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HERNDON TOWN COUNCIL
Tuesday
April 9, 2019

The Town Council met in public session on Tuesday, April 9, 2019, at 7:00 p.m. in the Herndon Council Chambers Building, 765 Lynn Street, Herndon, Virginia. In attendance were: Mayor Lisa C. Merkel; Vice Mayor Sheila A. Olem; and Councilmembers Jennifer K. Baker; Cesar del Aguila; Pradip Dhakal; Signe Friedrichs; and Bill McKenna.

Others present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Captain Ron Thunman, Herndon Police; Elizabeth Gilleran, Director of Community Development; Bryce Perry, Deputy Director of Community Development; Jennie Tripoli, Director of Finance; Gene Fleming, Director of Golf; Page Kalapasev, Director of Information Technology; Cindy Roeder, Director of Parks & Recreation; Tammy Chastain and John Irish, Deputy Directors of Public Works; John Cassella, Special Projects and Budget Manager; Dennis Holste, Economic Development Manager; Sergeant Bobby Galpin, Herndon Police; Corporal Chad Finley, Herndon Police; Danilo Ruiz, Legislative Assistant; and Margie C. Tacci, Deputy Town Clerk.

Mayor Merkel called the meeting to order at 7:00 p.m., all members present, and with Mayor Merkel presiding.

Mayor Merkel led the audience in the Pledge of Allegiance to the Flag of the United States of America.

PRESENTATIONS

3. Proclamation, to recognize "National Autism Acceptance Month," April 2019.

Mayor Merkel stated that this evening, the Council was proud to recognize "National Autism Acceptance Month," in the Town of Herndon.

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Mayor Merkel welcomed and recognized the following special guests that were present this evening for the presentation:

- Elizabeth Vosseller, Director of the Growing Kids Therapy Center;
- Kelly Berg and Julie Randall, Growing Kids Therapy Center;
- Ian Nordling, Rosaleen Presley & Eric Nordling;
- Ryan, Kevin & Loretta McMahon;
- Tom, Susan & David Pruyn;
- Huan & Huong Pham;
- Emma, Donna & Robert Budway;
- Ben & Bertra McGann;
- Meghann Parkinson;
- Janine Abalos;
- Senator Jennifer Boysko, 33rd District - Senate of Virginia;
- Delegate Ibraheem Samirah, 86th District, Virginia House of Delegates; and
- Jenny Phipps, Legislative Aide to Supervisor John Foust, Dranesville District, Fairfax County Board of Supervisors.

Mayor Merkel stated that it was with much pride and honor for her to read the proclamation into the record. Following the reading of the proclamation, she stated that two years ago, these students wrote the proclamation entirely on their own for the town.

There were brief comments from Council.

Mayor Merkel introduced and invited forward Elizabeth Vosseller, Director, Growing Kids Therapy Center.

Following comments from Ms. Vosseller, several members of the Tribe provided comments, including:

- Ian Nordling;
- Rosaleen Presley;
- Kevin McMahon;
- Ryan McMahon;
- Julie Randall; and others.

Mayor Merkel recognized Senator Boysko and Delegate Samirah, who presented a commendation for Growing Kids Therapy Center from the General Assembly to

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recognize their excellent work and commitment to individuals with autism. They each provided brief comments.

The proclamation was presented to Ms. Vosseller; her staff; the Tribe and their families; Senator Boysko; Delegate Samirah; and Ms. Phipps.

Mayor Merkel stated that Ms. Vosseller provided a video, but they did not have time to play it. She stated that she shared it on her Facebook page.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
NATIONAL AUTISM ACCEPTANCE MONTH
APRIL 2019**

WHEREAS, Autism is a motor sensory difference experienced by children and adults. Some individuals are able to speak and others are not. Speech is not an indicator of intelligence. Autism is a lifelong condition. Skills and quality of life are improved by intervention and support services; and

WHEREAS, People should presume competence in autistic individuals. This means believing autistic individuals can and want to learn. This means providing quality education and intervention; and

WHEREAS, Individuals want to be included in the community. This means ensuring access and acceptance. Autistic individuals are your community members, your neighbors, friends and family. The Town of Herndon proclaims acceptance and welcome for autistic individuals in the community, welcoming autistic individuals comes through education and community supports.

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby proclaims April 2019 as **National Autism Acceptance Month** in the Town of Herndon and urges all employees and residents to participate in our municipality's **National Autism Acceptance Month** activities, in order to become better educated about autism and create a better community for individuals with autism.

4. Proclamation, to recognize "Distracted Driving Awareness Month," April 2019.

Councilmember Baker read the proclamation recognizing "Distracted Driving Awareness Month" into the record.

There were brief comments from Council.

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Corporal Chad Finley provided brief comments and expressed his appreciation for the recognition.

The proclamation was presented to Captain Thunman, Corporal Finley, and other officers present from the Herndon Police Department.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
DISTRACTED DRIVING AWARENESS MONTH
APRIL 2019**

Distracted driving is any activity that could divert a driver's attention away from the primary task of driving a vehicle. All distractions endanger driver, passenger and bystander safety. According to the National Highway Traffic Safety Administration, in 2016 alone ~ 3,450 lives were lost in distraction-affected crashes, while an estimated 391,000 were injured in motor vehicle crashes involving distracted drivers in 2015. Engaging in visual-manual subtasks associated with the use of hand-held phones and other portable devices increases the risk of getting into a crash by three times, while texting and driving increases the risk for a crash by 23 times. Considering the significant risks, the best way to end distracted driving is by educating all Americans about the dangers inherent with these behaviors.

Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the month of April 2019, as **Distracted Driving Awareness Month** in the Town of Herndon; support the Herndon Police Department in raising awareness about distracted driving; and encourage education about of the significant dangers of distracted driving ~ improving highway safety for all citizens and visitors to Herndon, Virginia.

5. Proclamation, to recognize "Nepalese American Heritage Day," April 20, 2019.

Mayor Merkel stated that the Town of Herndon was proud to be the first government entity in history ~ including local, state, and federal ~ to proclaim "Nepalese American Heritage Day" in the United States.

Councilmember Dhakal read the proclamation recognizing "Nepalese American Heritage Day" into the record.

There were brief comments from Council.

Mayor Merkel recognized and invited forward Arati Sigdel, who provided brief comments and expressed appreciation for the recognition.

Following Ms. Sigdel's comments, the Council was presented plaques from Nepal.

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The proclamation was presented to the individuals that were present for the presentation, including:

- Senator Jennifer Boysko, 33rd District - Senate of Virginia;
- Delegate Ibraheem Samirah, 86th District, Virginia House of Delegates;
- Parshuram Bhandari;
- Govinda Subedi;
- Arjun Sigdel;
- Gunaraj Luitel;
- Bimal Acharya;
- Chiranjivi Lamichhane;
- Arati Sigdel;
- Sushila Subedi;
- Sudip Khanal;
- Mohan Uprety;
- Krishna Dharabasi;
- Bijay Thapa;
- Bishwa Thapa; and
- Toya Poudyal.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
NEPALESE AMERICAN HERITAGE DAY
APRIL 20, 2019**

The United States recognized Nepal in 1947, and the two countries established diplomatic relations in 1948. The migration of Nepalese Americans to the United States began in the 20th century.

Nepalese American Heritage Day is recognized on the third Saturday of April each year for celebration within the first week of Nepalese New Year, which is on April 14, 2019. April 20th marks this year's **Nepalese American Heritage Day**.

The Town of Herndon takes great pride to be the home of many Nepalese Americans that includes Councilmember Pradip Dhakal, who is one of four Americans of Nepalese origin, that have been elected to public office in the United States.

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Therefore, the Mayor and Town Council of the Town of Herndon, Virginia, hereby proclaim the 20th day of April, 2019 as **Nepalese American Heritage Day** in the Town of Herndon; recognize the contributions of Americans of Nepalese origin, who through their hard work and engagement, dedication to family and strong sense of community, have helped to unite and sustain our nation, and break down barriers of discrimination, indifference, intolerance, working towards the inclusion of people from all backgrounds.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby celebrate the history, traditions and culture of Americans of Nepalese origin and applaud their commitment to leadership, dedication to knowledge and determination to succeed; and highlight their contributions across all aspects of our society, including the arts, science, industry, government, and commerce.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, hereby encourage all residents to learn more about the history and culture of Nepal, and to celebrate the contributions that make the small town they call home ~ Herndon ~ a better place to live and work.

6. COMMENTS FROM THE TOWN MANAGER

William H. Ashton II, Town Manager, stated that after months of comprehensive engineering and zoning reviews, the Comstock downtown redevelopment site plan has been approved. The application would move forward to the Heritage Preservation Review Board (HPRB). Comstock submitted three certificates of appropriateness to appear before the HPRB and staff were reviewing the application for completeness. He stated that the application could be before the HPRB as early as May. He stated that this was a major milestone after months of due diligence and applauded staff for their detailed work to ensure that the application met standards.

7. COMMENTS FROM THE TOWN COUNCIL

Councilmember McKenna: Provided an update on the Dulles Phase 2 rail project. He stated that the Herndon parking garage would be opening this week. Rails were at 98 percent capacity, and things were moving forward as planned.

Councilmember Friedrichs: Stated that she was sorry she was not able to attend the Mayor's Volunteer Appreciation reception on Sunday, April 7, and she expressed appreciation for volunteers. She encouraged citizen comments on the budget and reviewed comments that have already been received.

Councilmember del Aguila: Echoed Councilmember Friedrichs' comments about budget. He encouraged further comments.

Councilmember Dhakal: Thanked the Herndon Police Department for their awards ceremony. He stated that there were very powerful stories and he was honored to be a part of it.

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Councilmember Dhakal thanked volunteers for their efforts in the town.

Mayor Merkel: Echoed her colleague's comments about the Mayor's Volunteer Appreciation reception and thanked those who volunteer.

Vice Mayor Olem: Stated that Spring Clean-up was underway and encouraged those interested to participate.

Vice Mayor Olem stated that the Farmer's Market would be opening next week, on Thursday, April 18.

Vice Mayor Olem echoed her colleague's comments about the Mayor's Volunteer Appreciation reception.

8. COMMENTS FROM THE AUDIENCE

There were no comments from the audience.

PUBLIC HEARINGS

9. **Ordinance 19-O-07, to consider Development Plan DP #17-01, an application for a Herndon Transit-Oriented Core Development Plan to allow a mixed-use development located at 555 Herndon Parkway. Owner: 555 Herndon LLC; Representative: Frank J. Poli, Senior Vice President, Penzance Management, LLC.**

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the Friday, March 8 and Friday, March 15, 2019 issues.

Mayor Merkel stated that this item was continued from the Council's March 26 public hearing to allow additional time for review.

Mayor Merkel opened the public hearing and stated that comments received on this item have been entered into the record. She recognized Bryce Perry, Deputy Director of Community Development, for the staff report.

Mr. Perry presented the staff report and PowerPoint dated April 9, which are on file in the Town Clerk's office. He reviewed the application, including the location, zoning, proposed design and developmental plan, use and proffers. He stated that the applicant and staff have worked through several comments throughout the review process. Staff recommends approval of the DP #17-01, as presented.

Mayor Merkel invited the applicant or applicant's agent forward for comments.

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- Ken Wire, Wire Gill, representing the applicant, provided comments on the application. He outlined the intended process and stated that they were happy to move forward.

Following the public hearing (there were no comments from the audience), Vice Mayor Olem moved approval of Ordinance 19-O-07, as presented. Councilmember del Aguila seconded the motion.

There were brief comments from Council.

The question was called on the motion, which carried by a 7-0 vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-07, to adopt Herndon Transit-Oriented Core (HTOC) Development Plan DP #17-01. To amend the zoning of the property located at 555 Herndon Parkway identified as Fairfax County Tax Map Reference Number 0164-10-0002C to allow a mixed-use development at a 4.3 FAR. The subject parcel contains an area of 4.3439 acres, and is zoned PD-TOC, Planned Development – Transit-Oriented Core. It is designated in the Town of Herndon 2030 Comprehensive Plan as Regional Corridor Mixed Use.

In adopting this Ordinance, the Town Council has considered the factors set out in 15.2-2284, Code of Virginia (1950) as amended.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that:

A. The zoning of the property described below, lying in the Town of Herndon, Fairfax County, Virginia, is amended to allow the mixed use redevelopment at a 4.3 FAR as proposed in the Penzance/Christopher Consultants/DCS Design/Wire Gill Development Plan dated March 14, 2019 and the Proffer Statement dated March 20, 2019 for DP #17-01 and in accordance with the Section 78-50.8 of the Town of Herndon Zoning Ordinance.

The property is shown on the above referenced Development Plan and described in the land records of Fairfax County in Deed Book 23971 page 0001. The property is further described in the metes and bounds dated November 25, 2015 included as an attachment to this ordinance. Total land area of the property is 4.3439 acres (189,220 square feet).

B. This rezoning shall be governed by this ordinance, the Town of Herndon Zoning Ordinance, the above referenced Proffer Statement for DP#17-01 and the above referenced Development Plan for DP#17-01. The Proffer Statement is included as an attachment to this ordinance. This rezoning is consistent with the 2030 Comprehensive Plan of the Town of Herndon and the

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incorporated Herndon Metro Station Area Study and Herndon Transit-Oriented Core Plan adopted February 28, 2012. It is generally compliant with the Urban Design and Architectural Guidelines for the Herndon Transit-Oriented Core adopted November 26, 2013.

C. The Town Council approves the following modification to the zoning regulations, as allowed under Section 78-50.2(d):

A modification to Section 78-50.8(g)(4)(a) *Dimensional Standards* to allow tower separation for buildings over 80 feet in height be reduced from 65 feet to not less than 55 feet.

D. As to the modification set out in item C. above, the Town Council finds that such modification will afford equal or greater assurance of meeting the goals of the zoning ordinance, Town of Herndon, Virginia, as set out in the preamble of that ordinance and the goals of the statement of intent of the PD-TOC Planned Development – Transit-Oriented Core zoning district.

E. This ordinance shall be effective on and after its adoption.

[Note: Attached for reference, at the end of the minutes, is the Proffer Statement dated March 20, 2019 and the Transportation Demand Management (TDM) Plan for 555 Herndon Parkway dated February 8, 2019 and revised March 14, 2019.]

10. **Ordinance 19-O-09, to Levy Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2020 budget;**
11. **Ordinance 19-O-10, to amend Chapter 30 (FINANCE & TAXATION), Article IX (Meals Tax), Sec. 30-401 (Levy), for a possible increase in the meals tax up to 4.0 percent. (The current rate is 2.5 percent.);**
12. **Ordinance 19-O-11, to amend Chapter 74 (UTILITIES), Article II (Sewers & Sewage Disposal), Division 5 (Sanitary Sewer System Rates & Charges), Section 74-262; and Article III (Water), Division 2 (Service), Section 74-326 (Schedule of Charges), to increase the usage charges for sanitary sewer and water, effective for meter readings taken on or after July 1, 2019;**
13. **Resolution 19-G-31, to adopt Fiscal Planning Resolution for the Fiscal Year 2020 budget; and**
14. **Ordinance 19-O-12, to Appropriate Funds to Implement the Fiscal Year 2020 budget, establishing the pay plan, and reserving on-going and capital funding for this fiscal year.**

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Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers*, showing that notices of said public hearings had been duly advertised in the Friday, March 29 and Friday, April 15, 2019 issues.

FY 2020 Proposed Budget

Mayor Merkel stated that the next five items on the agenda relate to the Town Manager's proposed FY 2020 budget. She outlined the budget process and stated that she would call on disclosures by Council; she would recognize the Town Manager, William H. Ashton II; and following his presentation, she would recognize Council for questions.

The Council would conduct separate public hearings on the:

- Ordinance to levy real estate taxes;
- Ordinance, to amend Chapter 30 (FINANCE & TAXATION), for a possible increase in the meals tax; and
- Ordinance, to amend Chapter 74 (UTILITIES), to increase the usage charges for sanitary sewer and water.

Followed by concurrent public hearings on the:

- Fiscal planning resolution to adopt the FY 2020 budget; and
- An ordinance to implement the FY 2020 budget; establish a pay plan and reserve on-going and capital funding for this fiscal year.

Mayor Merkel stated that following the public hearings this evening, she would ask for a motion to continue the public hearings until April 23.

Mayor Merkel stated that a second public hearing on each item in the Town Manager's proposed FY 2020 budget was advertised for the Council's April 23 public hearing. Tonight's public hearing would remain open and individuals may continue to email their comments to the Town Clerk, which she would distribute to the Council and Town Manager and would enter into the record.

Disclosures:

- **Mayor Merkel and Councilmember Dhakal** stated, for the record, that throughout the year, they may be invited to attend events hosted by organizations as guests. Both stated that they are able to participate in the budget deliberations regarding non-profit organizations fairly, objectively, and in the public interest, and that they have filed the appropriate disclosure with the Town Clerk and Town Attorney.
- **Vice Mayor Olem; and Councilmembers Baker, del Aguila, Friedrichs and McKenna** stated, for the record, that they are unpaid

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volunteers for various organizations in the community, some of which may receive grants or in-kind benefits from the town. Throughout the year, they may be invited to attend events hosted by these organizations as guests. They all stated that they were able to participate in the budget deliberations regarding non-profit organizations fairly, objectively, and in the public interest, and that they have each filed the appropriate disclosure with the Town Clerk and Town Attorney.

Mayor Merkel recognized William H. Ashton II, Town Manager, for the staff report.

Mr. Ashton provided an overview of the proposed FY 2020 budget and presented a PowerPoint, dated April 9, which is on file in the Town Clerk's office. He stated that he submitted the proposed budget on Friday, March 29, pursuant to the state code.

General Budget Overview

Mr. Ashton described the budget process and outlined Council priorities and guidance. He stated that the budget was structured to meet macro-level budgeting issues. He stated that by the time he met with councilmembers in two-by-two meetings, the Business Professional Occupational License (BPOL) tax loss had to be offset significantly.

Mr. Ashton reviewed the tax structures and rate changes proposed in the budget. He stated that the property tax had remained the same. He proposed a one-cent increase to the real estate tax. He proposed a one percent increase to the meals tax to help offset the BPOL loss. He reviewed challenges to transportation grants and losses to grant funding for transportation projects.

Mr. Ashton stated that the total budget decreased 11.6 percent, primarily because the town would not be purchasing water capacity this year, as it did last year.

General Fund

Mr. Ashton reviewed the General Fund. He discussed personnel needs, including funded positions, health insurance increases, and salary adjustments. He stated that this was the first time in the last few budgets where there was an increase to health care costs. Mr. Ashton reviewed the major funded projects, Operations and Maintenance, and the Capital Improvement Program (CIP).

Enterprise Funds

Mr. Ashton reviewed the enterprise funds, which are self-sustaining. He discussed the proposed changes to the water and sewer enterprise funds. The rates were changed in FY 2019, which had not been changed since FY 2012. He stated that the availability fees revenue funds the capital improvements to the

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water and sewer funds. He reviewed other proposed changes to the fees, which Council previously reviewed in its rate study.

Mr. Ashton reviewed Center Street construction necessities for the Herndon Transit Oriented Core (HTOC) development and planned water and sewer projects, as provided in the presentation.

Mr. Ashton discussed the golf course fund, cemetery fund, and downtown parking fund.

Budget Overview

Mr. Ashton continued his PowerPoint presentation and highlighted activities in the budget that drew on the Council's priorities and vision. Some of the significant items included technology updates and education and leadership opportunities. The education opportunities included the George Mason University Master of Public Administration cohort.

Mr. Ashton summarized the FY 2020 budget and reviewed staff's efforts to work toward updating budgetary policies.

At the next work session, Mr. Ashton stated that the Council would discuss several topics further, such as unfunded priorities and community donations.

FY 2020 Budget Discussion

There was brief discussion amongst Council and staff on the FY 2020 Budget.

In response to queries from Councilmember McKenna, Mr. Ashton stated that he received the report on the water and sewer models on Wednesday, April 3 and staff was reviewing it. He stated that he would schedule a work session item for the Council when the data was returned. He stated that the town also needed input from Fairfax County.

There was a brief question and answer period between Councilmember Friedrichs and Mr. Ashton. Councilmember Friedrichs stated that it seemed the town had been taking a lot of hits lately and they seem to keep coming. She asked if the proposed one percent increase to the meals tax was likely to absorb more.

Mr. Ashton stated that the town was in a strong fiscal position. His concern was not about a one-time hit, but repeated hits where funds needed to be replenished. He stated that the proposed meals tax increase should be enough for right now.

In response to queries from Councilmember Friedrichs, Mr. Ashton explained the BPOL tax process. He stated that the town does not budget for the fullest take of BPOL. The tax funds capital projects and there are several critical upcoming projects.

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Councilmember Friedrichs asked if revenues from the transportation projects would go back after the "Metro money" was figured out.

In response to queries from Councilmember Friedrichs, Mr. Ashton stated that the transportation funding was uncertain due to other state project needs and how competitive it was to receive funding at the state level.

Mayor Merkel stated that comments received by Council on the budget items had been entered into the record.

Ordinance 19-O-09

Mayor Merkel opened the public hearing called for comments from the audience on Ordinance 19-O-09, to levy taxes on real estate and manufactured homes.

The following individual provided testimony:

- Ann Vayda, 631 Oak Street, Herndon, provided comments on the real estate tax rate.

Councilmember Baker moved to continue the public hearing on Ordinance 19-O-09 to April 23, 2019. Councilmember McKenna seconded the motion.

In response to an inquiry from Mayor Merkel, Lesa Yeatts, Town Attorney, confirmed that because the motion was to continue the public hearing, it did not require a roll call vote.

The question was called on the motion, which carried by unanimous vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-10

Mayor Merkel opened the public hearing called on comments from the audience for Ordinance 19-O-10 on the possible increase to the meals tax .

The following individuals provided testimony:

- Brenda Wickman, 925 Vine Street, Herndon, provided comments on the meals tax and asked Council to exercise caution. She asked for clarification on the wording of the ordinance; and
- Ann Vayda, 631 Oak Street, Herndon, provided comments on the meals tax. She expressed concern over retail vacancies and raising the meals tax. She encouraged Council to rescind the meals tax to a nominal placeholder.

On motion of Vice Mayor Olem, seconded by Councilmember Dhakal, and carried by unanimous vote, the public hearing on Ordinance 19-O-10 was continued to

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April 23, 2019. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-11

Mayor Merkel opened the public hearing and called for comments from the audience on Ordinance 19-O-11, to increase the sanitary sewer and water charges.

On motion of Councilmember McKenna (there were no comments from the audience), seconded by Councilmember Friedrichs, and carried by unanimous vote, the public hearing on Ordinance 19-O-11 was continued to April 23, 2019. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Resolution 19-G-31 and Ordinance 19-O-12

Mayor Merkel opened the public hearings and called for comments from the audience concurrently on Resolution 19-G-31 and Ordinance 19-O-12. She stated that the resolution was on the proposed Fiscal Planning for FY 2020 and the proposed ordinance was to appropriate funds to implement the FY 2020 budget, establish the pay plan, and reserve on-going and capital funding.

Mayor Merkel reminded the audience that this separate action would be taken on both items.

The following individuals provided testimony about the importance of the arts in town and requested the Council support arts groups in the proposed budget:

- Michael O'Reilly, Chairman of the Board of ArtsHerndon, 761 Monroe Street, Herndon, reviewed events, exhibits, and projects that ArtsHerndon hosts. He encouraged the Council to be as generous as means would allow;
- Melanie Stanley, 12228 Park Stream Terrace, Herndon, expressed her support for arts and ArtSpace. She asked for the Council's continued support for ArtsHerndon;
- Mike Maggio, 1549 Coomber Court, Herndon, provided comments on community, quality of life, and business impact of the arts. He hoped the town would continue its support for ArtSpace and the arts;
- Hoffman, Producing Artistic Director, NextStop Theatre, 269 Sunset Evan Park Drive, Herndon; provided comments on the town's donations to non-profits. He addressed concerns that Councilmember Baker had expressed at a previous public hearing, only on behalf of NextStop. He encouraged the Council to consider new processes to standardize and guide non-profits in their donation requests and to allow for greater transparency. He provided further comments on NextStop's request and thanked the town for its support;

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- John Boylan, President, Dulles Regional Chamber of Commerce, 730 Elden Street, Herndon, provided comments to support community investment in the arts; and
- Don Owens, 847 Station Street, Herndon, provided comments to support community investment in the arts. He thanked the Council for its support.

Resolution 19-G-31

On motion of Councilmember del Aguila, seconded by Councilmember Dhakal, and carried by unanimous vote, the public hearing on Resolution 19-G-31 was continued to April 23, 2019. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-12

Vice Mayor Olem moved to continue the public hearing on Ordinance 19-O-12 to April 23, 2019. Councilmember Baker seconded the motion.

Councilmember McKenna thanked those who provided comments and for staying late. Mayor Merkel concurred.

The question was called on the motion, which carried by unanimous vote. The vote was: The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

GENERAL

15. **Ordinance 19-O-13, to amend Chapter 2 (ADMINISTRATION), Article I (In General), Section 2.5, to add a preamble, additional language to ethical responsibilities, and specific references to the Town Charter and Town Code.**

Mayor Merkel stated that comments received on the proposed ordinance have been entered into the record. She recognized Lesa Yeatts, Town Attorney, for the staff report.

Ms. Yeatts presented the staff report dated April 2, which is on file in the Town Clerk's office. Ms. Yeatts reviewed the state code allowances, and the prior Council discussions. The proposed ordinance would amend Section 2.5, as follows:

- Add a preamble reflecting the values of the town;
- Create numbered paragraphs for ethical responsibilities;
- Add specific language consistent with town values; and

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- Add cites to applicable Town Charter and Town Code sections.

Councilmember Friedrichs moved approval of Ordinance 19-O-13, as presented. Councilmember McKenna seconded the motion.

There were brief comments from Council.

In response to comments from Councilmember del Aguila, Ms. Yeatts addressed the creation of a social media policy.

The question was called on the motion, which carried by unanimous vote. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

Ordinance 19-O-13, to amend Chapter 2 (ADMINISTRATION), Article I (In General), Section 2.5, of the Code of the Town of Herndon, to add a preamble, additional language to ethical responsibilities, and specific references to the Town Charter and Town Code.

BE IT ORDAINED by the Town Council of the Town of Herndon, Virginia, that:

1. The following section of the Herndon Town Code (2000), as amended, is amended and re-ordained as follows:

Sec. 2-5. - Code of ethics for the members of the town council and council appointed board and commission members.

Preamble

WHEREAS, the proper operation of local government requires that public officials be independent, impartial and accountable to the citizens, that governmental decisions and policy be made through proper processes, that public office not be used for personal gain, and that the public have confidence in the integrity of its government and public officials; and

WHEREAS, as public officials we are charged with upholding the trust of the citizens and with obeying the law and respecting established policies and procedures; and

WHEREAS, as public officials we have taken the oath of office and have pledged that we will support and maintain the Constitution and laws of the United States, and the Constitution and laws of the Commonwealth of Virginia and further that we will faithfully and impartially discharge the duties of our office.

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NOW THEREFORE, in recognition of our obligations as citizens of the Commonwealth of Virginia and as public officials and citizens of the Town of Herndon, we do hereby adopt the following Code of Ethics to guide the Town's council and council appointed board and commission members.

Ethical Responsibilities

1. Faithful and Impartial Performance of Duties

- (a) Members of the town council and council appointed board and commission members shall *faithfully and impartially* perform their duties to the very best of their abilities and demonstrate integrity, *independence*, honesty, and ethical behavior in the conduct of all town business.

2. Demonstrate Integrity and Respect

- (b) Members of the town council and council appointed board and commission members shall treat the public, town staff and each other in a *respectful and* courteous manner and shall at all times refrain from abusive conduct, threatening or intimidating language or gestures, personal charges, or verbal or written attacks concerning the character or motives of other members of the town council, town boards and commissions, town staff, or the public.

3. Follow established town policies and procedures

- (ea) Members of the town council and council appointed board and commission members shall bring any concerns about the performance of a *town council member or council appointee* to the entire council. *Herndon Town Charter Sec. 3.5 and 3.9*
- (b) Concerns about the performance of a town employee shall be discussed privately with the town manager. *Herndon Town Charter 4.1 and Herndon Town Code Sec. 54.1*
- (dc) Members of the town council and council appointed board and commission members should direct significant requests for information or discussions concerning town business to the town manager, who directs the day-to-day operations of the town and its employees. *Herndon Town Code Sec. 54.1*

4. Follow the Law

- (e) Members of the town council and council appointed board and commission members shall, *as required by the Code of Virginia*, fully

**April 9, 2019
(public hearing)**

comply with the provisions of the Virginia Freedom of Information Act, Code of Virginia, §§ 2.2-3700, et seq. and the State and Local Government Conflict of Interests Act, Code of Virginia, §§ 2.2-3100—2.2-3131, as applicable.

2. This ordinance shall be effective on and after the date of its adoption.

CONSENT AGENDA

16. **Proclamation, to honor Mani Fierro on posthumously being named the 53rd Herndon Rotary Citizen of the Year; and**
17. **Resolution 19-G-32, to award contract IFB #19-09, Asphalt Concrete Paving & Milling.**

On motion of Vice Mayor Olem, seconded by Councilmember McKenna, and carried by unanimous vote, the following Consent agenda items were approved, without comment. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem and Mayor Merkel voting "Aye."

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION
MANI FIERRO DAY
APRIL 11, 2019**

Each year, the Herndon Rotary Club names an individual who has greatly contributed to the Herndon community through volunteerism and community service as its "Citizen of the Year." This year, the Herndon Rotary Club has posthumously honored **Mani Fierro** ~ dedicated community volunteer ~ as the **53rd Herndon Rotary Citizen of the Year**.

Mr. Fierro spent countless hours of his personal time volunteering with many organizations, including ~ Jeanie Schmidt Free Clinic, where he served as president; Herndon Rotary Club, where he was an active member and Board Member; Loyal Order of Moose; Herndon Police Citizens' Support Team; American Cancer Society; and the Advisory Board for the Northern Virginia Community Foundation Herndon Rotary Scholarship Program. Mr. Fierro served as a mentor for many; a dedicated little league coach; and he regularly provided free legal services to charitable organizations and those in need in Virginia. He will also be remembered as a leading member of the Herndon business community.

The Herndon community was dealt with an irreplaceable loss when Mani passed in November 2018. The personal commitment and attributes that Mani embraced and shared are very rare in most individuals and are what made Mr. Fierro a leading volunteer and citizen in our community.

**April 9, 2019
(public hearing)**

Therefore, to honor his dedicated volunteer spirit and unwavering commitment to improving the quality of life in Herndon, the Mayor and Town Council of the Town of Herndon, Virginia, proclaim April 11, 2019 as **Mani Fierro Day** in the Town of Herndon.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, commend **Mani Fierro** on being named posthumously as the **53rd Herndon Rotary Citizen of the Year**, the highest honor presented by the Herndon Rotary Club, and look forward to celebrating his life and momentous achievements ~ together with his family ~ at the Rotary Club's banquet in his honor on Thursday, April 11, 2019.

Resolution 19-G-32, to award contract #19-09, Asphalt Concrete Paving & Milling.

WHEREAS, Asphalt Concrete Paving & Milling is an annual program funded for street rehabilitation; and

WHEREAS, IFB #19-09, Asphalt Concrete Paving & Milling was advertised on February 28, 2019; and

WHEREAS, the following bids were received and opened on March 21, 2019 at a public bid opening:

<u>Contractor</u>	<u>Bid</u>
Virginia Paving Company	\$703,510.25
Arthur Construction Co., Inc.	\$765,350.00
Commonwealth Paving, Inc.	\$807,345.75
Finley Asphalt & Sealing	\$954,229.40
Pro Pave, Inc.	\$1,047,091.51; and

WHEREAS, in accordance with the specifications, the contract may be extended by the town for four successive one-year periods; and

WHEREAS, it is the staff's recommendation to award the contract to the lowest responsive and responsible bidder, Virginia Paving Company; and

WHEREAS, funds to support this contract are available in the FY 2019 Street Maintenance & Construction, Repaving Program, budget account 0010886-420710 and the Major Road Repaving Projects CIP account 0150886-491720; and

WHEREAS, other Budget and Reserve accounts as needed will be used to fund the work under this contract.

**April 9, 2019
(public hearing)**

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby awards Contract #19-09, to Virginia Paving Company for Asphalt Concrete Paving & Milling in the amount of \$703,510.25.

BE IT FURTHER RESOLVED that staff is authorized to complete work using this contract with appropriate funding sources identified in the FY 2019 Budget and CIP, and subsequent approved budgets, as appropriate.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:54 p.m.



**Lisa C. Merkel
Mayor**



**Amina Ait-Bella
Legislative Assistant**



Minutes approved by Town Council: May 28, 2019.



DESCRIPTION OF PARCEL 2C

PARKWAY TRADE CENTER

TOWN OF HERNDON

FAIRFAX COUNTY, VA

NOVEMBER 25, 2015

BEGINNING at a point on the southerly right of way line of Herndon Parkway State Route #924, said point being the northeast corner of Lot 6 Parkway Trade center and the northwest corner of the property herein described;

Thence with the southerly line of Herndon Parkway S 79°09'53" E a distance of 238.40 feet to a point of curvature;

Thence with a curve turning to the left with an arc length of 138.18 feet, with a radius of 840.00 feet, with a chord bearing of S 83°52'38" E, with a chord length of 138.02 feet, with a delta angle of 9°25'30" to a point;

Thence departing the southerly right of way line of Herndon Parkway and running with the westerly line of Lot 3 Parkway Trade Center S 03°17'45" E a distance of 405.22 feet to a point on the northerly line of the Dulles Toll Road Route #267;

Thence with the northerly line of the Dulles Toll Road with a curve turning to the right with an arc length of 486.05 feet, with a radius of 7439.44 feet, with a chord bearing of S 88°34'33" W, with a chord length of 485.97 feet, with a delta angle of 3°44'36" to a point;

Thence departing the northerly line of the Dulles Toll Road and running with the easterly line of Lot 6 Parkway Trade Center N 10°50'07" E a distance of 484.81 feet to the point of beginning.

Containing an area of 189,218 square feet or 4.3439 acres.

PROFFER STATEMENT**555 Herndon Parkway****March 20, 2019**

Pursuant to Section 15.2-2303 of the Code of Virginia (1950, as amended) and Section 78-50.8 of the Town of Herndon Zoning Ordinance, as amended (the "Zoning Ordinance"), the undersigned, for themselves and their successors and/or assigns (referred to hereafter, both collectively and, where appropriate, individually, as the "Applicant"), hereby proffers that the development (the "Development") of the parcels that are the subject of this application, which are shown on the Fairfax County 2015 Tax Map as parcels 16-4(10))2C (the "Property") shall be in substantial conformance with the conditions set forth below (the "Proffers") if and only if Development Plan #17-01 ("Development Plan") is approved.

1. DEVELOPMENT PLAN.

- a. The Property shall be developed in substantial conformance with the development plan entitled 555 Herndon Parkway prepared by Christopher Consultants and Davis Carter Scott dated February 14, 2019 (the "Development Plan") and these Proffers. It is understood by the Applicant that all other applicable regulations and policies governing land development within the Town of Herndon (the "Town") shall apply to the Property and its development unless specifically modified by the language of this approval.
- b. Minor modifications of the Development Plan may be permitted without the need for an amendment to this approval when necessitated by final engineering or site design provided that the development is in substantial conformance with the Development Plan, these Proffers, and as approved by the Architectural Review Board ("ARB"), if applicable. Substantial conformity shall be determined as provided in the Zoning Ordinance.
- c. The Applicant may proceed with the approval of a unified commercial subdivision development plan without the need to amend these Proffers, provided that the proposed subdivision does not adversely impact the ability of the site to develop in accordance with the Development Plan and these proffers.

2. ARCHITECTURE AND URBAN DESIGN

- a. The final architectural treatment and exterior design of all buildings within the Development Plan shall create a sense of identity and place through the use of unifying elements such as materials, textures, color, lighting, and landscaping as

generally reflected on the materials and exhibits contained in the Development Plan and the HTOC Urban Design & Architectural Guidelines.

- b. Architectural plans may be revised subsequent to the final approval of the Development Plan and pursuant to approval by the ARB.
- c. Development Phasing. The Applicant shall construct the streets and provide pedestrian improvements, public accessible parks, private amenities and public accessible facilities on the Property in conjunction with the development of each new building in a manner that reflects the intent of that shown within the Phasing Exhibits contained in the Development Plan. Development may proceed in any order provided that each building provides the phasing conditions depicted on the Phasing Exhibits. Each phase of the project shall also comply with the minimum parking requirements. Adjustments to the phasing boundaries may be approved with the site plan approvals provided that the adjustments do not materially adversely affect the other phases.
- d. Conceptual Open Space Plan. The Development Plan includes a conceptual landscape plan for the Property as shown on Sheet 8.0 consisting of approximately 1 acre and including details for streetscapes, plazas, publicly accessible park areas, courtyards and private amenity areas. As part of each plan approval, more detailed landscape plans for each building phase shall be provided and subject to the review and approval of the ARB, provided that the detailed landscaping and hardscape plans are found to be in substantial conformance with the concepts included in the Development Plan.
- e. Garage Screening.
 - i. The Applicant shall screen the interim phases of the parking garages with temporary decorative treatments such as fabric panels or decorative designs subject to the review and approval of the ARB.
 - ii. The permanent garage facades shall be treated with architectural enhancements that integrate the garage into the overall project design. Such enhancements may include, continuing design elements for the primary use above down through the garage façade, incorporating decorative paneling within garage openings, landscaping, lighting or metal designs subject to the review and approval of the ARB.
- f. First Floor Activation. The Applicant shall include active first floor uses in the areas shown in the Development Plan facing and turning the corner of Herndon

Parkway and facing the internal open space courtyard. Active first floor uses shall incorporate transparent exterior store fronts and lobbies accessible from the abutting streetscape.

- g. Interior Noise Attenuation. The Applicant shall submit highway noise studies, prepared by a qualified acoustical consultant, at the time of each building permit submission to determine what if any noise attenuation measures are needed to achieve Day-Night Average Sound Levels (DNL) of no more than 45 dBA for interior residential uses or hotel uses and no more than 55 dBA for interior office uses. Based on the findings of the studies, the Applicant shall incorporate the appropriate noise attenuation elements into the design and construction documents to achieve the recommended DNL for the applicable building(s) or portions thereof.
- h. Streetscape Furnishings, Materials and Lighting. Streetscape furnishing, materials and lighting plans shall be provided as part of the site plan and shall be in substantial conformance with the HTOC Urban Design & Architectural Guidelines and the Herndon Streetscape Manual and subject to review and approval by the ARB. Unified and high-quality streetscape materials shall be provided and may include, but not be limited to, unit pavers, seat walls, tree space edging, lighting, traffic signal poles, benches, trash receptacles and other hardscape elements. These plans shall include general product information and approximate locations of furnishings and materials to be located in the streetscape between the building face and the curb.
- i. Sugarland Trail Run fence and Lighting. The Applicant shall install a metal fence and lighting along the southern border of the Property. The style of the components shall reflect the HTOC Urban and Design and Architectural Guidelines and are subject to the review and approval of the ARB. The proposed fence and lighting shall be incorporated in the first site plan for the Property and shall be built with the first phase of the project.
- j. Decorative Surface Treatments. The Applicant shall utilize decorative pavers for high visibility crosswalks at all intersections. Similar crosswalks designed to blend with the adjoining streetscape pavements shall extend over aprons and curb cuts to loading docks or similar vehicular entrances and exits. Within the roadway a special decorative surface treatment or pavers shall highlight the pedestrian/vehicular entrance into the garage and/or pedestrian connections. The style of the crosswalks and special surface treatments shall reflect the HTOC Urban Design Guidelines and are subject to the review and approval of the ARB.

- k. Design of Central Plaza and Internal Street. The plaza will include decorative pavers and crosswalks, flush curbs, bollards and other design elements as shown, subject to the review and final approval of the ARB. The internal street installed with Building A shall include final materials including the decorative pavers within the drive aisle as shown on Sheet 7.0 of the development plan.
 - l. Pedestrian Passageways. The Applicant will continue to refine the pedestrian passageways to increase visibility through the use of lighting and distinct building materials. The Applicant will work with the Town to increase passageway ceiling height on the eastern passageway where possible.
3. USES. Unless modified by an amendment to the approved Development Plan, any use or combination of uses permitted in the PD-TOC may be established on the Property so long as the Project is in substantial conformance with graphics and notes on Development Plan Sheet 4.0 and the following:
- a. The total maximum project floor area is limited to 813,637 square feet of GFA which is a 4.3 FAR based on a lot area of 189,218 square feet.
 - b. Total residential development shall not exceed 488,182 square feet of GFA;
 - c. Total office development shall not be less than 200,000 square feet of GFA.
 - d. Total retail development shall not be less than the minimums shown on Sheet 4.0 of the Development Plan.
 - e. Incorporation of a hotel use is permitted but shall be in lieu of the residential GFA.
 - f. Subject to Zoning Ordinance Article IX, Temporary uses and Structures, the Applicant, or its designee, shall be permitted to operate or hold festivals, fairs farmers' markets, food trucks/carts or similar activities on the Property, either in the interim surface parking lots or within publicly-accessible privately-owned open spaces, pedestrian ways and private streets. Portions of the private street network may be closed for such activities, provided that alternate circulation, garage and parking access is maintained.
 - g. The interim surface parking lots on the Property as shown on Sheets 5.1 through 5.6 of the development plan may remain as-is until each phase is completely built-out. Parking may only be used for on-site uses and shall not be used for Metro

parking.

4. TRANSPORTATION.

- a. Off-Site Transportation Improvement Contribution. The Applicant shall make a per GFA foot contribution of \$1.50 to the Town to address off-site transportation improvements. This contribution shall be paid on a pro-rata basis upon or prior to the issuance of an occupancy permit for each building based on the actual GFA of the building.
- b. The Applicant shall receive a full credit towards the contribution provided in Proffer 4(a) for any other requested off-site transportation improvement expenditures, except for improvements required by Zoning Ordinance and HTOC Urban Design & Architectural Guidelines.
- c. Traffic Signal. Concurrent with the submission of the site plan for Office Building B, the Applicant shall prepare and submit to the Town the appropriate traffic signal warrant analysis for a traffic signal at the western entrance to the Property and Herndon Parkway and diligently pursue any off-site easements and permission needed to construct the signal. If the applicable warrants are met, the signal warrant study is approved by the Town all design exceptions and waivers necessary for installation of the signal are approved, and all necessary off-site easements and permission are obtained, then the Applicant shall install the signal prior to the first certificate of occupancy for Building B. The Applicant shall deduct 50% of the total cost of the signal from the Off-Site Transportation Improvement contribution in Proffer 4(a) up to a total signal cost of Four Hundred Thousand Dollars (\$400,000.00). If the cost of the signal exceeds Four Hundred Thousand Dollars (\$400,000.00), the Applicant will shall deduct 100% of the costs above \$400,000.00 from the Off-Site Transportation Improvement contribution in Proffer 4(a).
- d. Right of Way Dedication. The Applicant shall dedicate the right-of-way along the Herndon Parkway frontage shown as Public Dedication Area on Sheet 8.1 of the Development Plan prior to the first site plan approval. Notwithstanding the foregoing, the existing eastern entrance as shown on Sheet 3.0 shall remain operational until the issuance of a building permit for Building B and C. The Applicant reserves future density credit from the Right-of-Way dedication in accordance with the terms and conditions of Zoning Ordinance Section 78-155.9 in affect as of the date of the approval of these Proffers.

- e. Public Pedestrian Access. The Applicant shall provide public pedestrian access to the at-grade Public Accessible Space areas as shown on Sheet 8.1 of the Development Plan. Such access may be closed temporarily for private events and for construction and staging of the various phases. The Applicant will work with the Town to establish reasonable rules and hours for use of the Public Accessible Space.
- f. Private Street and Utility Easements.
 - a. The Applicant will grant public vehicular access and utility easements over the project's perimeter streets shown as Street and Utility Easement Area on Sheet 8.1 of the Development Plan.
 - b. These easements will enable the Applicant to close the perimeter street for the construction of future phases and street maintenance.
 - c. The Applicant will reasonably cooperate with the immediately adjacent property owners to permit the final construction and widening of the private streets to their full street cross sections, as well as address any maintenance, insurance and liability issues.
- g. Sidewalk Improvements. As shown on the Development Plan, the Applicant will construct the sidewalk and bicycle track improvements along the Herndon Parkway frontage between the eastern and western Project entrances prior to the issuance of the first certificate of occupancy for the first phase of the project.
- h. Transportation Demand Management. This Proffer sets forth the programmatic elements of a transportation demand management program (the "TDM Program") that shall be implemented by the Applicant to encourage the use of transit (Metrorail, Fairfax Connector, Metrobus, or other public transit service), other high-occupant vehicle commuting modes, walking, biking and teleworking, all in order to reduce automobile trips generated by the multifamily dwelling and the office uses constructed on the Property. The proffered elements of the TDM Program will be implemented through a Transportation Demand Management Work Plan (the "TDM Work Plan") developed by the Applicant with input from and approval by the Town of Herndon Department of Community Development. It is the intent of this Proffer that the TDM Work Plan will be adapted over time to respond to the changing transportation related circumstances of the Property, the surrounding community and the region, as well as to technological and/or other improvements. The Applicant's TDM Work Plan has the objective of meeting the

trip reduction goals for signal occupancy vehicles measured at the peak AM/PM hours by 35% for residential uses and 25% for office and commercial uses. The TDM Work Plan shall incorporate any combination of the following elements:

- a. Contributions to resident and employee Metro fare cards.
 - b. Contributions to Fairfax Connector, WMATA, or other public transit service approved by the Town.
 - c. Ride sharing and carpool parking spaces.
 - d. Bicycle racks and bicycle share stations.
 - e. Bicycle storage rooms and office tenant shower and changing rooms.
 - f. Tenant incentives to participate in yearly transportation management surveys.
- i. Parking. Parking shall be provided in phases concurrent with development of the Property and in substantial conformance with the Development Plan and these proffers. Notwithstanding the above, Applicant reserves the right to provide parking at revised ratios as may be permitted at time of site plan by the Town of Herndon Zoning Ordinance or may seek future parking reductions for the Property as permitted by the Town of Herndon Zoning Ordinance, either of which shall not require a Development Plan amendment.

5. GREEN BUILDING.

- a. Residential Building Certifications. The Applicant shall design and construct each residential building to achieve either LEED v4 New Construction or Multifamily Midrise certification from U.S. Green Building Council, Multifamily Building certification from National Green Building Standard (NGBS), EarthCraft Multifamily certification, or an equivalent green building program as determined by the Applicant and the Town.
- b. Office Building Certifications. The Applicant shall design and construct the office base building to achieve either LEED v4 Core and Shell Development or New Construction Silver certification from U.S. Green Building Council, or an equivalent green building program as determined by the Applicant and the Town.
- c. The Applicant shall include, at the time of application for a building permit for each building, a list of specific credits or design elements incorporated into the building using the then current documentation of the selected green building program for each multifamily building and the office building.
- d. The Applicant shall meet with the Town following application for each site plan to coordinate green building strategies and priority credits, such priorities shall

include evaluating green infrastructure for stormwater management and potential bird-friendly design features, and the installation of at least 2 electric vehicle charging stations per garage.

6. CONTRIBUTIONS.

- a. Sanitary Sewer. The Applicant shall make a contribution to the Town in the amount of \$120,000.00 for the construction of a new sewer sanitary line along the Project's Herndon Parkway frontage which shall be paid prior to the issuance of a building permit for the first phase of the project.
- b. Recreation/Community Amenities/Civic Facilities. Prior to the issuance of the first certificate of occupancy for each phase, the Applicant shall demonstrate that the value of any proposed recreational on-site amenities/community amenities/civic facilities are equivalent to a minimum of \$1,900.00 per residential unit. The value calculation shall include the cost of amenities such as, but not limited to, benches and seating, outdoor seating and gathering areas, fitness centers, community rooms, swimming pools, decks, artwork, fire pits, trellises, etc. Project building materials are not included in the calculation. The Applicant shall submit the verification of the cost of these improvements to the Town as provided by its general contractor. In the event it is demonstrated that the proposed facilities do not have sufficient value, the Applicant shall provide the remainder in a cash contribution to the Town of Herndon for use on recreational facilities in the Town of Herndon.
- c. Offsite Recreation Contribution. The Applicant shall make a per GFA square foot contribution payment of \$0.35 to the Town for offsite recreation improvements for residential GFA and \$0.15 for offsite recreation improvements for non-residential GFA prior to the issuance of the first certificate of occupancy for each phase based on the actual GFA of the building. Such funds shall be used for the improvements of Town recreational facilities in locations that logically serve the approved development and the HTOC area.
- d. School Contribution.
 - i. Per the Residential Development Criteria Implementation Motion adopted by the Fairfax County Board of Supervisors on January 7, 2003, as amended prior to the issuance of the first certificate of occupancy for each residential phase, the Applicant will contribute funds at an assumed rate of 0.062 students per units for elementary school, 0.019 for middle school, 0.031 students per high school multiplied by \$12,262.00 per student generated to

the Board of Supervisors for transfer to the Fairfax County School Board to be used for capital improvements and capacity enhancements to schools that serve the Town of Herndon. The contributions will be based on the actual number of residential units constructed, as the total amount may vary. Following approval of this Development Plan and prior to the Applicant's payment of the amount(s) set forth in this Proffer, if Fairfax County should modify the ratio of students per units of the amount of the contribution per student, the Applicant will pay the modified contribution amount for that phase of development to reflect the then current ratio and/or contribution.

- ii. Prior to beginning construction, the Applicant will notify the Fairfax County Public Schools of the intended construction and anticipated completion date.

- e. Fire Department Contribution. The Applicant shall contribute a total of \$10,000.00 to the Fairfax County Fire and Rescue Department towards the cost of preemptive devices within a two-mile radius of the Property. The contribution shall be paid upon site plan approval for the first building to be constructed on the Property.

7. DECLARATION OR OWNERS ASSOCIATION. Prior to any subdivision of the Property, the Applicant shall cause the recordation of one or more declarations creating an owners' association ("OA") and as necessary, condominium owners' associations ("COA") or declarations of covenants and agreements dealing with the governance of maintenance and operation of the Property or other governance documents which will legally bind the Property, (collectively referred to as the "Governance Documents"). Such Governance Documents shall be prepared, be legally effective and recorded prior to the issuance of the first certificate of occupancy. The respective Governance Documents (including budgets provided in any offering or sale materials) shall specify the various proffer and maintenance obligations set forth in the Development plan and these Proffers, including the maintenance of certain streets, bicycle facilities, associated sidewalks and streetscapes, and site amenities such as, but not limited to, the publicly accessible park areas as well as funding, implementation and monitoring of the TDM program, as related to the Property. Purchasers shall be advised in writing of these obligations, and other restrictions, prior to entering into a contract of sale, whether purchasing residential or commercial property. The Governance Documents shall be included in any offering, sale materials or contracts for any condominiums. Purchasers of land of buildings shall be advised of these obligations in the contract of sale.
8. MAINTENANCE. The Applicant shall maintain and replace in-kind all elements within the Development Plan that are shown on Sheet 8.1 as Public Accessible Space and Street Utility Easement Areas. Maintenance commitments include, but are not limited to:

- a. All plantings including trees, shrubs, perennials, and annuals;
 - b. All associated irrigation elements;
 - c. All hard surfaces;
 - d. All streetscape furnishings including benches, bike racks, trash and recycling receptacles and non-standard structures;
 - e. All lighting fixtures, poles and brackets;
 - f. All sign posts, traffic signal poles, pedestrian signal poles, mast arms, signal heads and control boxes;
 - g. Snow removal;
 - h. Leaf removal;
 - i. Trash, recycling and litter removal;
 - j. Decorative and structural retaining walls;
 - k. Special drainage features, such as Low Impact Design facilities; and
 - l. All urban park amenities including horticultural care, maintenance of all water features, irrigation, lighting, furnishings, paving, and art.
9. METRORAIL TAX DISTRICT BUYOUT FOR CERTAIN RESIDENTIAL USES. At least sixty days prior to registration with the Common Interest Community Board of any residential condominium documents that would change the use of all or any portion of the Property to a use that is not subject to the Phase II Dulles Rail Transportation Improvement District (the "Phase II District") tax, the Applicant shall provide a written notice to the Director of the Real Estate Division of the Fairfax County Department of Tax Administration advising that the Applicant intends to register such condominium documents for that portion of the Property. Prior to registering the condominium documents, the Applicant shall pay to Fairfax County a sum equal to the then-present value of Phase II District taxes estimated by the County to be lost as a result of that change in use.
10. ESCALATION. All monetary contributions required by these proffers, with the exception of the proffer relating to the public school contribution, shall escalate on a yearly basis from the base year of 2022 and change effective each January 1 thereafter, based on the Consumer Price Index as published by the Bureau of Labor Statistics, the U.S. Department of Labor for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area (the "CPI"), as permitted by Virginia State Code Section 15.2-2303.3.3.

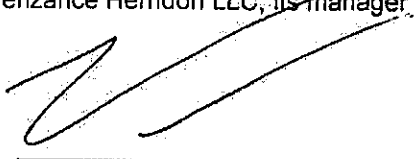
11. SUCCESSORS AND ASSIGNS. These proffers shall bind and inure to the benefit of the Applicant and his/her successors and assigns
12. COUNTERPARTS. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

TITLE OWNER/APPLICANT SIGNATURE TO FOLLOW ON THE NEXT PAGE:

555 HERNDON LLC,
a Delaware limited liability company

By: DP Herndon LLC, its sole member

By: Penzance Herndon LLC, its manager

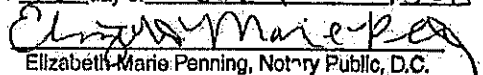
By: 

Name: Victor Tolkan

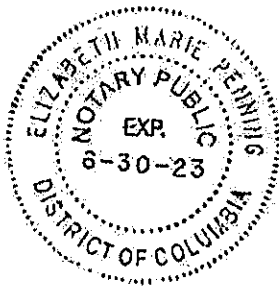
Title: Manager

District of Columbia: SS

Subscribed and sworn to before me, in my presence,
this 20th day of March, 2019


Elizabeth Marie Penning, Notary Public, D.C.

My commission expires June 30, 2023.



Transportation Demand Management (TDM) Plan

555 Herndon Parkway

Town of Herndon, Virginia

February 8, 2019

Revised: March 14, 2019

Prepared for:

Penzance

2400 N Street, NW Suite 600

Washington, DC 20037



GOROVE / SLADE

Transportation Planners and Engineers

Prepared by:



GOROVE / SLADE

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This document, together with the concepts and designs presented herein, as an instrument of services, is intended for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization by Gorove/Slade Associates, Inc., shall be without liability to Gorove/Slade Associates, Inc.

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1.0 | BACKGROUND SUMMARY

This Transportation Demand Management (TDM) Plan is designed to help achieve the ultimate goal of reducing peak hour vehicular trips generated by the 555 Herndon Parkway development as directed by Proffer 4.h. from the 555 Herndon Parkway Proffered Conditions dated February 7, 2019.

TDM is the establishment of measures to influence travel behavior by mode, frequency, time, route, or trip length in order to achieve a maximally efficient use of transportation facilities.

1.1 | Site Location

The 555 Herndon Parkway development is located in the Town of Herndon, Virginia on the south side of Herndon Parkway, between Van Buren Street and Spring Street, and north of the future Herndon Metrorail Station as shown on Figure 1.



Figure 1: Site Location

1.2 | Description of the Parcel

The subject site is composed of one parcel (Tax Map 16-4 ((10)) 2C) and is approximately 4.34 acres. The parcel is zoned PD-TOC (Planned Development – Transit Oriented Core) as shown in Figure 2. Adjacent properties are also zoned PD-TOC, and sites to the north across Herndon Parkway are zoned O&LI.

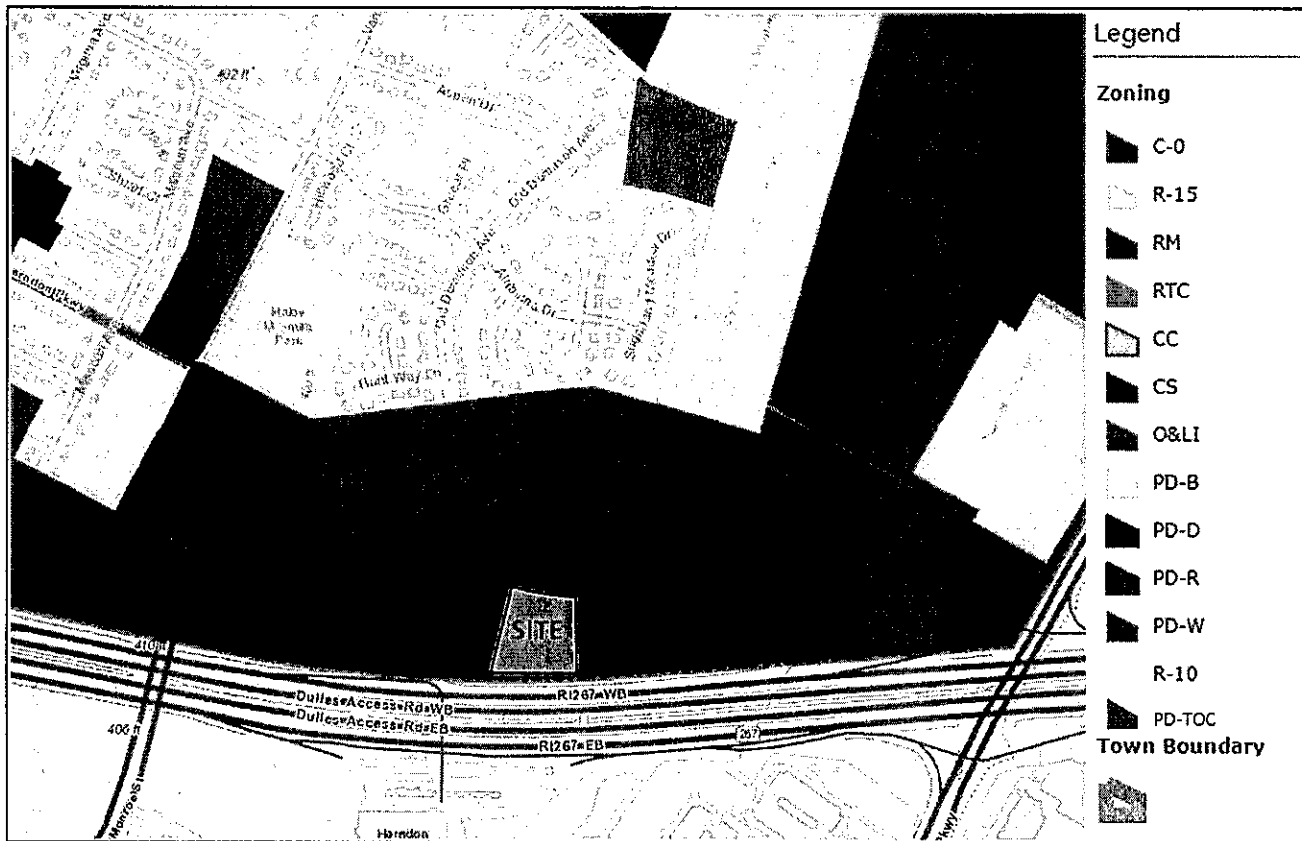


Figure 2: Zoning

1.3 | Proposed Development

The site is currently occupied by 90,000 square feet of office that is to be removed. The proposed program is a mixed-use development comprised of up to 475 residential units, 325,000 SF of office, and 13,000 SF of retail.

2.0 | EXISTING CONDITIONS

In order to make informed recommendations for the property, it is necessary to know the transportation services that are currently available to the site. This section explores the existing programs and services that residents, employees, and patrons of the 555 Herndon Parkway property can utilize for additional transportation options.

2.1 | Vehicular Access

Regional vehicular access to the site is provided via the Dulles Toll Road (Route 267). Local access is provided via Sunset Hills Road. There are some planned transportation improvements in the area, as shown on Figure 3 and Figure 4.

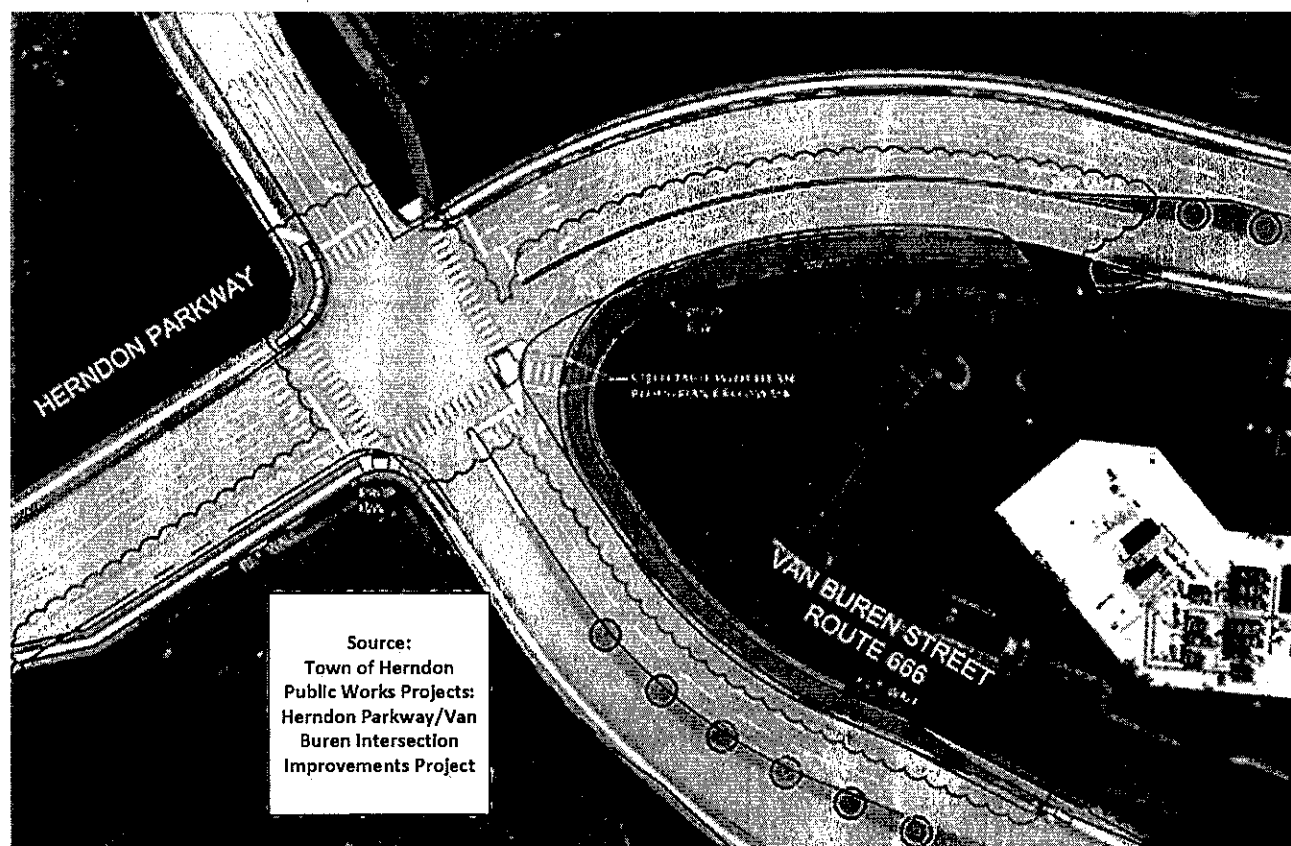


Figure 3: Herndon Parkway/Van Buren Intersection Improvements

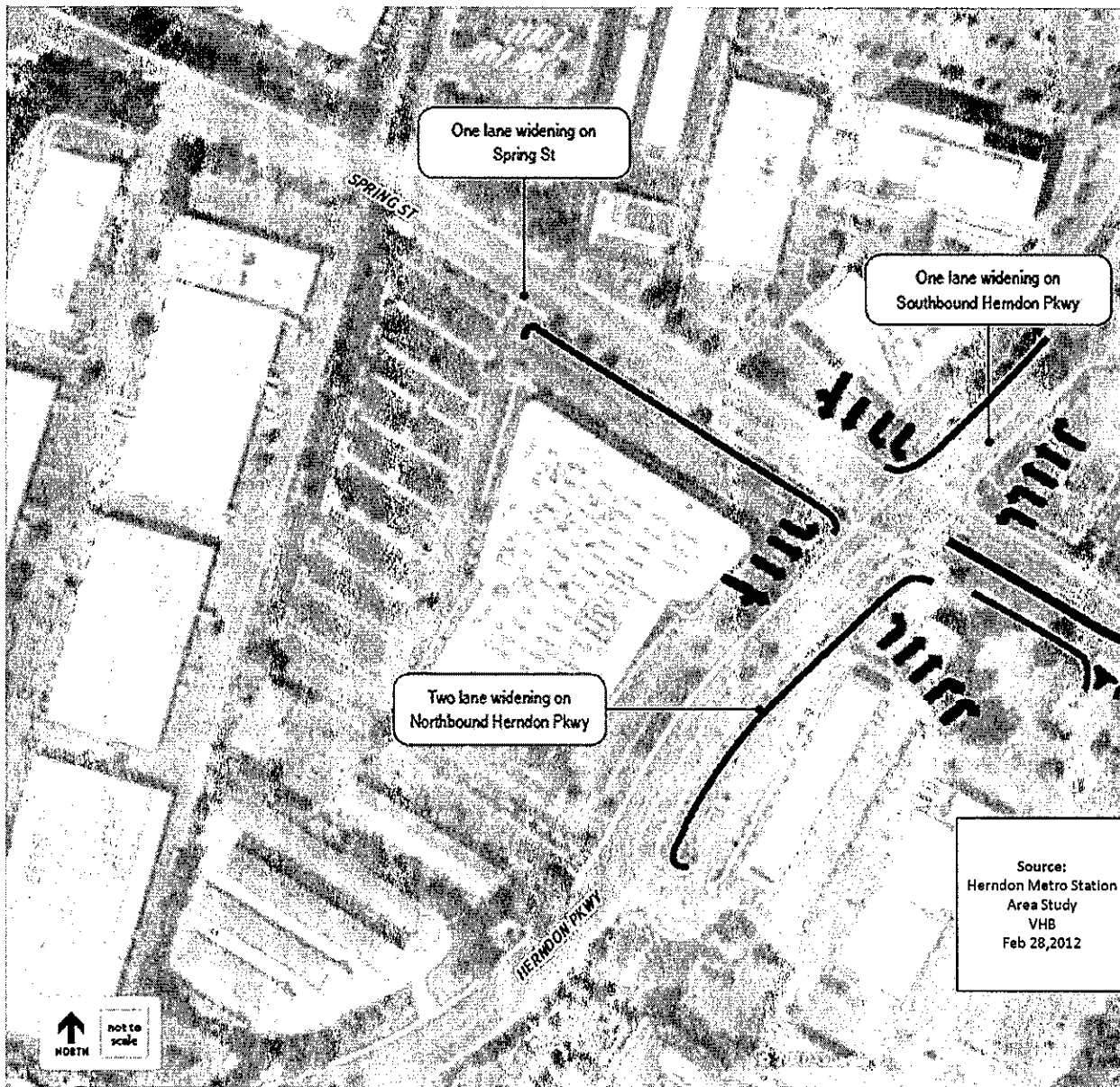


Figure 4: Herndon Parkway/Spring Street Intersection Improvements

2.2 | Transit

The 555 Herndon Parkway property is currently served by one (1) Fairfax Connector Bus in the vicinity of the site as shown in Figure 5. According to the *Fairfax County Transit Development Plan*, dated December 2009, new transit routes are recommended for the area near the site. The routes will be adjusted in accordance to the phased completion of the Dulles Corridor Metrorail Project. Figure 6 show the recommended routes near the study area per the Transit Development Plan.

As part of the Dulles Corridor Metrorail Project Phase 2 development immediately south of the proposed site, the Silver Line will be extended to the west from the Wiehle-Reston East Metro station and located in the median of Dulles Toll Road. A future stop is planned at the existing Herndon-Monroe Park & Ride facility and located less than a quarter of a mile from the site.

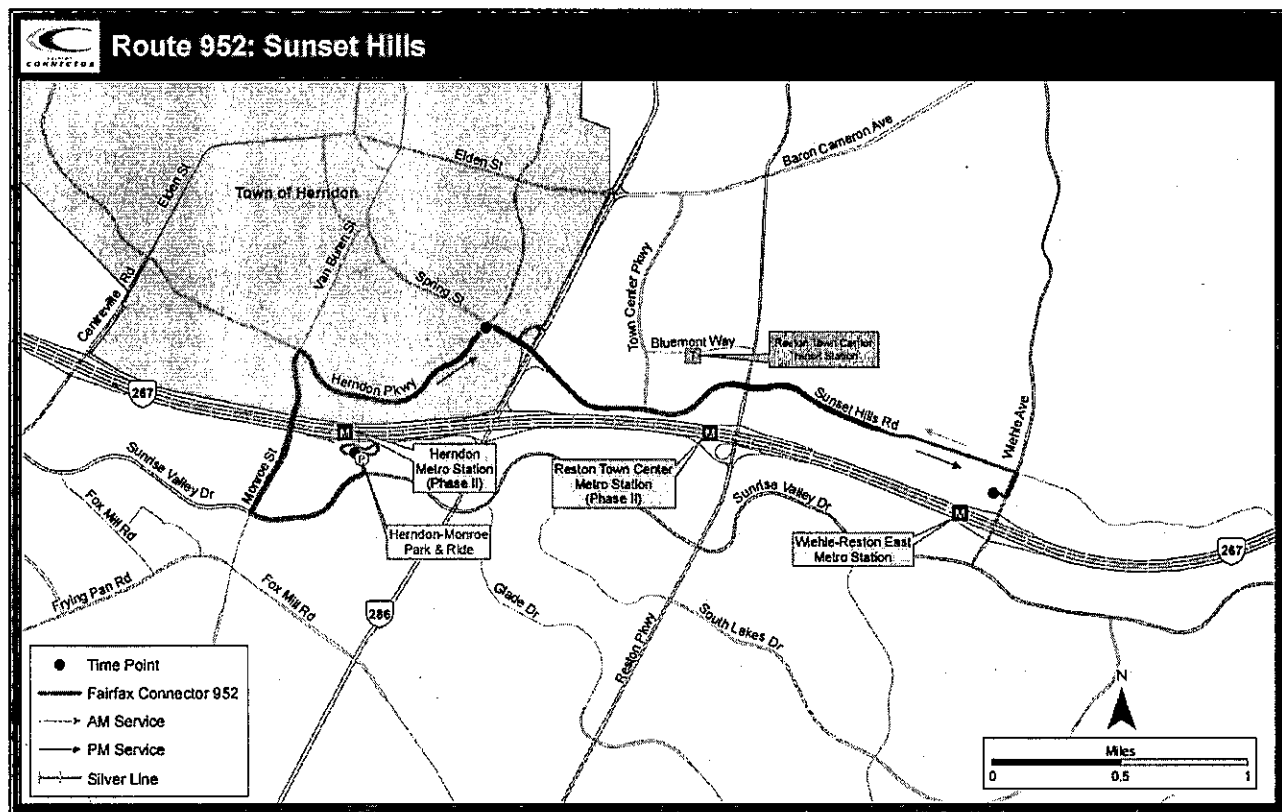


Figure 5: Bus Routes

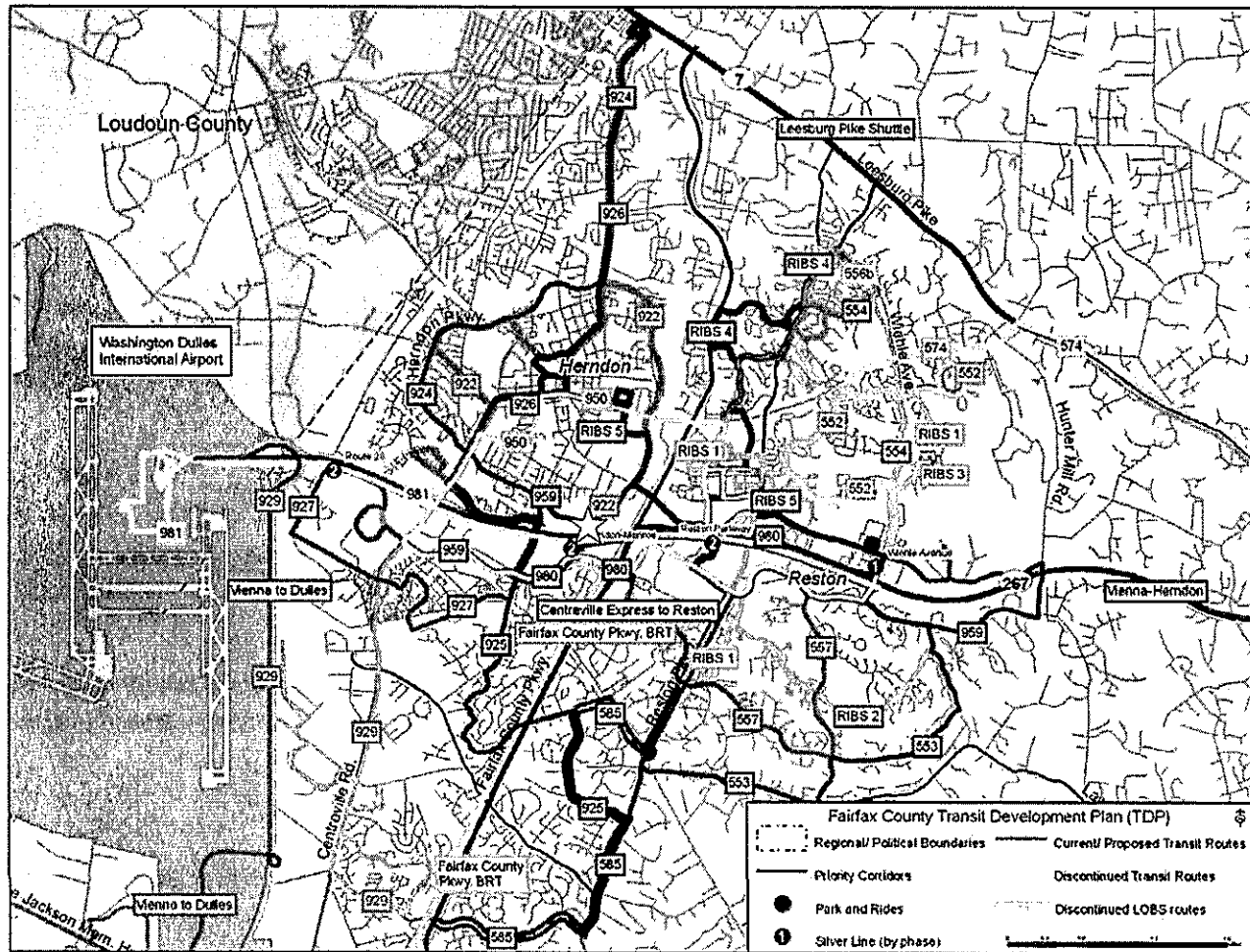


Figure 6: Reston/Herndon Area Recommended Transit Plan

2.3 | Existing Bicycle and Pedestrian Facilities

Herndon Parkway, Van Buren Street, and Spring Street are considered “Less Preferred Streets and Roads” for bicycling as shown in Figure 7. Sidewalks exist on the north and south sides of Herndon Parkway, but most intersections and driveways lack crosswalks. The intersections of Herndon Parkway/Van Buren Street and Herndon Parkway/Spring Street have crosswalks and pedestrian signal heads without countdown timers on all approaches.



Figure 7: Bicycle and Trail Network

A cycletrack is recommended along Herndon Parkway in the vicinity of the site. Recommendation of a cycletrack on Herndon Parkway is consistent with the proposed cross-sections for Herndon Parkway as described in the Town's *Urban Design and Architectural Guidelines*.

2.4 | Existing Regional Programs

In addition to transportation services, several regional programs, benefits, and events are currently in place that the 555 Herndon Parkway development can utilize. These external programs include:

- **Commute Assistance**
 - **Commuter Connections Rideshare Program:** This service matches commuters with others who live and work in the same area. (<https://www.commuterconnections.org/commuters/ridesharing/>)
 - **Fairfax Alliance for Better Bicycling:** This organization advocates, educates, and builds public support for better bicycling throughout Fairfax County. They provide cycling resources such as commuter guides, maps, and other education materials. (<http://www.fabb-bikes.org/about/>)
- **Commute Incentives**
 - **Commuter Connections Guaranteed Ride Home (GRH):** This service provides commuters who regularly (twice a week) carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home when one of life's unexpected emergencies arise. (<https://www.commuterconnections.org/commuters/guaranteed-ride-home/>)
 - **NuRide:** This national rewards program is for commuters who walk, bike, telecommute, carpool, vanpool, take the train, subway, or bus, or work a compressed week. Commuters accrue points with each green trip that may be redeemed for prizes. (<https://www.nuride.com/>)

- **SelectPass:** This WMATA program allows users to save on frequent travel within the Metro system. SelectPass allows users to pay a flat rate for unlimited service on trips that are equal to or less than the amount of the paid segments. (<https://www.wmata.com/fares/selectpass.cfm>)
- **VanStart:** This program provides temporary funding for new vanpools in the critical startup phase to fund empty seats. Non-profit vanpool organizations may apply for assistance through this program within three months, if certain additional criteria are met. (<http://www.fairfaxcounty.gov/fcdot/vanassist.htm>)
- **Qualified Bicycle Commuting Reimbursement:** This reimbursement benefits bicycle commuters that are eligible for the Federal Bicycle Benefit of \$20.00 per month. (<https://www.nctr.usf.edu/programs/clearinghouse/commutebenefits/>)
- **Events**
 - **Earth Day:** This event promotes the environmental movement worldwide and seeks to promote action for health, sustainability, and climate challenges. People are encouraged to make changes in their daily routine to help alleviate these issues, such as using cleaner and more efficient methods of transportation. (<http://www.earthday.org/>)
 - **National Bike to Work Day:** This event takes place in May every year and serves to encourage bicycling as a method of commuting. May is Bike to Work Month as declared by the League of American Bicyclists. The most popular activity is Bike to Work Day, which takes place on the last day (Friday) of Bike to Work Week. (<http://www.biketoworkmetrodc.org/>)
 - **Dump the Pump:** This event is celebrated every June to encourage people to pledge to stop driving their cars and save money on gas ("Dump the Pump") by taking an alternative means to driving. (<http://www.apta.com/members/memberprogramsandservices/advocacyandoutreachtools/dumpthepump/Pages/default.aspx>)
 - **Try Transit Week:** This Virginia event invites residents to pledge to use transit for all of their transportation needs for an entire week. Prizes are offered for participants. (<http://www.trytransitweek.com/>)
 - **International Car Free Day:** Held every September 22, this worldwide event promotes all alternatives to single occupant vehicle use. Carpooling, transit, bicycling, walking, and teleworking are all encouraged in order to reduce carbon emissions. (<http://carfreemetrodc.org/>)

3.0 | TDM PROGRAM RECOMMENDATIONS

The strategies recommended for the 555 Herndon Parkway TDM program are detailed in this section. These strategies are intended to enhance the use of transportation alternatives as opposed to driving alone that may naturally occur.

Fundamentally, TDM strategies reduce and redistribute travel demand by controlling several influences. These influences include financial incentives, providing accurate and accessible information, and time savings. Together, these influences will have a significant impact on the mode of travel used by travelers.

The TDM program recommendations are divided into sections that cover the following TDM elements:

1. Infrastructure
2. Program Management
3. Rideshare
4. Incentives
5. Outreach

3.1 | Infrastructure

Bicycle Accommodations

At a minimum, a secure location will be provided for people to leave their bicycles. The racks will be placed proximate to the building entrances and will be designed to provide support at both the wheel and frame. The applicant will also provide bicycle storage rooms and office tenant shower/changing rooms.

Cycle Track

A cycle track is planned by the Town on the southern side of Herndon Parkway. The applicant will be providing a section of the cycle track across the site frontage.

3.2 | Program Management

Property-wide TDM Program Management

A TDM Program Manager will be appointed to the 555 Herndon Parkway development. Property-wide TDM responsibilities for the Program Manager include:

- Answer resident, guest, and employee questions about all aspects of the TDM program.
- Coordinate with other county TDM providers including DATA, LINK, and MWCOG to avoid duplication of services and obtain support for program implementation.
- Work with leasing staff to train them on TDM programs and information so they can provide appropriate transportation information to tenants as they move in.
- Conduct a survey of residents/employees to evaluate the effectiveness of the TDM Plan in meeting the TDM Goals and to evaluate the need for changes to the TDM Plan.
- Verify that the proffered TDM Goals are being met through the completion of vehicle trip counts.

3.3 | Rideshare

Car/Vanpool

Ridesharing (carpool and vanpool) can be an important vehicle trip reduction strategy. The applicant will work with car/vanpool agencies to provide strategically located parking spaces within the site.

Carsharing

Carsharing refers to a short-term automobile rental service available to the general public. Carsharing operators provide a fleet of vehicles that are placed across defined geographic areas and can be used by members for personal trips that are typically short in length and duration. Carsharing encourages travelers to use alternative transportation methods because they can use carshare vehicles for trips rather than have to rely on their private vehicle. Carsharing programs allow residents and employees to give up their cars and can reduce some of the parking demand.

The applicant will work with carshare agencies to provide strategically located parking spaces within the site. If opportunities exist to coordinate with other property owners in the vicinity, then a joint effort will be pursued.

3.4 | Incentives

Adjusting the cost of travel is the most effective tool in TDM programs. Options can include increasing the cost of undesirable actions (i.e. driving alone) and decreasing the cost of desirable actions. The following is an incentive program that could be implemented:

Metrorail SmarTrip Cards

Temporary transit subsidies have proven successful at encouraging people who normally drive alone to try and subsequently continue to use transit. Preloaded SmarTrip cards could be distributed to new residents and employees on a one-time basis.

3.5 | Outreach

The program management will coordinate with area TDM providers to help assist and implement strategies such as:

- Online ridesharing
- Guaranteed Ride Home
- Employer consultation
- Teleworking program development
- Tabling events to build awareness of commute choices

4.0 | PROGRAM MONITORING

Program monitoring of the site will be implemented in order to ensure performance. The monitoring program will assess whether the implemented TDM strategies meet the forecasted peak hour vehicle trip reduction targets shown in Table 1.

Table 1: TDM Goals

Peak Hour	Residential and Office Use Permits	ITE Land Use Code	Maximum ITE Projected Trips	Target Peak Hour Trip Reduction Percentage	TDM Trip Reduction Goal
AM	1 to 480	220	239	35%	156
PM	1 to 480	220	282	35%	184
AM	up to 324,000 SF	710	490	25%	368
PM	up to 324,000 SF	710	441	25%	331

**Based on ITE 9th Edition*

The monitoring of the TDM Program should consist of surveys, trip counts, and a report. Appropriate monitoring standards for each element are discussed in this section.

4.1 | Surveys

Surveys will be performed by the TPM and analysis of the survey shall include, at minimum, the following items:

1. A description of the TDM strategies in effect for the survey period and a description of how such measures have been implemented.
2. The number of people surveyed and the number of people who responded.
3. The results of the surveys taken during the survey period.
4. The number of people participating in the TDM programs, displayed by category and mode of use.
5. An evaluation of the effectiveness of the TDM program elements in place, including their effectiveness at achieving the TDM goals, and, if necessary, proposed modifications and how they will be implemented.

If a survey reveals that changes to the TDM Plan are needed or advisable, then the TPM shall coordinate with such changes with the Town and, as necessary, implement the revisions.

4.2 | Trip Counts

Traffic counts will be collected for the purpose of verifying that the proffered TDM goals are being met. Trip counts shall be collected yearly until such time as three (3) consecutive trip counts show that the vehicle trips generated are less than or equal to the TDM Goals. Notwithstanding the aforementioned, at any time prior to or after stabilization, the Town may suspend such vehicle traffic counts and/or person surveys if conditions warrant such.

4.3 | Reporting

The Report details the implementation of the TDM Plan. The Report is anticipated to occur in May every other year starting at first occupancy of the first building and will be provided to Town Staff.

The Report shall include, at a minimum, the following items:

1. A description of the current TDM strategies and implementation efforts.

2. Description of the details associated with the monitoring and reporting requirements of the TDM program.
3. Analysis of any applicable surveys and/or trip counts.
4. Description of the TDM strategies that will be put into place.
5. Any revisions to the TDM Plan.
6. An update of the program manager's contact information.
7. The amount of any cash incentives provided.
8. AM and PM peak traffic counts.

NOTE:

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