestrian Plan
- Shared mobility ordinance
- Dedicated CIP funding for pedestrian and bicycle facility improvements

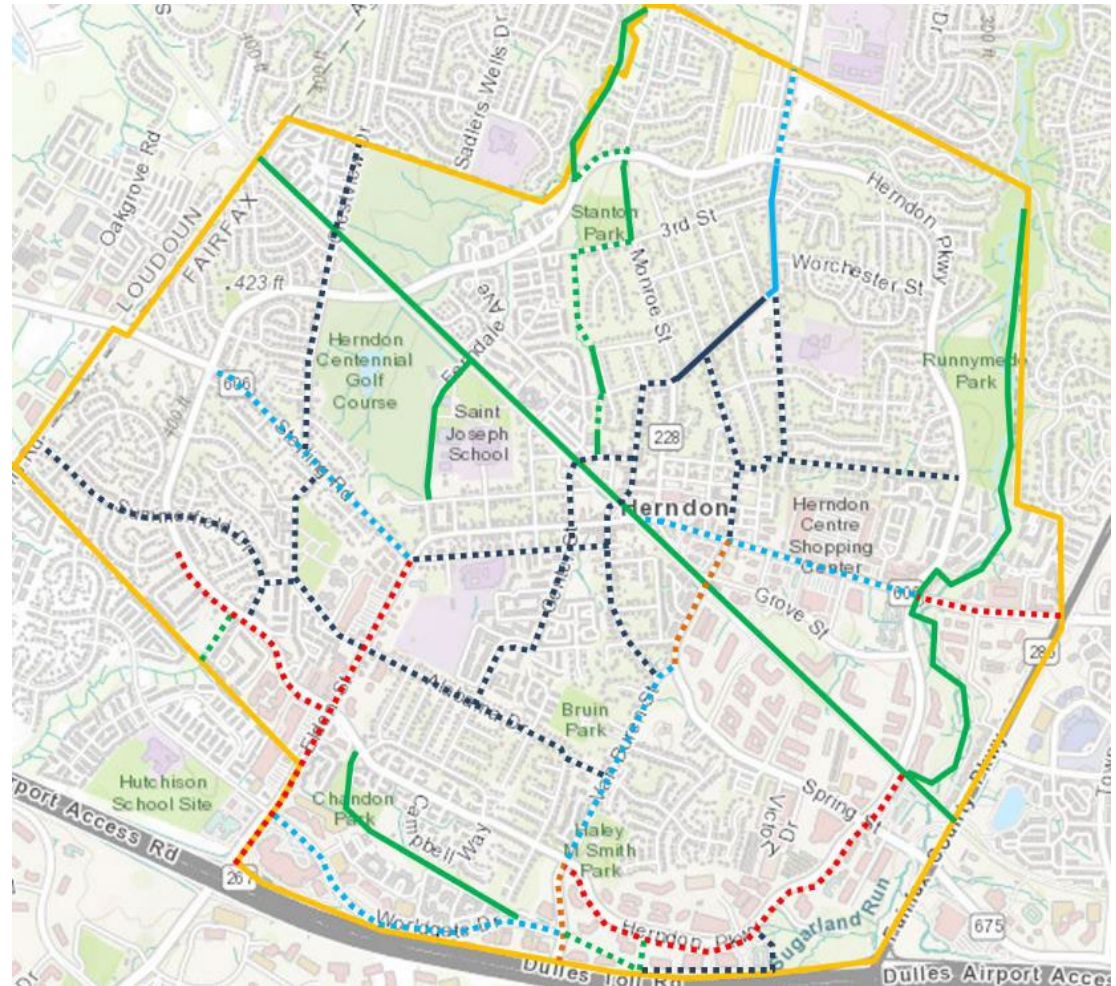
On Going

- Transportation projects:
 - Center & Elden Intersection, Elden & Monroe Intersection, Streetscapes, Van Buren Street, Spring Street, East Elden Street
- Prioritizing Pedestrian Plan Projects
- Elden Street signal timing study
- Traffic calming concepts, Ferndale Ave
- Implementing Bicycle Masterplan projects
- Periodic reviews of complaints, speed, volume, and accident data

Bicycle Network (Current)

LEGEND

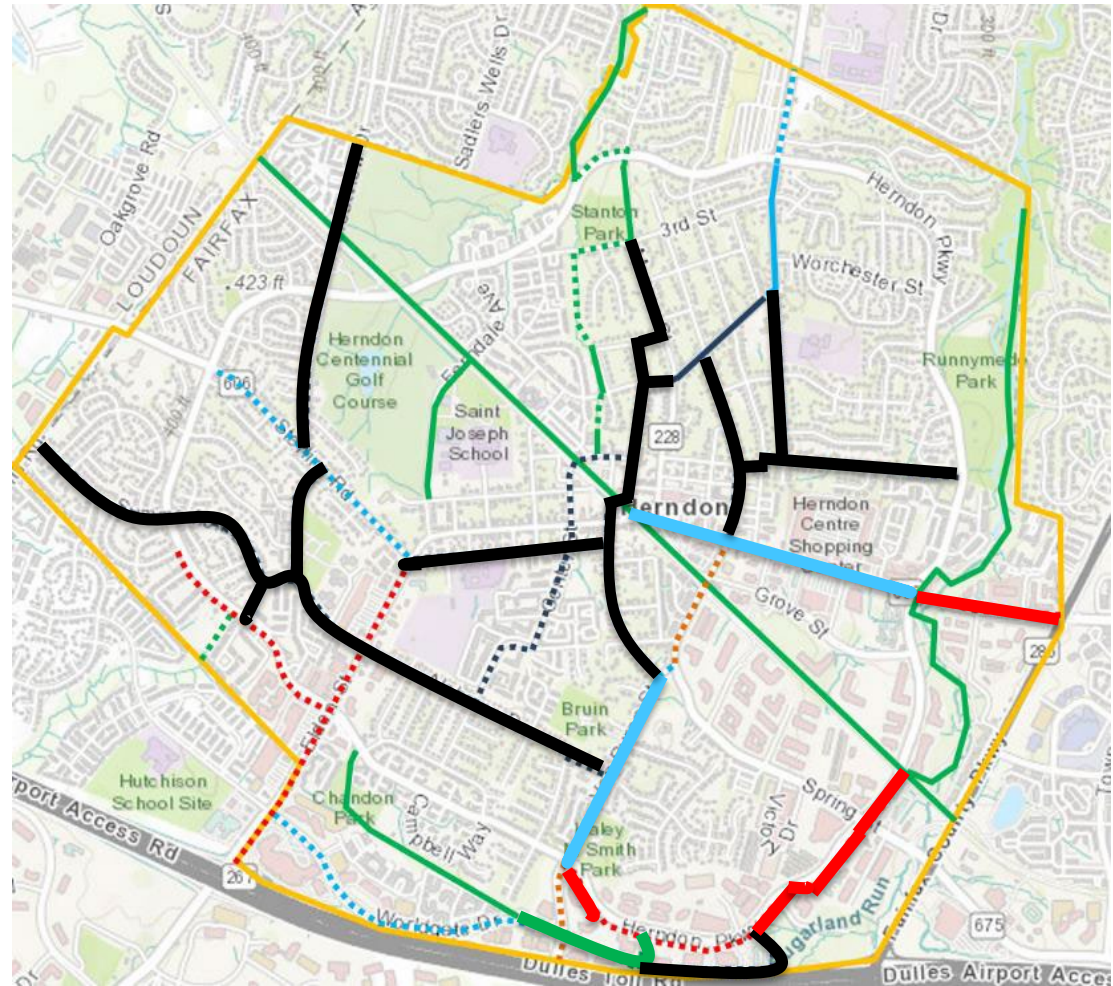
- Mixed Use Trail
- Cycle Track
- Bicycle Lane
- Sharrows
- Further Study Required
- - - - - To Be Built
- Town Boundary



Bicycle Network (2028)

LEGEND

- Mixed Use Trail
- Cycle Track
- Bicycle Lane
- Sharrows
- Further Study Required
- To Be Built
- Town Boundary

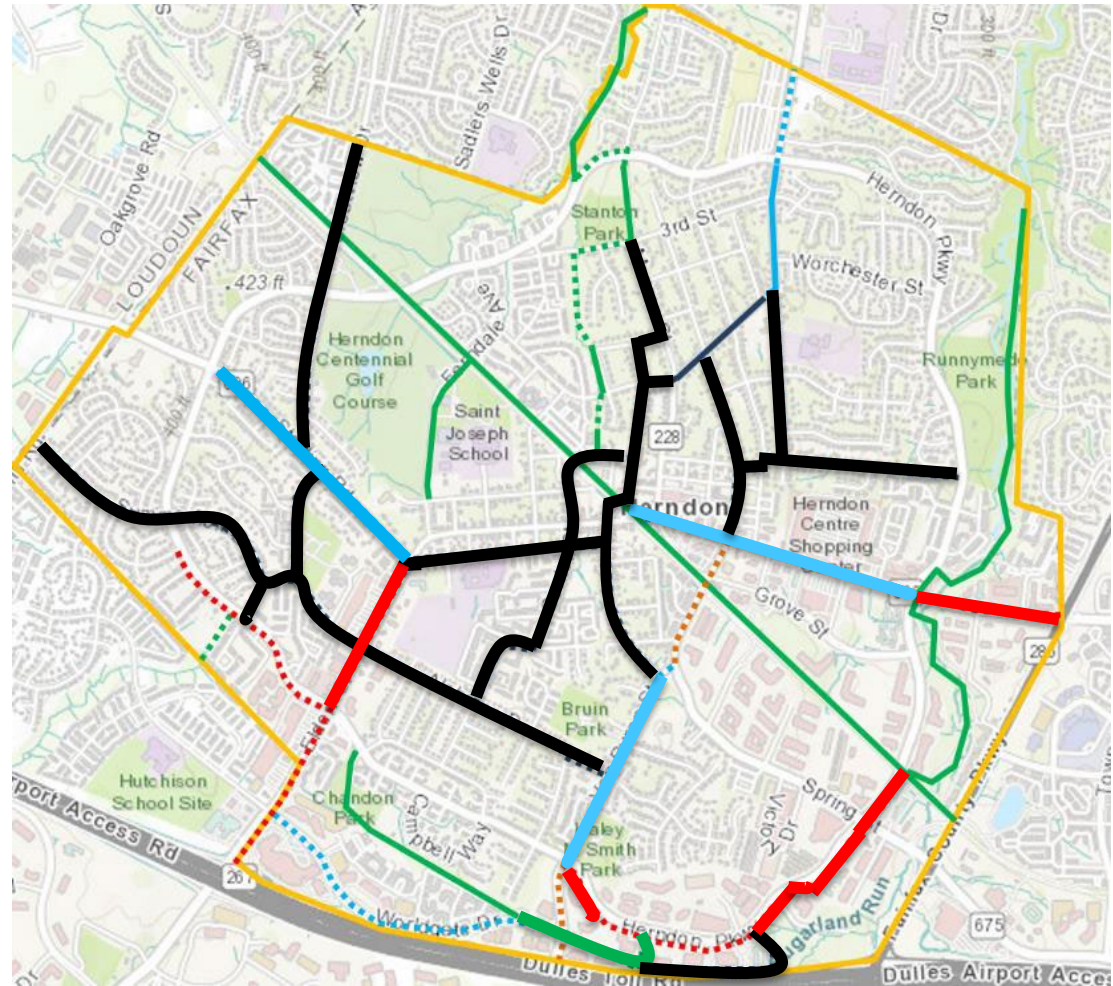


(Subject to future traffic studies)

Bicycle Network (2032)

LEGEND

- Mixed Use Trail
- Cycle Track
- Bicycle Lane
- Sharrows
- Further Study Required
- To Be Built
- Town Boundary



(Subject to future traffic studies)

Town of Herndon

UPDATE on INITIATIVES ADVANCED
at AUGUST 5, 2021 MEETING

Housing Allowance for Town Employees

Housing Allowance

Permissive Legislation

- As a Dillon Rule state, the applicable legislation in local government section of the state code says:

§ 15.2-958.2. Grants for homeownership; workforce housing.

- “A. In order to ensure its competitiveness as an employer, a locality may, by ordinance, provide for the use of funds, other than state funds, to provide homeownership grants to employees of the locality, employees of the school board and employees of constitutional officers, to purchase their primary residences in the locality. The ordinance shall require that individual grants not exceed \$25,000 per employee, nor lifetime cumulative grants exceed \$25,000 per employee. Any such grants issued shall be subject to the Virginia Housing and Development Authority regional sales price and household income limitations. The ordinance may establish such other terms and conditions to ensure the integrity of the homeownership grant program.

- B. In addition to the homeownership grants authorized in subsection A, a locality may by ordinance, and in cooperation with the local school division, offer residential housing assistance grants in amounts not to exceed those permitted in subsection A and, with the local school division, enter into public-private partnerships and other arrangements to provide affordable workforce housing alternatives to school division personnel.”

Comparative Program – Loudoun County PEG

- Loudoun County Public Employee Ownership Grant Program (PEG)
 - Run by department of Housing and Department of Family Services
 - Funded by trust fund and has no interaction with General Fund
 - Allows for \$10,000 grant per qualifying employee, based on required income and housing price rules as required under state code under Virginia Housing and Development Authority (VHDA).
 - Liens recorded on employee's mortgage, and if employee separates before obligation is up, legal collection process may take place
 - Requires 30 staff across multiple departments to support housing programs which includes a dedicated attorney.

Virginia Housing and Development Authority (VDHA) rules

Area	Maximum Gross Household Income				Sales Price/Loan Limits
	2 or Fewer People		3 or More People		New & Existing Construction
	Standard	With Virginia Housing DPA or CCA Grant	Standard	With Virginia Housing DPA or CCA Grant	
Washington-Arlington-Alexandria	\$145,000	\$116,000	\$170,000	\$136,000	\$550,000

Employee Survey Results

■ All employees surveyed fall 2021

	QUESTION	YES	NO	MAYBE	N/A	NO ANSWER	% OF RESPONDANTS
1)	Do you currently own a primary residence in the Town of Herndon?	0%	100%	0%	0%	0%	100%
2)	Do you intend to move or live in the Town of Herndon in the next 24 months? Yes/No. If no, why not? Be specific.	16%	66%	13%	6%	0%	100%
3)	If you currently rent in the town, would you like to buy a primary residence in the town? Yes/No	6%	28%	0%	34%	31%	100%
4)	If the town offered a housing allowance for buying a primary residence in the town, would you be willing to move to or live in the Town of Herndon? Current Town of Herndon home owners would not be eligible. Yes/No. If no, why not? Be specific.	31%	41%	16%	0%	12%	100%
5)	Is there anything else you'd like to share on this topic?	14 qualatative responses were submitted					

Possible Scenario

- Assume nine town employees potentially interested, some will not qualify.
- Based on PEG program, if three employees qualified and benefit same as Loudoun's program, cost would be ~\$30,000 after set up.
- Cost of setup would include actuary and tax and property legal advice from specialized attorney, additional staff with mortgage/lien expertise
- Estimated ~\$100,000 for initial set up, with continued staff costs around the same.

Town of Herndon

UPDATE on INITIATIVES ADVANCED
at AUGUST 5, 2021 MEETING

**Regional Cut-Through Traffic
& Improvements to
Parking & Light Timing**

Town of Herndon

UPDATE on INITIATIVES ADVANCED
at AUGUST 5, 2021 MEETING

Recording Closed Meetings

Town of Herndon

UPDATE on INITIATIVES ADVANCED
at AUGUST 5, 2021 MEETING

Make Downtown Records Public

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

COUNCIL INITIATIVES
by
Jasbinder Singh (8/6/21)
Revised (12/2/21)

RESTORING INTEGRITY

Creates the Basis for Progress

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Increase in Council Salary

1. INCREASE IN COUNCIL SALARY

- a. The ISSUE: The salary has not changed since 1985. People including some local politicians say that we have a job where “rubber meets the road”. In other words, we have to be more than politicians. We have to develop:

- first-hand knowledge about issues facing our neighborhoods, schools, water and sewer systems, parks, etc. and,
- some expertise in civil engineering, economics, municipal finance, community development or law.

To do the job well, we need to spend time to learn the issues, talk with residents, ask in-depth questions, guide the staff and make sound judgments. **It takes time and effort** to develop the expertise necessary to become a competent councilmember.

A salary of \$4000/year is woeful at best. Without exception, our citizens become incredulous when told that a councilmember earns only \$4000/year. In resetting the salaries, we should take into account both the inflation rate and the increase in the complexity of a councilmember’s job since the early 80’s.

- b. PROPOSED REMEDY: I propose (i) a salary of \$20,000 per year for a Councilmember and \$25,000 for the Mayor starting in 2023¹, and (ii) after 2013, the salaries be increased automatically by using the following formula:

$$\text{Salary in Year Y} = \text{Salary in Year (Y-1)} * (1 + \text{the rate of inflation during year (Y-1)})$$

- c. EFFECTIVE DATE OF THE PROPOSAL: January 1, 2023
- d. COST OF THE PROPOSAL: The cost of the Council salaries should increase by \$115,000 in year 2023. This amount is less than 0.2% of the Town Budget.

¹ A Councilmember may be expected to develop expertise in an area of his/her choice.

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Real Estate Taxes

2. REAL ESTATE TAXES – PAYMENT DATES & PENALTIES

- a. **ISSUE NO. 1: The Tax Payment Date:** Currently Town Real Estate Taxes are paid on July 28th and Dec 5th. Several residents and some small businesses have complained that the payments on specific dates cause considerable anxiety to them. Some have asked if it would be possible to pay the taxes by using their August pay checks.
 - i. The PROPOSED REMEDY: Create “No penalty Weeks”, that is, no late payment penalty will be imposed on our residents and businesses, if they pay their taxes during the week of July 28th (July 28 through August 3) and the week of Dec 5 (Dec 5 through Dec. 12).
 - ii. EFFECTIVE DATE: Dec. 1, 2021.
 - iii. COST OF THE PROPOSAL: The cost to the proposal will be minimal, if any, to the Town. If anything, it will generate considerable goodwill in the community.
- b. **ISSUE NO. 2: The Size of the Penalty:** Currently, the size of the penalty is 10% of the taxes due (one reason for the residents’ anxiety). Many consider the penalty to be confiscatory and have called the Town to be heartless - worse than loan sharks, big banks and other financiers.
 - i. The PROPOS: It is proposed that the Town impose a graduated penalty of 1% for each week of delay. Thus, if the payment is due during the week of July 28th, and if the taxpayer pays his taxes between August 4 and August 17, the penalty will be 1%, and if the taxes are paid after August 18, the penalty will be 5%.
 - ii. EFFECTIVE DATE: Dec. 1, 2021.
 - iii. COST/BENEFIT OF THE PROPOSAL: The Town will collect smaller fines but, it will generate goodwill among the Town residents.

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Single Lot Development Plans

3. SINGLE-LOT DEVELOPMENT PLANS (Section 78-155.6 of Herndon Code)

a. ISSUES:

- i. The Quality of the Development
- ii. Adverse Effects on Surrounding Properties
- iii. Adverse Effects on Development Goals of the Town
- iv. Negative Impacts on the Environment, Drainage, Soil Erosion and Storm-water controls²



v. Current (Partial) Text of the Code

Development...of lots shall include the provision of curb, gutter, sidewalk ...A waiver ... may be requested and considered ... if at least one of the following criteria is met:

(a) Provision of curb and gutter along the street would cause the subject property to become the **only lot** in the neighborhood with curb and gutter; or

(b) The street on which the subject property fronts **is not on the town's plan for installation of curb and gutters.**

² **Examples :** (a) **3rd & Monroe Street (see photos)** – All properties (constructed during or after 2015) developed as single lot developments; (b) **3rd Street Water Tower** - The tower and improvements dump storm-water on all neighboring properties except those on the western side; (c) **724 Grace Street** – next door to 726 Grace Street (Vine & Grace Street) – Faulty Engineer's Report – Personal involvement because I had come to know Ronald Thompson. *The engineering report said there was no drainage issues at 724 Grace and 726 Grace;* (d) **Tyler Street** – lack of curb and gutters on Tyler created storm water issues for properties on Dranesville Rd. Virgil had to spend \$60,000 to implement storm-water control measures, (e) Every area of the Town has storm-water drainage issues.

(c) In lieu of providing the curb, gutter, and sidewalk improvements, the applicant shall, unless this requirement is waived by the zoning administrator in accordance with subsection 78-155.6(e)(1)b.1, make a cash contribution to the town's street improvement program equivalent in value to the cost of installing the improvements.....

(d) Neither the cost of installing the improvements nor the value of the cash contribution shall exceed five percent of the value of the sum of all other lot improvements.

b. PROPOSED REMEDY ³

- i. The town's plan for installation of curbs, gutters and sidewalks should state that no streets are exempt from the requirement to install curbs, gutters and sidewalk.
- ii. In lieu of providing the curb, gutter, and sidewalk improvements, the applicant shall make a cash contribution, equivalent in value to the cost of installing the improvements, to a trust account specifically created to construct curbs, gutters and sidewalk improvements.
- iii. The Town Manage shall create a suitable trust account.
- iv. The applicant may discharge storm-water to the neighbor's property only with the neighbor's written permission. (Merlin Lane case)
- v. The Town should disbar a consulting engineer, should he/she submit a misleading or erroneous storm-water drainage report.

c. EFFECTIVE DATE

12/2021

d. COST OF THE PROPOSAL

Legacy Issues: Will Cost Millions. (The staff should develop a Master Plan for providing curbs, gutters, sidewalk and seek grants)

Future Projects: Will prevent collateral damage & save millions; Create higher quality neighborhoods, and result in higher property values

³ **Purposes of Section 78-155.6 :** (a) Balance rights of the property owner with the development goals of the town and the rights of adjacent landowners; (b) Minimize the adverse impacts of development on the investments of surrounding landowners; (c) Ensure site design minimizes negative impacts on the environment, drainage, soil erosion, and storm-water control. (Discharges from the downspouts in the back of homes are often very problematic.)

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

**Prohibit Technical Work
by the Town Manager**

4. PROHIBIT TECHNICAL WORK BY THE TOWN MANAGER

- a. THE ISSUE: Herndon is small town. For most of its existence, its administrative systems have understandably been designed to serve the needs of a small town. However, with the advent of Metro and upscale development in the surrounding areas, Herndon faces increasingly large and sophisticated projects of its own. When faced with the associated challenges, Town Managers have often taken on Project Manager/Director responsibilities. Generally, however, they have neither the experience nor the expertise in real estate, finance, transportation and other multitude of relevant subjects. The temptation to get involved and set the direction is great, but the risk of things going wrong is equally great. Let's consider two projects:

Metro Area Plan – The “first” 107-acre metro plan around the Herndon-Reston station was based on a single criterion suggested by a builder from the Tysons Corner area. The builder had advised the then TM (and, other senior staff) that *“no development would take place unless the buildings were at least 15 stories high”*. Without questioning this criterion, the town gave orders to develop a plan in which all lots would have 15-story buildings on them.

When the plan was ready to be presented to the public, it was discovered that the Metro Plan would generate 8 times as much traffic as the capacity of the Herndon Parkway. Even this embarrassing failure did not force the Town Manager to question the 15-story criterion. He just reduced the planning area by 75% (to 27 acres) and asked the staff to move ahead and prepare another version of the Plan.

Vine Haven: Once again, the TM made a critical decision that still affects the residents. The builder had proposed to create 16 building lots on a Town property in the downtown area and offered to pay \$190,000/lot to the town. Because the TM wanted to maximize the revenue from the sale, he asked that 17 lots be created.

If the Town had reduced the number of lots to 15, then the Buyer would have paid only \$1.71 million for the property. On the other hand, if the Town had increased the number of lots to 18, the Buyer would have had to pay \$2.05 million. The Town, therefore, was in a position of making tradeoffs between the total purchase price and the quality of the development. The Town Manager wanted to maximize the revenue by creating & selling maximum number of lots. He took it upon himself to show how 17 lots could be created and then asked the builder to create 17 lots.

The Heritage Preservation Review Board "...expressed a general discomfortability with the density of the project, as proposed. The maximized lot coverage, number of lots, and close spacing of the houses are not typical of applications that have been reviewed by the Board in the past...". By reducing the number of houses to, say 15, the Town could have addressed several major planning issues but chose not to do so. The Planning staff and the HPRB had essentially been sidelined by the TM.

- b. The PROPOSAL: Town Managers must meticulously recuse themselves from doing any technical work or providing any technical direction. If the Town staff does not have sufficient technical skills, the TM should retain the services of consultants with the requisite expertise and let them do their work. In the case of the Metro Plan, the TM should have subjected the "15-story" criterion to intense scrutiny of consultants with first rate expertise in "planning around Metro Areas" and help set the criteria for making critical decisions.

In the case of the Vine Haven development, he should have asked the staff to work with the builder or a consultant to understand and articulate the planning effects of creating 13, 14, and 15 lots and compared them to the effects of creating 17 lots. He should have then allowed staff to present the analysis first to the HPRB and then to the Council. The yearly evaluation of a TM should be based, in part, on (a) "how he sets up the organization for excellence", (b) how he retains consultants who can stand up to developers and do not have any conflicts of interests, and (c) "how effectively he allows the staff and consultants to carry out their responsibilities."

- c. EFFECTIVE DATE: Immediately, with the next project - perhaps the new TRG Metro Project.
- d. COST OF THE PROPOSAL: The TM, after consulting with the staff, should set aside a significant amount of money (Perhaps as much as **\$1,000,000**) for hiring the right consultants for a variety of projects. However, this initiative has a great potential to (1) save money by shortening the time for preparing reports, developing community consensus, directing developers, and (2) making Herndon an attractive and beautiful place for the long run.

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

**Town Staff Presentations
need to be more Professional**

5. TOWN STAFF'S PRESENTATIONS NEED TO BE MUCH MORE PROFESSIONAL

- a. THE ISSUE: The staff, including the management, often gives incomplete and/or misleading information to the Council or omits material information from its presentations in order to benefit certain individuals. Examples:

Case 1: In 2011, when the staff and its consultant presented information to the council on a proposed sewer rate increase, they did not describe in sufficient detail,

- the Town's (institutional) arrangement with Fairfax County for providing sewage treatment services; and, that the major part of the rate increase would help pay for the County's costs in treating our sewage.
- the Town's need to generate additional capital funds for upgrading Herndon's sewer system.

Consequently, the discussion of the rate increase was incomprehensible.

Case 2: When a builder wanted certain town land given to him for free, the staff did not address three normal public concerns: What was the (even rough) market value of the land, what was the public interest in giving away the land, and whether the builder's claim that he needed the land for "drainage" purposes was valid?

Case 3: The then Town Manager and Town Attorney omitted, from their presentations to the public, the fact that Town was purchasing the property "As Is" and that it was contaminated.

Case 4: The staff claimed that its calculations showed that the builder could not afford to underground utilities at a site. In fact, no calculations had been done, and the cost of undergrounding was rather small.

- b. PROPOSED REMEDIES: The problems, stated above, are central to the integrity of the administrative system and survival of the Town as an independent entity. The Town Council and the staff must address such issues thoroughly, perhaps in a closed-door session. A Council and the public must receive unbiased and truthful information every time.
- c. EFFECTIVE DATE: October 1, 2021
- d. COST OF THE PROPOSAL: - Minor, staff may need on-going training in making good presentations

OPEN GOVERNMENT

Creates Trust

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Create Transcripts of Council Work Sessions & Public Sessions

1. CREATE TRANSCRIPTS OF COUNCIL WORK AND PUBLIC SESSIONS

- a. The ISSUE: Lisa Merkel was elected on May 6, 2012 on the promises of a new beginning, and fresh ideas. Little did people know that she had already planned to greatly diminish their ability to know what was really going on. On the very first day of her term, July 1, 2012, Mayor Merkel had put “the reduced minutes” up for discussion and approval. Two days later, on July 3, the new policy became effective.

In a flash, Ms. Merkel rendered the Minutes feckless and reversed the Town’s long-standing practice of preparing detailed “summary of discussions” of Council meetings.⁴ There was so little detail that several members of the 2012-2014 continued to ask the staff to provide more information. Slowly, over time, the staff added more content to the Minutes. On Oct 20, 2014, she asked the Council to restate its concurrence with the reduced public hearing format approved in July 2012, after a councilmember highly supportive of transparency in government was elected in June 2014.⁵

Let’s take a look at the case of *the “Junction Square”* development. It was discussed in the council work-session on Dec. 2, 2014 and in the public session on Dec. 9, 2014. The following two sections show how selected issues discussed in the two council sessions were summarized in the official minutes of the meetings.

Dec. 2, 2014 Work Session:

The work session was notable for two things: First, in a rare show of independence from the Mayor, Councilmember Wolf spoke passionately about the fact that the proposed development had not provided sufficient parking. The Town Manager responded to Ms. Wolf and several other council-members’ concerns about the parking by saying that visitors or patrons would have to park on the streets around the development. [2] Yet, **the official summary does not mention Ms. Wolf by name nor does it indicate that the TM had made any comment about the parking.** Incidentally, in order to not displease the Mayor, Councilmember Wolf made no comment about the inadequacy of parking during the public hearing.

⁴ According to the Advisory Council for the Freedom of Information Act, the phrase “summary of the discussion” has not been litigated and therefore has not been defined definitively. Consequently, while some governments provide a substantial amount of content in their minutes, others provide very little. **The details depend on the value a government places on transparency and accountability**

⁵ A few days later, I approached the Town Attorney, Mr. Kaufman, to discuss this matter. I opened the discussion by stating that the Virginian Code 2.2-3707 requires that the minutes contain a “**summary of the discussion**” and that I do not believe the “I spoke, he spoke, and she spoke” is a summary of the discussion. (Emphasis added). He replied, “In my legal opinion, it is a summary of the discussion.” And, slammed the door on our discussion!

Second, the staff, while justifying the financial inability of the developer to underground the utilities, made a statement that can be stated as follows: *“The staff has applied the rule of proportionality, developed by the US Supreme Court, to this case. It appears to the staff that the applicant cannot afford to underground utilities in this case.”* Even a casual observer of the council knows that the town staff (a) lacks the capacity to understand and interpret Supreme Court cases and (b) does not have the wherewithal to apply the (SC’s) rule of proportionality, if any, to small or large rezoning cases. **This rather audaciously deceptive statement does not appear in the minutes of the work-session.**[3]

December 9, 2014 Public Session

During the public session, my comments had focused on the cost of the development to the town. I had opined that the Town’s cost for this development would vary between \$500,000 and \$800,000. My estimate of \$500,000 consisted of \$335,000 for undergrounding the utilities and \$160,000 for the town’s share of the cost of 12 parking spaces that were going to be a part of the public shared parking program. The estimate of \$800,000 also included the cost of visitor parking spaces that developers had been required to provide under prior regulations. My back-of-the-envelope calculations had shown that it would take 15 to 20 years to recover these costs.

The summary of the Minutes, prepared under the new guidelines, however, for all practical purposes, had no substance. It said, “Councilmember Singh stated, for the record, that the town would pay for a large part of the undergrounding of utilities and the shared parking for this project.” **It did not convey his main concern – that it would take more than 15 years to recover the losses.**

Mayor Merkel had highly degraded the public’s ability to know how the government was affecting their well-being, how the decisions were being made, and how the money was being spent. The public could no longer (1) read the kinds of expository articles that had been written over the last three years, (2) document the past decision-making processes, (3) learn from our past mistakes and (4) advocate the development of more enlightened policies. The minutes of Council meetings, required to be held in perpetuity by the Library of Virginia, would now become devoid of substance. This is the ISSUE in this case.

- b. PROPOSED REMEDY: It is proposed that the Town of Herndon take advantage of new technologies to prepare transcriptions of Council Meetings. At a later date, Herndon should produce “summaries of discussions” as required by FOIA when and if more advance technologies become available.
- c. START DATE – As quickly as possible.
- d. COST OF THE PROPOSAL: Minimal.

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Recording Closed Meetings

2. RECORDING CLOSED MEETINGS

Among other things, Closed meetings are held to discuss, (1) the performance of the town's senior management, (2) personnel issues, and (3) contracts and studies pertaining to disposal or purchase of real estate property. The matters discussed in a closed meeting are usually not disclosed to the public. Consequently, the public usually does not get the opportunity to know the nature and substance of the discussions in such meetings. Further, the documents containing the information discussed are hardly ever made public.

- a. The ISSUE: As the following example shows, the provision of Closed Meetings under FOIA can lead to abuse of the system.

In March 2016, Comstock submitted its proposal for developing the downtown. To the surprise of everyone in the town government, it set the value of the land at zero – that is right, zero. Rather than rejecting the proposal outright, the Town decided to somehow justify a much lower value of the land. It hired a consultant to, in TM's terminology, to "evaluate the trends in the real estate market". Long behold, a couple of months later, the consultant (who was not a real estate appraiser), presented his findings to the Town Council in a closed meeting. At the high end, he had pegged the value at 2/3rd of the apparent market value of \$45,000 per apartment (as stated by other builders and determined by the Town's own appraisals). At the lower end, he had established the value at 1/3rd the market value. When questioned sharply by me, he could not support his results with even an ounce of conviction. The contents of the meeting and the consultant's report have not seen the light of the day since that fateful day in September 2016. **This is just one example of the abuse of the Closed Meetings provision of the FOIA.**

- b. The REMEDY: Fortunately, however, Virginia's Freedom of Information Act (FOIA) permits the government to record Closed meetings. Section 2.2-3712-1 of the Act states that "minutes may be taken during closed meetings of a public body but, shall not be required".

It is proposed that (1) all Closed meetings be recorded in order to stop or discourage the abuse of the system and make government actions more transparent and (2) the town establish a policy for the release of all releasable documents/materials used in such meetings. The report by the consultants should have been released immediately after the meeting ended.

- c. EFFECTIVE DATE – Immediately
- d. COST OF THE PROPOSAL: Cost to install a recording system in a meeting room and/or to purchase a portable recording system.

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Fulfilling FOIA at Little or No Cost

3. FULFILING FOIA REQUESTS AT LITTLE OR NO COST

- a. The ISSUE: Over the last 8 years or so, many Herndon residents have complained about the excessive costs associated with FOIA requests. The Vice-Mayor, Cesar Del Aguila paid \$1200 for one of his requests. I filed two FOIA requests in 2017 and 2018 to obtain documents related to the Downtown Development. The staff's estimates for conducting just the searches, for documents that I knew were readily available, were in the range of \$1,300 and \$1,500 in each case. Who knows what the cost of actually fulfilling the requests would have been? The high cost estimates are very discouraging to say the least. What is clear is that the staff does not respond proactively to fulfill the requests.⁶ It appears that there are two reasons for this reluctance. First, the staff records are not as organized as they should be, and project files do not contain all of the pertinent information. Second, the staff deliberately stifles requestors from getting information about "politically sensitive" matters.
- b. The REMEDY: Regardless of any action the General Assembly might take, the Town, in its quest to implement the best FOIA practices, it can undertake the following two actions:
 - i. Document Existing Records and Create a Meta Data Format/Structure

Almost all departments of the town government already keep reasonably well-organized project files in order to do their day-to-day work or in order to maintain historical records. In some cases, they make them available to the public for inspection and scanning at the HMC at little or no cost. For example, Community Development, maintains files for individual projects. A folder for "800 Third Street/Policy Planning & Evaluation, Inc./Jasbinder Singh" contains records of projects undertaken at this location since 1998; however, the records are not complete, there is no table of contents and they are not organized in a chronological order. The folder is available for review, copying and scanning by anyone in the town.

The Finance Department also maintains records for "projects" or initiatives in which it is involved. For instance, it maintains files on the financial contributions made by every participant in the Shared Parking Program. However, it does not have any record on how this program was developed. That is/was the responsibility of Community Development. While doing my research, I did not come across a folder titled "Shared Parking Program". Perhaps one exists, but I gathered most of my

⁶ Fortunately, the VA General Assembly is considering bills that promise to require Virginia governments to not charge for first two hours of a search.

information by reading the Minutes of TC work sessions and public hearings on Granicus.

In summary, under this first task, we must start with asking each department to explain how it complies with the mandates of the Records Act and to document how they otherwise keep records that are not subject to the Records Act. To the extent feasible, each department should , (1) document what records exist and how they are organized (2) document the procedures used to assure the completeness and accuracy of the data, and, if possible, (3) provide a chronological index of the available data.

This initial effort should be followed by asking a “Central” office (perhaps, the IT department) to create a Meta Data Matrix that shows how different departments are involved in a particular program. In the case of the Shared Parking Program, the matrix would indicate the respective responsibilities of Community Development and the Finance Depts.

- ii. Develop a **Pilot Project** to evaluate the feasibility of computerizing the data and using the system to fulfill FIOA requests.
 - iii. Research the Literature on Storing Municipal Data and Creating Meta Data Formats/Structures.
 - iv. Computerize and Integrate the data from all departments.
 - v. Make the Meta Data Available to the Public for Filing FIOA Requests at little or no cost.
- c. EFFECTIVE DATE – As soon as possible with Task b (i)
- d. COST OF THE PROPOSAL: In the short run, each dept will have to document its own existing records, scan the records, create a table of contents of each type of data and provide inputs into the structure of the meta data. It can be used to fulfil the FOIA requests in its current form.

In the long-run, the Town will have to retain the services of a consultant and purchase an appropriate software. I believe the major benefit would be that the government would run much more efficiently.

Town of Herndon

RESUBMITTED AUGUST INITIATIVES (Not Advanced)

Make Downtown Records Public

3. MAKE DOWNTOWN DEVELOPMENT RECORDS PUBLIC

- a. The ISSUE – The public has remained in the dark about the design and economics of the downtown development and does not know that the developer has taken the Town to the cleaners, in my opinion, to the tune of \$20-\$30 million. Throughout this process, the town government has negotiated against its own interests. It has allowed the former Mayor, Lisa Merkel, to run roughshod over everyone except the developer. Right from day 1 of her first term (July 1, 2012), as discussed earlier, she started by decimating the Minutes of the Council Sessions and thereby greatly reducing the public's ability to know what decisions she was making. The following chronology sets out the basic framework for understanding her actions and gathering the relevant data.

- i. **Town Changes the DMP Without First Notifying the Public (2012)**

After taking office on July 1, 2012, the Mayor set out to change the downtown master plan (DMP) that had been approved by the then Town Council in 2011. And, change she did. The Number of Stories, Building Heights, Location of Arts Related Uses, Architecture & Massing of Structures, HPRB Review (of Future Proposals), and (6) Public Realm changed completely. In less than six months, she had sent her plan to the Planning Commission. The following exchange, during the December 2012 public hearing of the PC, reflects the surprise of the Chairman:

Chairman East: "You know, the minute the public sees 64 feet, we are all going to be lynched. I mean, 50 feet was ... when the hotel came in at 50 feet, the place went nuts. Are we sure that we want to have a height limit of 64 feet in the Downtown? Is that what that discussion turned out to be? Now that you see the number, do you really want 64 feet?"

Vice Chairman LeReche: "I'm sure."

Commissioner Bettard: "How many stories is that?"

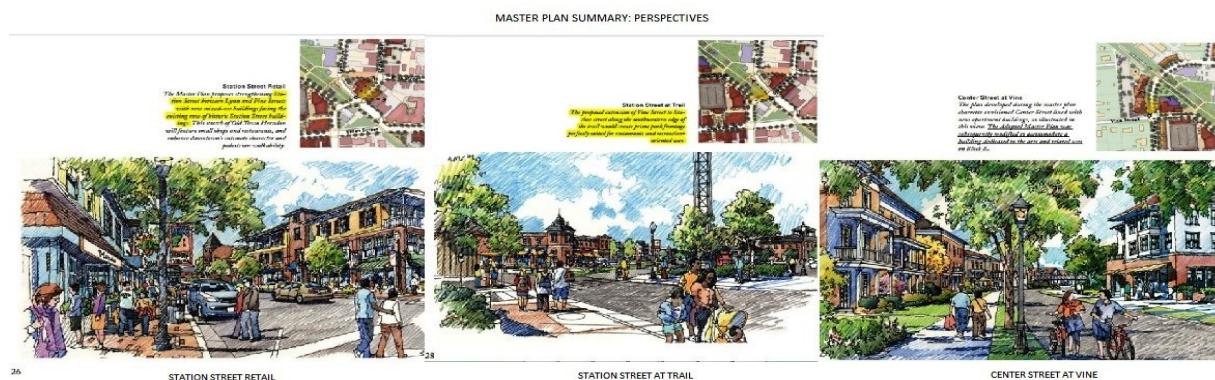
Vice Chairman LeReche: "Mr. Chairman, I think the discussion from the work session was based on the total height allowed, and the 50 feet did not include penthouses. (emphasis added). So, we want to put a maximum, and I think this is what we're trying to do ... put a maximum height on some of the elements that could be an impact, visually, within the Downtown. So, I feel comfortable with the 64 feet, understanding that's the maximum height to include sloped roofs, penthouses and the like."

What was not discussed in this exchange was the concept of an English Basement – a concept that also changed how building heights were to be calculated. Under this concept, up to 2/3rd the total height of a basement, if above ground, could be excluded from the building height calculations. So, if a basement was 12' high, and up to 8' of it could be excluded from the height

calculations. The adoption of this concept, effectively increased the permissible height of the buildings by 6 to 8 ft.

Finally, the revisions lifted the DMP's restriction of 2-story and 3-story buildings. The community had seen the illustration of 2, 3 and 4-story perspectives. Most citizens had liked what they had seen and were excited about them. The illustrations (shown below) had the look and feel of a small town with:

- 3-story, 35' tall structures that would grace the downtown landscape.
- A 2-story, about 25' tall structure would define the central retail center, and
- A couple of 4-story, 40-45 ft tall multi-family buildings that would dot the center of the downtown



After the revisions, all buildings in the downtown could be 64' high or taller. There are reasons to believe that Comstock, the eventual winner of solicitation, was instrumental in inducing the changes that were made in 2012. The proposal, they submitted in 2016, turned out to be consistent with the changes proposed by the mayor in 2012. It would not be surprising to find that Mayor Merkel had already met the developer right after she won the election on May 6, 2012.

ii. Purchase of the ASHWELL Property and Discovery of the Contamination (2014-2015)

The Town conducted two appraisals of the Ashwell Property. The Town Manager and the Town Attorney, during the presentation of the Contract to the public, did not disclose that the land is being purchased "As Is". Environmental Studies, conducted after presenting the contract, show residual contamination. During this process, Lisa Merkel, asks the TM not to give the Appraisals, and the reports of the contamination to Councilmembers. The Town Attorney opines that "the Mayor has broad powers" to withhold reports from Councilmembers. If the contention of the TA is true, then the public and councilmembers need to know the circumstances under which the broad powers can be used by the

Mayor. Councilmembers must be free to read all background reports if they want to make informed decisions.

iii. **The Town Issues an RFP for Downtown Development. Two developers submit their proposals. (March 2016). COMSTOCK, the eventual winner, sets the Value of Town Owned Land at Zero.**

Rather than rejecting the proposal, the Town asks Comstock to submit a revised proposal. Once again, the land value did not change. In fact, the developer's position of taking the land for nothing never changed after the submission of the initial proposal in 2016.⁷ The title to the land was transferred to Comstock in Dec. 2020. It is worth noting that the Town lost ground every time it negotiated with Comstock between 2016 and 2020. Comstock took whatever it possibly could from the town until the very end.

After every set of negotiations, the town staff was forced to somehow justify that the proposal was financially beneficial for the town. In 2016, for instance, the previous Town Manager retained JLL – a real estate company (not professional property appraisers) to assess “trends in the market”. The real purpose was to show that the value of downtown land had declined substantially between 2012 and 2016. That report has never been made public, but it should be. Other unwholesome attempts were also made to show that the project would be financial beneficial to the town. **All of the related facts must be disclosed to the public.**

- b. PROPOSED REMEDY – Make all records related to the downtown development, and the Ashwell property, created between April 1, 2012 and Dec. 31, 2020, public in a suitable form and at no cost to the public. These include, but not limited to:

Emails/Records of Meetings (pertaining to the Downtown Development): Between Lisa Merkel and representatives, members, officers or partners of Comstock; Between Art Anselene and representatives, members, officers or partners of Comstock; Between Art Anselene and Lisa Gilleran and other Town Staff; Between Art Anselene and the JLL consultants; Between Bill Ashton and representatives, members, officers or partners of Comstock; Between Bill Ashton and Lisa Gilleran and other Town Staff; between the TA and the town staff; between the TA and

⁷ The only numbers that did change were those pertaining to: (a) Cash to be Provided by the Town, (b) Cost of Parking Spaces (for the Town), (c) Cost of the Shell of the Art Center, (d) Cost of Moving the Art Spaces to a temporary location, (e) Cost of Providing Temporary Parking, (f) subsidies for the commercial parking spaces needed by Comstock. Before closing on the property, Comstock received a big gift. All of the changes were made for the benefit of Comstock.

attorneys representing Comstock; between the Town's external Attorneys and Comstock's representatives including its officers, partners and attorneys.

Proposals/decision memos/opinions/Analyses: Copies of all Proposals/analyses submitted by Comstock, Stout & Teague, and JLL or any other consultant. Copies of the evaluations of the proposals. Copies of memos and notes of conversations or opinions given by the town's consultants about the downtown and related matters. These documents should be organized chronologically, if possible, and into various categories such as buildings heights in the downtown (changing the DMP), effect on government revenues, expenditures and/or budget deficits), copies of the analyses related to the abatement and or reduction of Real Estate taxes, the waiving of Water & Sewer Availability fees, deferring of the proffers fees for recreation, reducing parking requirements for multifamily units to no less than 1.25 space per dwelling unit, etc; all communications (notes, emails, reports and analysis) related to the value of the downtown land, cost of parking, the shell of the art center and the art center itself.

Reports, Financial Analysis/Real Estate Appraisals: Copies of reports or financial analyses prepared by the Town's consultants (JLL's report, for example), real estate appraisers or the Town Staff or the Town's Finance Director.

- c. EFFECTIVE DATE: Start within two months; produce information within 4 months
- d. COST OF THE PROPOSAL – 2 to 3 person-weeks.

Town of Herndon

NEW INITIATIVES for CONSIDERATION

Water Towers

MITIGATING THE EFFECTS OF INSTALLING COMMUNICATIONS EQUIPMENT ON HERNDON'S WATER TOWERS

By
Councilmember, Jasbinder Singh

The Town of Herndon has three water towers. The land for 3rd Street and Spring Knoll Dr. water towers was purchased in 1977. The towers were constructed in the early 1980s. The Alabama Dr. water tower was constructed in on a lot called, the Town Well lot. All of the water towers are surrounded by residential areas and/or by parks. The discussion of this initiative focuses largely on the most heavily used water tower – the water tower at Third Street.

Various commercial communication companies, pursuant to 5-year renewable leases with the Town, have been installing:

- antennas atop the water towers and
- cables that connect the antennas to the switches at the ground level, and
- supporting equipment at the ground level

A part of the supporting equipment has been housed in several small buildings at the base of the water towers. The remaining has been left “outdoors.” With changes in technology, the communication companies have been upgrading, replacing and adding new equipment over the last 30 years. This trend is expected to continue for the foreseeable future.

The communications companies could have built their own towers; however, they have chosen to install their equipment on the Town's water towers, because it is cheaper for them to do so. Needless to say, the Town has welcomed this opportunity to raise revenue.

THE MAIN ISSUE

The increase in revenue has come at the expense of neighborhoods that surround the three water towers as discussed below.

SUB-ISSUES

1. Architectural Impacts:

- a. **Antennas (Located on Top and/or at other locations):** The number, type and location of antennas installed by a telecommunication company depend on the size of its service area and advances in the associated technology. Visual impacts of the antennas and those of platforms used for installing and servicing them can be “intrusive” on nearby neighborhoods.

The visual impacts can be mitigated by requiring that telecommunication companies use colors (to paint the antennas, cables, platforms and even the water tank itself) that are less intrusive.

- b. Unsightly Communications cables:** Cables transmit communication signals from antennas (located on top of the tower) to the equipment located at the ground level.
 - i. As many as 9 cables are being used on each leg of the water tower) to carry telecommunications signals. In the past, the cables were not secured properly to the columns (they used to hang loose). Actually, they were not even pulled straight and aligned properly.
 - ii. The cables are black and stand out against the blue color of the columns. The fastening brackets are made of metal and unsightly.
 - iii. Cables running along the parameter of the water tower on the top are also visually unappealing

The following actions can be taken to mitigate the visual effects; The cables should always be held tight against the tower's legs and platform, and they should be painted in the same colors as the entire water tower.

- c. Unsightly Ground Level Equipment:** Any communications company needs, among other things, an emergency generator, power supply, and equipment to convert from AC power to DC power, and utilities such as basic electrical service, telephone service and high capacity T1 Lines. It appears that most service providers have housed their equipment in individual storage shelters . It also appears that most shelters have HVAC, humidity controls to control the operating conditions. The shelters and various other pieces of equipment are not visually appealing. They seem to have been constructed in an ad hoc manner over the years.

Two steps can be taken to mitigate the visual impacts at the ground-level: Plant ever-green trees that are widest at the ground level, rise more than 70-80 ft and form a visual "wall" around the parameter (chain-link) fence. The town should consider replacing the chain-link with a decorative solid block wall. Note that the Town is the only entity that uses chain-link fences; yet, it prohibits everyone else from using them!

2. Increase in Storm-Water Discharges

Over the years, the ground at the base of the towers has become more and more impervious (with the construction of concrete pads, new buildings and the installation

of service equipment). Consequently, “storm-water” discharges to the surrounding properties to the north, east and south have increased significantly over time.

The Town should install a curb & gutter around the parameter and direct storm-water runoff to specific areas away from affected properties .

3. Impacts of Repetitive Replacement and Servicing of the Equipment

Telecommunication technology continues to change rapidly (some say at mindboggling speed). Consequently, it appears that almost every week representatives of telecommunications companies show up to replace and service the equipment. Often, they park their trucks at the tower (or, on 3rd Street), work all day long and disturb the tranquility of the neighborhood. Some say that site has become an industrial “hub” in the middle of a residential neighborhood.

The town staff should work with the companies to reduce the number and duration of visits to the site and provide advance notice to affected residents.

4. (Unpermitted) Street Parking by Video Enthusiasts Near the Water Tower

Cox, Communications used to provide free Wi-Fi service to anyone who wanted to play video games or watch shows on their iPhones, iPads and other devices. To take advantage of high capacity Wi-Fi service, at the designated time, people used to rush to the water tower site and park on both sides of 3rd Street to take the best spots. There were two major effects:

- On the south side, the vehicles drove or parked over a town water meter. The Town had to replace the water meter enclosure twice. One of the enclosures had no cover for an extended period of time. Fortunately, no one stepped into the enclosure and hurt themselves.
- Initially, the enthusiasts parked on the edge of the street, even though it was dangerous to do so. Overtime though, someone put gravel on one side of the road and created a parking area without getting permission from the town.

It appears that this practice has stopped for the most part now, but who is to say that Cox or some other company will not start it again. The Town should forbid the communication companies from providing services that create dangerous traffic and parking and situations.

5. Unaddressed Needs – Cleaning up Nearby Wooded Areas

On eastern and western sides of the 3rd street tower, the wooded areas are rather unappealing. The Van Buren right-of-way, created well before the Van Vlecks

subdivision was transferred to the Town in the late 1800s, has remained unused. The 50'x800' long strip contains large amounts of dead wood and ugly and dangerous shrubbery; therefore, it is largely unwalkable. This area could be converted into a nature preserve, or a community garden or a playground area for children. A much smaller area on the eastern side (a part of the Water Tower property) is similarly unappealing. It could easily be cleaned up and made rather appealing (without destroying the wildlife habitats).

PROPOSED ADMINISTRATIVE ACTION

1. Set Aside 20% of the revenues generated every year to mitigate the impacts. Set-aside 20% of the expected revenues in FY 22.
2. Prepare a site-plan for the "Water Tower Site" (Including the Van Buren right-of-way)
3. Develop a long-term plan to mitigate the impacts.



RESIDENTS

BUSINESS

GOVERNMENT

SERVICES

CONNECT

PROPERTY SEARCH

Address

Map Number

Map Search

Search Home

Profile

Sales

Values

Tax Details

Residential

Commercial

Map

Structure Size

MAP #: 0104 02 0045A
TOWN OF HERNDON THE

N/A



1974 - 40,000 sq ft

R-10 - Farm Dist.

historical, architectural
and cultural
significance.

destruction of or
encroachment upon
such areas, and premises

moftit forge - started
getting built around
1988-89?

Fairfax County, Virginia

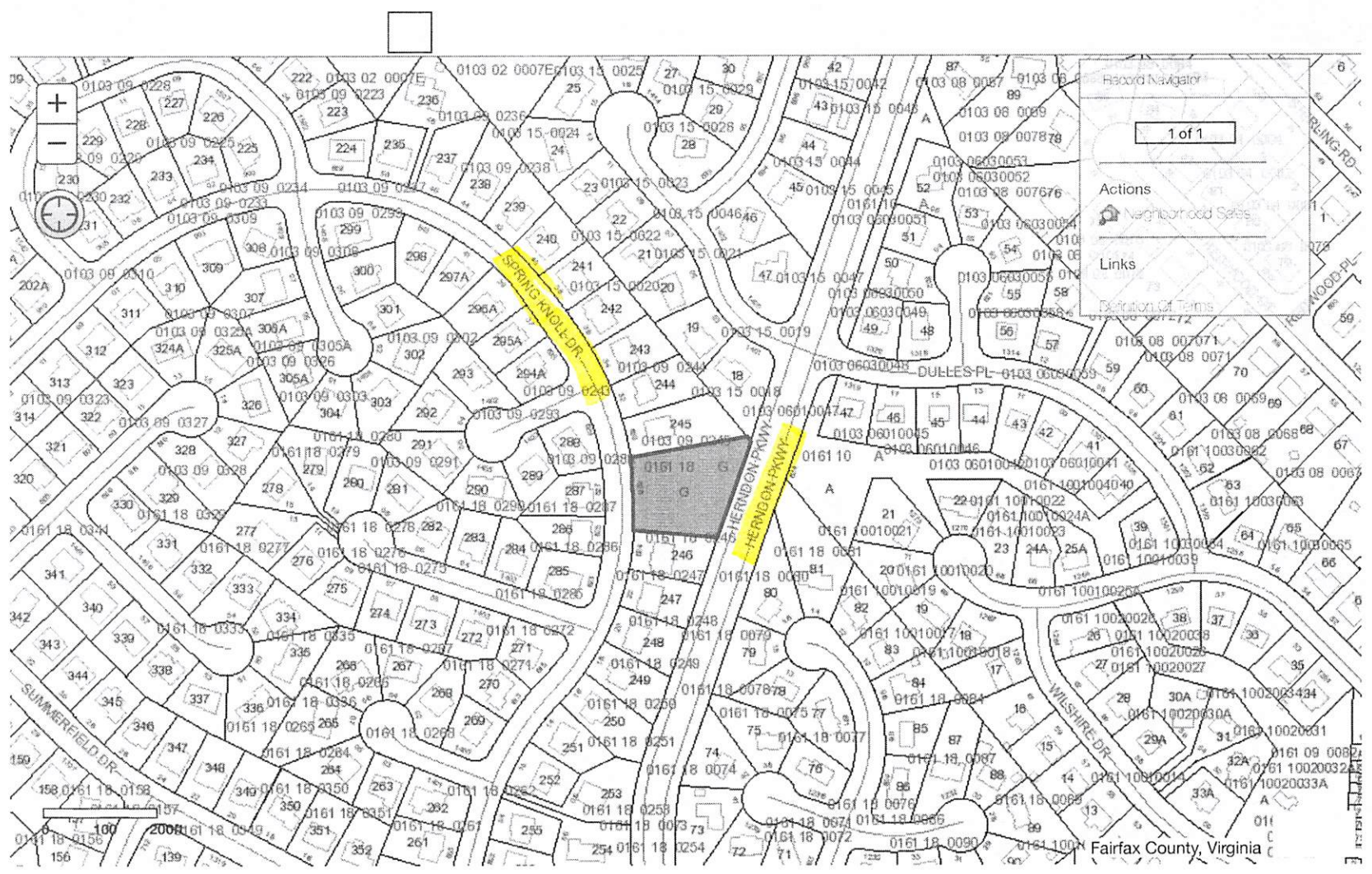
Address Map Number Map Search Search Home

- Profile
- Sales
- Values
- Tax Details
- Residential
- Commercial
- Map
- Structure Size

MAP #: 0161 18 G
TOWN OF HERNDON THE

N/A

1974
30057 sq ft
Planned Dev. - Res.
sewer available.
(1993) next door
1996↑





RESIDENTS

BUSINESS

GOVERNMENT

SERVICES

CONNECT

PROPERTY SEARCH

Address

Map Number

Map Search

Search Home

Profile

Sales

Values

Tax Details

Residential

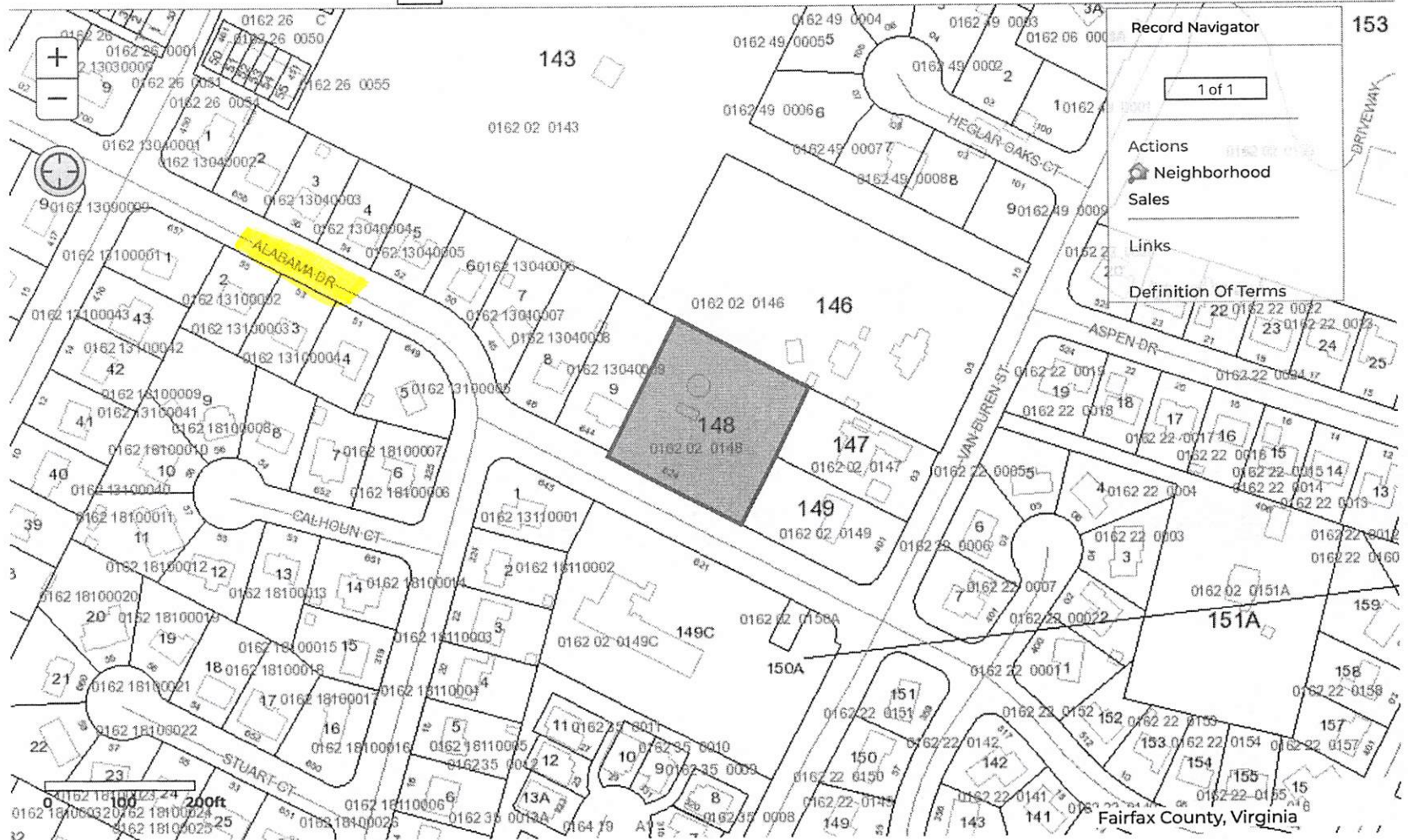
Commercial

Map

Structure Size

MAP #: 0162 02 0148
TOWN OF HERNDON THE

624 ALABAMA DR



19..

~ 42,000 sq. ft.

Town Well Lot

Area around
it was already
built in 1970s
to 1980s.
Is what's left?

Town of Herndon

NEW INITIATIVES for CONSIDERATION

Revised ADU

RE-EXAMINE AND IMPROVE THE RECENTLY APPROVED ADU ORDINANCE

By
Councilmember Jasbinder Singh

On November 23, 2021, the Town Council approved Ordinance 21-O-22. Thereby, it approved the construction of Accessory Dwelling Units in several residential districts of the town. However, the approval process was hampered by many shortcomings including the following:

- The word, *Accessory*, was not defined
- Even though the Planning Commission tried, meaningful citizen input was not received (special public meetings/hearing should have been held for this purpose)
- The demand for ADUs was not assessed
- The conformity with the Comprehensive Plan was evaluated in a rather perfunctory manner, that is, long-term impacts of the proposal on the town's infrastructure was not evaluated

The demand for Affordable Housing has been a matter of concern in many areas of the country for a long time. Many cities and states have developed ADU policies and implemented associated programs. Portland, Oregon, San Francisco, CA, Los Angeles, CA have initiated ADU development programs. Early advocates of the ADU have analyzed the barrier to the adoption of ADUs and suggested legislative initiatives to tackle the issue. The existing wealth of knowledge was not examined. In other words, the Ordinance was developed without first understanding the factors that lead to the failure and success of ADU initiatives.

This new initiative proposes to reconsider the matter of *Accessory Dwelling Units* again after, among other things:

- Receiving Citizen Input
- Receiving Business Input
- Evaluating demand for ADUs, particularly demand for affordable ADUs by new entrants into the workforce (teachers, etc.)
- Reviewing the literature on the economics of ADUs
- Evaluating limitations of size, bulk and setbacks for ADUs
- Evaluating the financial feasibility of ADUs
- Reviewing policies developed by other Virginia jurisdictions including the City of Alexandria

- Examining Issues that have arisen in Oregon, California and other states and their applicability to Herndon
- Recommending policy alternatives including the need to revise the Comprehensive Plan with a focus on storm-water discharges, drinking water use, sewer capacity, parking availability and transportation effects, and
- Developing appropriate ADU Policy Recommendations

This initiative will be conducted in several stages. In the first stage, we propose to evaluate

1. The definitions of *Accessory Dwelling Units* developed and employed by different jurisdictions in Virginia and other parts of the country
2. The processes used for achieving meaningful participation by citizens and businesses, if any, and
3. The type of analysis done by Herndon to achieve “compliance/consistency with the Comprehensive Plan” (to be done by the staff)

The results of the first stage analysis and the tasks for the second stage analysis will be presented to the Town Council.

Completion Date for the First Stage: 3 months after start

Town of Herndon

NEW INITIATIVES for CONSIDERATION

Community Noise

REDUCING NOISE GENERATED BY COMMERCIAL SOURCES IN RESIDENTIAL AREAS

(A Template for Action)

by

Councilmembers Naila Alum & Jasbinder Singh¹

A. THE ISSUES

To develop a template for action and to balance business and residential interests, we evaluate the noise generated by businesses located on the Lot 14 and its effects on the adjoining Cypress Tree Lane townhouses (Figure 1). Notice that Lot 14 is encompassed by Elden Street and the Herndon Pkwy and by Cypress Tree Lane townhouses along its western and northern lot lines.

ISSUE No. 1 – Past Community Planning Practices: Fairfax County Real Estate Assessment data suggests that Lot 14 was developed in 1992 and the Cypress Tree Lane was developed a couple of years later in 1994. The layout of the Cypress Tree development suggests that the 116 townhouses were “packed” tightly in the available space. Consequently, rear setbacks of townhouse adjoining the commercial area of Lot 14, were reduced to as little as 10 ft. This means such townhouses were susceptible to noise created by commercial operations on Lot 14. The developer did not take any noise mitigating measures either. The developer could have shielded the townhouses by constructing, say, a 10’ high wall around the applicable parameter and/or by planting tall evergreen trees or by taking other noise mitigating measures. Such measures would have probably reduced the number of townhouses in the development by about 5 percent. However, the reductions would have made the development more appealing and substantially reduced the effects of noise generated by the commercial operations.²

ISSUE No. 2 – Noise Generated by Commercial Equipment: The Town has a noise ordinance that is supposed to protect residential areas from noise emitted, especially at night, by commercial equipment, such as: delivery trucks, large parking lot sweepers, garbage pickup trucks and construction equipment. The ordinance was last modified in 2012 in response to (construction-related noise) complaints from residents located at the corner of Van Buren and Alabama Streets. Otherwise the noise ordinance has not been changed for a long time.

¹ Jasbinder Singh provided technical support for this initiative.

² This area is not an isolated example of places where poor land use decisions have created on-going conflicts between residential and business activities. The conflicts between the “K-mart shopping center” and the houses on Madison Ridge Ct on the one hand and the townhouses at Herndon Mills Cir on the other hand are the result of unacceptable planning practices.

Business located on Lot 14 include Starbucks, Bank of America, several office suites, three restaurants, and a nail salon, among others. Their basic need is that the premises are kept clean during their business hours which span from 6am till 10pm. Consequently, the trash must be picked up, the lot must be swept clean and the supplies must be delivered every day well before the customers start to arrive. In the case of Starbucks, for example, some customers show up for coffee and breakfast at 6 am.

Let's see how some of the equipment that services the businesses, adversely affects the residents of Cypress Tree Lane (Fig. 1).

- **Parking Lot Sweepers:** One of the provisions of the Town's noise ordinance is that commercial equipment cannot operate between the hours of 11pm and 6am; yet, a sweeper cleans the parking and other areas of Lot 14 **daily** between the early morning hours of 4 am and 5 am. It goes back and forth from one end of the lot to the other end numerous times again & again until the lot has been completely swept and cleaned.

Research suggests that an average parking lot sweeper emits sounds at 75 dBA. In comparison, sounds between 40 and 45 dBA do awaken people at night. Even though the noise emitted by any source is mitigated by walls, windows and window treatments of a townhouse, parking lot cleaning operations at Lot 14 have a great potential to disturb the sleeping patterns of residents occupying townhouses along its northern and western property lines.³ In fact, they do at this location.

- **Delivery Trucks – Noise from loading and unloading operations:** Almost every day, several trucks deliver supplies to restaurants and other businesses – some as early as 5:30 am. Truck engine noise by itself may not be particularly intrusive, but the opening & closing of back doors, pulling out of loading & unloading ramps on the lot surface can and do emit noise loud enough to disturb people's sleep.
- **Hauling Trash (from Business Premises to Dumpsters:** Private businesses generally collect trash from their premises, fill their private trash containers and deposit the trash periodically during the day in large commercial dumpsters located on the lot. Some businesses, though, carry their trash containers to the large dumpsters during the late hours of the evening - sometimes as late as 11:30pm. As they traverse the parking lot surface, the wheels of the containers, it has been reported, generate noise loud enough to the residents' sleep.

It appears that the Town is not aware of the characteristics, operations and operating hours of the lot sweepers, delivery trucks and of other service operations at this location. By extension, one can deduce that the Town is also not aware of the community noise issues at other locations in the town (where business and residential areas co-exist in each other's vicinity). Further, even if citizens are troubled by the noise created by business activities, our citizens are not aware that there is even a noise ordinance and that they can file complaints against the

³ Sweepers often serve other functions that can generate even more noise. Emptying trash containers can be particularly troublesome in this regard.

offenders. Unfortunately, they also do not know that the ordinance is largely unenforceable and the Town, therefore, may find it very difficult to redress any complaints.

ISSUE No. 3 - UNENFORCEABILITY OF THE NOISE REGULATION: The ordinance is based on the concept of “**noise being plainly audible**” inside a dwelling unit ... or at 50 ft. from the *noise emitting device or equipment!* (*italicized words added in order to clarify the meaning of the sentence*).

Appealing as it may appear, the **plainly audible** concept does not state how loud the noise level has to be for it to be **plainly audible**, whether it has to be lower in noise sensitive locations and how it has to be measured. The ordinance sets out 12 different standards or factors by which a violation may be assessed. These include: Volume of the noise, the Intensity of the noise, and the Duration of the Noise, Whether or not the noise is usual or unusual, etc. etc. (see the attached copy of the Town Ordinance). Who can possibly enforce such a noise ordinance? **It appears that the Town did not really want the ordinance to have any teeth.**

ISSUE No. 4. –NOISE LEVELS THAT PROTECT PUBLIC HEALTH: The Town’s noise ordinance omits any mention of desired in-the-home noise levels. However, many government and universities advocate noise levels of 35 dBA for enclosed offices and schools, 30 dBA for conference rooms, and 30 dBA to 40dBA for sleeping comfortably. It is generally accepted that noise levels between 40 dBA and 45 dBA can awaken people from their sleep. Consequently, regardless of the level of noise generated by commercial equipment, noise levels within the adjoining dwelling units (townhouses, in this case) **should** remain well below 45 dBA at night - particularly between of 10pm and 6am. In the absence of such a numerical standard, it would be impossible to give citations for violating the noise ordinance or even have serious discussions between the residents and representatives of the businesses.

ISSUE No. 5. ACCEPTING THE DATA PROVIDED BY APPS FOR DETERMINING VIOLATIONS: In order to enforce its ordinance, the Town has to make decisions (or, develop policies) about (i) who should measure the levels, (ii) how should they take the readings, (iii) how should they communicate their readings to the authorities and (i) how should the government take enforcement actions.

Fortunately, in this digital age, several apps for iPhone and other devices are available to homeowners (or renters) at little or no cost. One such application, developed by the National Institute of Occupational Safety and Health, is NIOSH SLM. It is free and available at the Apple APP store. It is extremely easy to use. Homeowners could use it to take noise levels readings at night inside their homes and report them to the police while commercial vehicles are still operating, making noise or waking people up. It is highly questionable that the police, after receiving a complaint, can come to the site in time enough to take noise readings (by using the NOISH app or any specified equipment, and cite the offending equipment/people. Consequently, the results of inside the dwelling unit

readings taken by a homeowner should be used to cite the offenders and/or **negotiate mitigation steps**.⁴

B. PROPOSED REMEDIES

The Town could, pursuant to a noise reduction program, take a series of steps, including the following, to minimize the violations of the noise ordinance:

1. **Implement Best Planning Practices:** Implement best planning practices including (a) reducing the density of developments to achieve larger setbacks in residential areas adjoining the commercial areas, (b) requiring commercial entities and residential developers to implement noise reduction measures (building parameter walls, planting trees, etc.)
2. **Ensure Enforceability of Regs:** Revise the Noise Ordinance to make it enforceable. **Plainly Audible** is not enforceable. Use numerical standards to measure noise levels.
3. **Encourage Residents to Use Noise Apps:** Make the use of the NIOSH App **by residents in residential districts** acceptable for purposes of enforcement and negotiating with property owners.
4. **Information About Equipment Employed:** Ask all businesses to provide information about, among other things, (1) the type of trucks, sweepers or other equipment they use and their associated noise emission characteristics, (2) the type of operations conducted at their sites (3) the current hours of operations and the possibility of changing them, and (4) replacement cycle of the equipment used in commercial operations.
5. **Strategy for Negotiations:** The Town should develop a negotiating strategy for minimizing noise emissions. The strategy should be focused on (a) employing the best available technology at every reasonable opportunity and (b) minimizing night-time operating hours.
6. **Annual Reminder for Businesses:** Send an annual letter to all business informing them that they are required to operate within the night-time operating hours established by the Town's noise ordinance.

⁴ Alternatively, after receiving citizen complaints, the police could begin patrolling the areas in question at most opportune hours and be ready to take noise readings in accordance with the designated procedures.



Address Map Number Map Search Search Home

Profile

Sales

Values

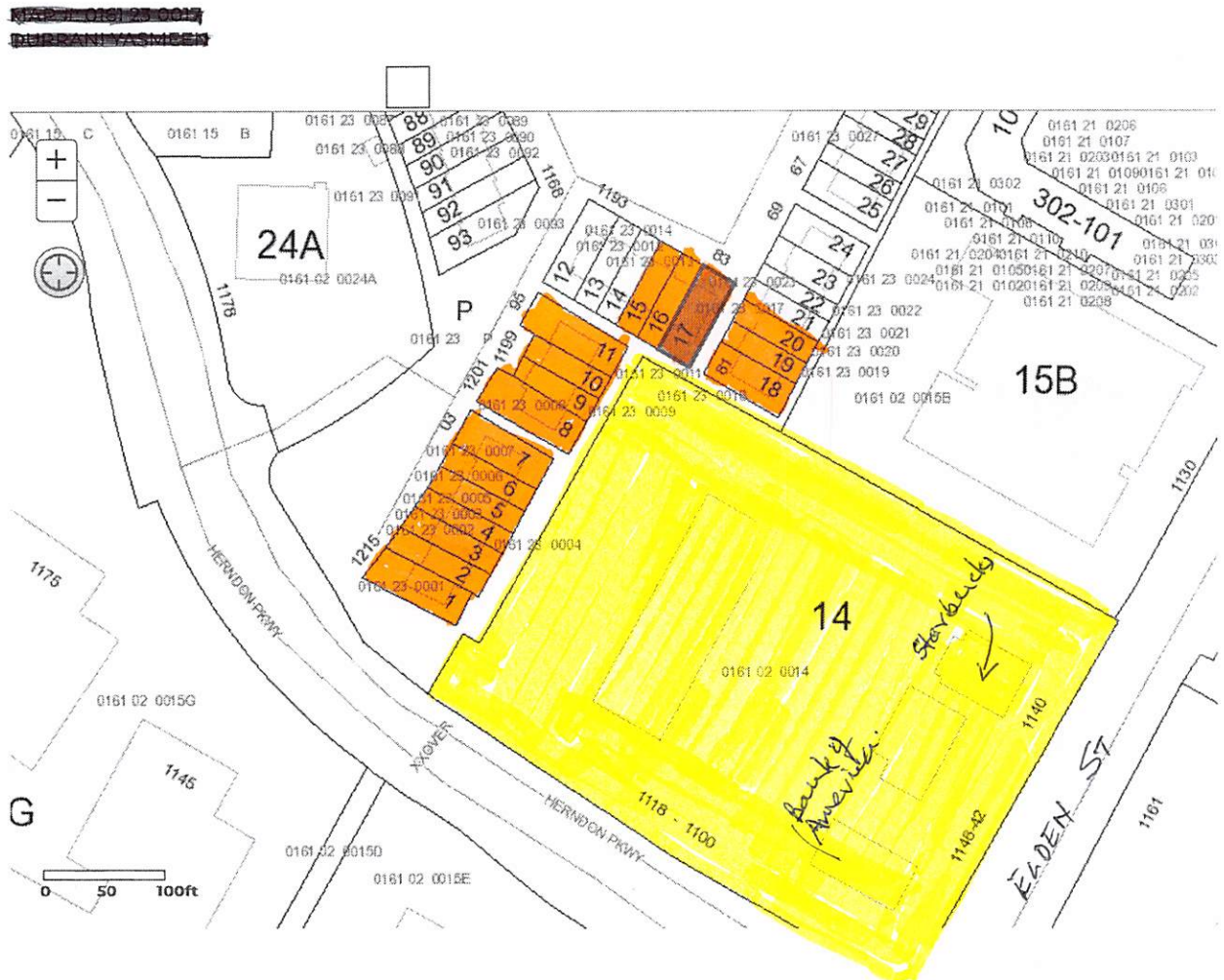
Tax Details

Residential

Commercial

Map

Structure Size



Lots (Townhouses) affected by noise from operations of business located in Lot 14.

Lot 14



RESIDENTS

BUSINESS

GOVERNMENT

SERVICES

CONNECT

PROPERTY SEARCH Q

Address Map Number Map Search Search Home

Profile

Sales

Values

Tax Details

Residential

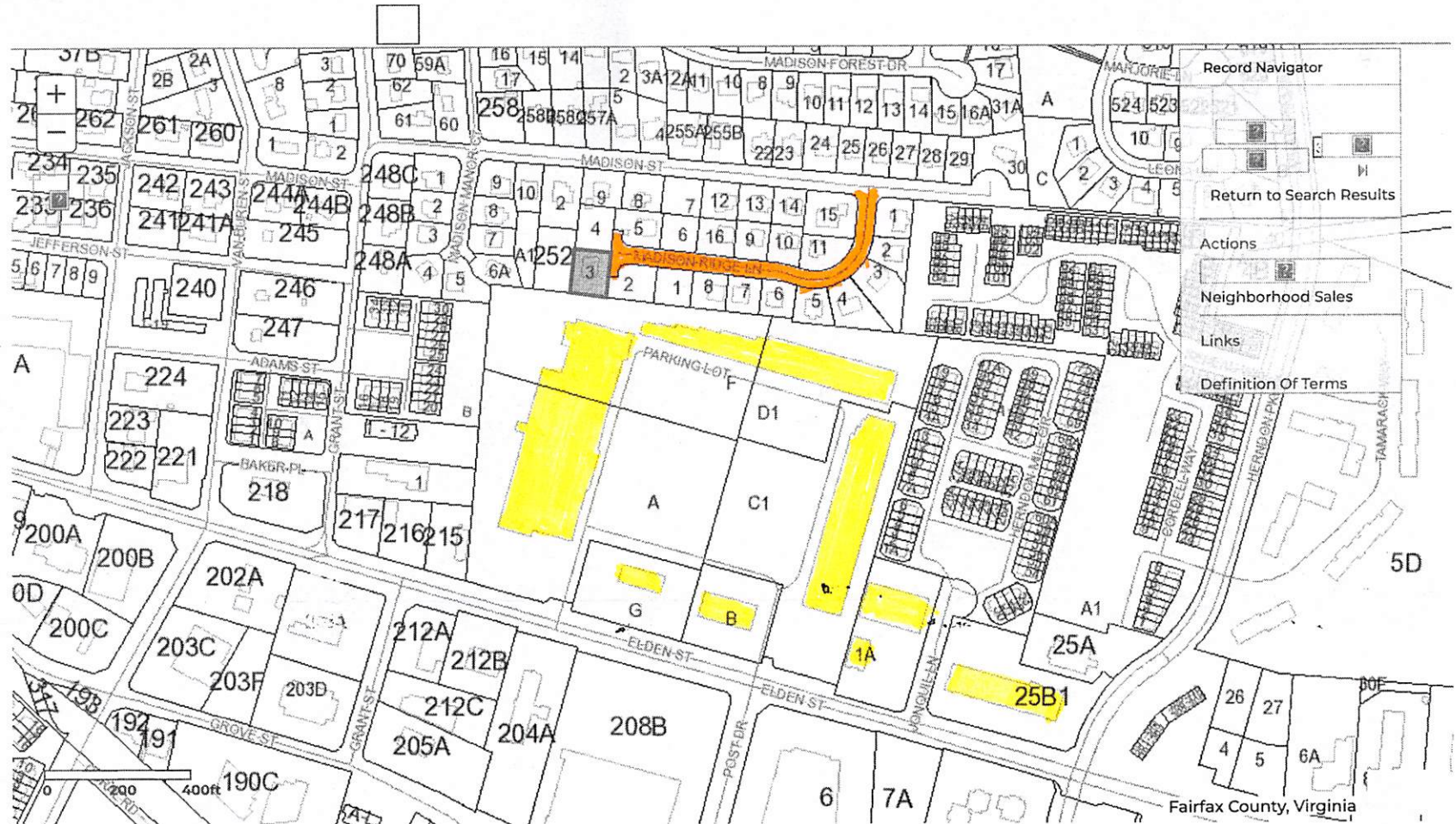
Commercial

Map

Structure Size

MAP #: 0162 12020003
FINBERG SCOTT

121 MADISON RIDGE LN



ARTICLE VI. - NOISE

Sec. 26-216. - Statement of policy.

It is the policy of the town to prohibit unnecessary, excessive, and annoying noise from all sources subject to police power. At certain levels noises are detrimental to the health and welfare of the citizenry and, in the public interest, controls are necessary to minimize excessive noise.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-217. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Emergency means any occurrence or set of circumstances, including preparation for or reaction to a snow or ice storm, hurricane, flood, or other such major weather related event, involving actual or imminent injury, illness, death, threat to public health or to public welfare or property damage, that requires immediate action.

Highway means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the commonwealth, including the streets and alleys, and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the town council and (ii) the entire width between the boundary lines of every way or place used for purposes of vehicular or pedestrian travel on any property owned, leased, or controlled by the United States government and located in the commonwealth.

Moped means every vehicle that travels on not more than three wheels in contact with the ground that has (i) a seat that is no less than 24 inches in height, measured from the middle of the seat perpendicular to the ground and (ii) a gasoline, electric, or hybrid motor that displaces less than 50 cubic centimeters.

Motor vehicle means every vehicle as defined in this section that is self-propelled or designed for self-propulsion. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle.

Motorcycle means every motor vehicle designed to travel on not more than three wheels in contact with the ground and is capable of traveling at speeds in excess of 35 miles per hour. The term "motorcycle" does not include any "electric personal assistive mobility device," "electric power-assisted bicycle," "farm tractor," "golf cart," "moped," "motorized skateboard or scooter," "utility vehicle" or "wheelchair or wheelchair conveyance" as defined in Code of Virginia, § 46.2-100.

Motorized skateboard or scooter means every vehicle, regardless of the number of its wheels in contact with the ground, that (i) has no seat, but is designed to be stood upon by the operator, (ii) has no manufacturer-issued vehicle identification number, and (iii) is powered by an electric motor having an input of no more than 1,000 watts or a gasoline engine that displaces less than 36 cubic centimeters. The term "motorized skateboard or scooter" includes vehicles with or without handlebars, but does not include "electric personal assistive mobility devices."

Noise means loud, confused, or senseless sound. "Sound" also includes "noise" as the context may determine.

Powered model means any internal combustion powered device, either airborne, waterborne or landborne, which is not designed to carry persons or property including, but not limited to, model airplanes, boats, cars, and rockets.

Sound amplifying equipment means any machine or device for the amplification of music or any other sound. Sound amplifying equipment shall not include standard motor vehicular or household sound producing or reproducing devices. Sound amplifying equipment shall not include warning devices or horns, other warning devices on any vehicle when used only for traffic safety purposes, or any loudspeaker or other sound-producing or reproducing device capable of emitting music, sounds or voice on the outside of any business or nonresidential establishment.

Vehicle means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. Bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Cross reference— Definitions generally, § 1-2.

Sec. 26-218. - Determination of violation.

- (a) Any determination of a violation as to noise **being plainly audible** within a dwelling unit or motor vehicle shall be made using normal seasonal window or door use or position of the same.
- (b) Any measurement required to be made in the enforcement or application of this article shall be made from the source of the noise or from the edge of a building or structure from which the sound emanates as appropriate, unless otherwise specifically provided.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-219. - Facts to be considered in determining violations.

- (a) The standards which shall be considered in determining whether or not a violation of the provisions of this article exists may include, but not be limited to, the following additional general standards to supplement those specifically set out:
 - (1) Volume of the noise;
 - (2) The intensity of the noise;
 - (3) Whether or not the nature of the noise is usual or unusual;
 - (4) Whether or not the origin of the noise is natural or unnatural;
 - (5) The volume and intensity of background noise, if any;
 - (6) The proximity of the noise to residential sleeping facilities;
 - (7) The land use or zoning of the area, within which the noise emanates;
 - (8) The density of the inhabitation of the area in which the noise emanates;
 - (9) The time of day or night the noise occurs;
 - (10) The duration of the noise;
 - (11) Whether or not the noise is recurrent, intermittent, or constant;
 - (12) Whether or not the noise results from the abatement of or reaction to an emergency.

- (b) These standards serve as an aid in enforcement to avoid unreasonable, awkward, or overly technical enforcement actions. These standards do not affect, replace, or diminish the objective enforcement standards set out in this article.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-220. - Penalties.

Violating any of the provisions of this article on noise shall constitute a class 3 misdemeanor punished by a fine of not less than \$100.00 or more than \$500.00.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-221. - Loud noises prohibited.

It shall be unlawful for any person:

- (a) To use, operate or play any radio, phonograph, television, record, compact disc or tape player, musical instrument, loudspeaker, or other machine or device capable of producing or reproducing sound in such a manner or with such volume or duration that it is plainly audible (i) between 10:00 p.m. and 7:00 a.m., inside the confines of the dwelling unit, house, apartment, or condominium of another person or (ii) at any time 50 or more feet from the device, except in any case of use of permitted sound amplifying equipment.
- (b) To allow an animal or bird to emit continued or repeated howling, barking, whining, meowing, squawking and so produce noise which is plainly audible inside the confines of the dwelling unit, house, apartment, or condominium of another person, or which is plainly audible across a residential property boundary.
- (c) To create any noise on any street adjacent to any school, institution of learning or court while it is in session, or adjacent to any hospital at any time, where such noise is audible inside the confines of the school, institution of learning, court or hospital.
- (d) To operate, have, or permit on the outside of any business or other nonresidential establishment, any loudspeaker or other sound-producing or reproducing device capable of emitting music, sounds, or voice and so create noise in such manner that it can be heard on any public sidewalk or street at any time unless it signals the ringing of a telephone, danger from smoke, a fire or burglary, calling of the police, or the beginning or stopping of work or school, or unless it is operated in conformity with the Zoning ordinance or with a police power directive of the town manager.
- (e) To yell, shout, whistle or scream and so create noise between the hours of 10:00 p.m. and 7:00 a.m. on any public street, sidewalk, or parking lot or any privately-owned street, sidewalk or parking lot open to the public, except in case of an emergency.
- (f) To create noise in areas zoned or used for residential purposes between 10:00 p.m. and 7:00 a.m. in connection with lawn care, leaf removal, gardening, tree maintenance or removal and other landscaping, lawn or timbering activities.
- (g) To generate and emit sound that becomes noise from equipment or operation of any business or nonresidential establishment in such a manner or with such volume or duration that the noise is plainly audible (i) between 10:00 p.m. and 7:00 a.m., inside the confines of the dwelling unit, house, apartment, or condominium of another or (ii) at any time 50 feet or more from the source of the noise, except in case of emergency or in conformity with the zoning ordinance which in case of conflict with this article shall predominate as to the application of this subsection.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-222. - Construction of buildings and projects.

- (a) It is a violation of this article to operate or cause to be operated any equipment or use any tools in construction, repair, alteration, or demolition work on buildings, structures, streets, alleys, or in the development of land, and so create noise, between the hours of 9:00 p.m. and 7:00 a.m. the following weekday that is not a town-observed legal holiday as set out in the next phrase; or between 9:00 p.m. and 8:00 a.m. the following Saturday, Sunday, or the following town-observed legal holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- (b) On application, the town manager using the standards set out in section 26-219 and the procedures set out in section 26-228, may expand these hours by written permit with conditions in specific cases. No such permit may endure more than 60 days after its issuance.
- (c) Nothing in this section or in this article affects or controls the town's or any other person's efforts to address an emergency as determined by the town manager using the standards of this article.

(Ord. No. 09-O-38, § 1, 12-8-2009; Ord. No. 12-O-20, § 1, 10-9-2012)

Sec. 26-223. - Powered models.

It shall be unlawful to operate or permit the operation of powered models in the outdoors between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-224. - Trash and refuse collection.

- (a) It shall be unlawful to collect trash or refuse between the hours of 10:00 p.m. of one day and 6:00 a.m. of the following day.
- (b) On application, the town manager using the standards set out in section 26-219 and the procedures set out in section 26-228, may expand these hours by written permit with conditions in specific cases. No such permit may endure more than 60 days after its issuance.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-225. - Loading and unloading.

- (a) It shall be unlawful to load or unload motor vehicles or trailers in the outdoors so that this activity produces sound that may be heard within the confines of a dwelling unit, house, apartment, or condominium of another person between the hours of 10:00 p.m. of one day and 7:00 a.m. the following day.
- (b) On application, the town manager using the standards set out in section 26-219 and the procedures set out in section 26-228, may expand these hours by written permit with conditions in specific cases. No such permit may endure more than 60 days after its issuance.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-226. - Motor vehicle maximum sound levels.

- (a) No person shall operate or cause to be operated a private motor vehicle, motorcycle, moped, or motorized skate board or scooter, (here motor vehicle) in such manner or with such volume or duration that it is audible between 10:00 p.m. and 7:00 a.m. within the confines of the dwelling unit, house,

apartment, or condominium of another person, except for motor vehicles permitted to be used at public parks or recreation fields, sporting events, school-sponsored activities, on school grounds, or duly authorized parades, public functions or commemorative events, or except for the normal and reasonable operation of motor vehicles with equipment meeting legal standards.

- (b) Notwithstanding any other provisions of this section or article, it shall be unlawful for any person to play or operate, or permit the playing, use or operation of, any radio, tape player, compact disc player, loud speaker, or sound amplifying equipment, which is located within a motor vehicle being operated or parked on public or private property, including any public or private street or alley, in such a manner as to create noise audible between 10:00 p.m. and 7:00 a.m. inside the confines of the dwelling unit, house, apartment, condominium, or motor vehicle of another person.
- (c) The provision of this section shall not apply to motor vehicle alarms which do not create noise or other security devices or to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission of sound in the performance of emergency work.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-227. - Sound amplifying equipment.

It shall be unlawful for any person other than personnel of law enforcement, governmental agencies, or public utilities, to use or operate within the town sound amplifying equipment in a fixed or movable position or mounted upon any motor vehicle for any purpose upon any street, alley, sidewalk, park, place or public or private property without a written permit setting forth the exact time and location or route to be used.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Sec. 26-228. - Permit.

The town manager is authorized to issue, deny, or reasonably to condition the permit under this chapter to achieve the policies of this article. The town manager in this regard will be guided by the applicable standards of section 26-219 of this Code. The town manager shall act on the permit within two work days of receipt. The town manager in an emergency (as determined by the town manager), or in other cases where the circumstances require immediate action, must act on the application at once. Any party aggrieved by the decision of the town manager may appeal to the town council by written notice to the town clerk within ten calendar days of the town manager's decision. The town council shall act on this appeal at the next public hearing by ordinance adopted after a public hearing and will be guided by the applicable standards in section 26-219 of this Code.

(Ord. No. 09-O-38, § 1, 12-8-2009)

Secs. 26-229—26-290. - Reserved.

Town of Herndon

NEW INITIATIVES for CONSIDERATION

Modernize Town Staff Presentations

Strategic Initiative	30
Title	Modernize Town staff presentations
Sponsor	Councilmember Regan
Statement of Need	Work Sessions were once unrecorded and sparsely attended by residents and other interested parties, and as a consequence staff presentations and Council commentary were often repeated at Public Hearings so the public could be informed. Now that Work Sessions are available on the Town website, that need is lessened and we should consider changing Work Sessions to reduce their length and therefore the amount of staff time, Council time, and resident time they consume.
Next Steps	Discussion at the 12/2/21 Strategic Initiatives meeting. Specific topics could include: • Should Work Session staff presentations be similar to those at Public Hearings or should they be abridged versions? • Is it reasonable to assume Councilmembers will have read materials in advance of Work Sessions? ○ If so, should we simply start with Councilmember discussion? ○ If not, should Councilmembers be given time to read materials at the beginning of the Work Session or should staff present as if nothing has been read? • In either case, could the Consent Agenda be used to minimize redundant presentations and discussion, especially knowing that an item can be pulled from the Consent Agenda if the public or staff thinks it warrants discussion at a Public Hearing? Are certain types of item ineligible for placement on the Consent Agenda? • Should staff presentations have a hard time limit? • Should Councilmember commentary have a hard time limit and if so, per-Councilmember or per-item? • Who is the audience for Roundtable comments? Is it an appropriate time for back-and-forth discussion? • On a related topic, should we consider changes to the format of Public Hearings (within statutory requirements)?
Time frame	Unknown

Town of Herndon

NEW INITIATIVES for CONSIDERATION

Bringing DMV Services to Herndon

BRINGING DMV SERVICES TO HERNDON

by

Councilmember Naila Alam

THE ISSUE

During the height of the pandemic last year and earlier this year, it often took Herndon residents weeks and months to get appointments with local DMV offices and even longer to receive motor vehicle services (renewing driver's licenses, registering personal vehicles etc.) due to COVID-19 restrictions. Working in partnership with the Town and the DMV, we successfully brought DMV services to the people of Herndon. The Town provided much-needed space in the Community Center, and the DMV provided personnel and equipment. Several hundred people including those living at the Harbor House, employees of Herndon businesses, some town employees and many residents with limited access to motor vehicles or those who often use public transportation to go to the DMV took advantage of the services.

The Pandemic still continues, and new variants of Covid-19 are a matter of great concerns. The CDC has issued new guidance to wear masks once again. Therefore, to start providing DMV services at the local level is paramount. The need to restart providing DMV services in Herndon on a regular basis is urgent.

PROPOSED REMEDY

We propose to bring DMV Connect to the town once a month and thereby give our residents an opportunity to receive motor vehicle services in Herndon. Further, we propose to start providing the services from January 2022 between the hours of 9:30 am and 3:30 pm

We request that the Town reserve a large room and a few tables and chairs for this purpose.

Councilmember Naila Alam will work closely with the Town Manager to make necessary arrangements and provide updates to the Council.

BENEFIT TO THE TOWN

We believe DMV services will reinforce the already positive image of the town in this regard.

Considering our town's social and political importance in the entire state, DMV services will give lot of boosts in promoting positive image of the town in terms of public service.