



This does not represent a verbatim transcript of the Town Council meeting. Visit www.herndon-va.gov "agendas & minutes" to view agendas and videos. Copies of videotapes of the public hearing meetings are available on request by contacting HCTV at 703-689-2323. Work sessions are not videotaped, but audio files are available. Individuals not having access to the town's website may contact the Town Clerk's office at 703-435-6804 or town.clerk@herndon-va.gov.

**HERNDON TOWN COUNCIL
Work Session
Tuesday September 3, 2019**

At a regular meeting of the Town Council of the Town of Herndon, Virginia, held in the Herndon Council Chambers Building, at 765 Lynn Street, Herndon, Virginia, on Tuesday, September 3, 2019, at 7:00 p.m., there were present:

- Mayor Lisa C. Merkel, presiding;
- Vice Mayor Sheila A. Olem;
- Councilmember Jennifer K. Baker;
- Councilmember Cesar del Aguila;
- Councilmember Pradip Dhakal;
- Councilmember Signe Friedrichs; and
- Councilmember Bill McKenna.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Chief Maggie DeBoard, Herndon Police; Viki Wellershaus, Town Clerk; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Tammy Chastain and John Irish, Deputy Directors of Public Works; Mike Farr, Utility Manager; Mark Duceman, Transportation Program Manager; and Margie C. Tacci, Deputy Town Clerk.

ANNOUNCEMENT

Mayor Merkel stated that the Town Attorney had been scheduled to be out of town, but was at tonight's meeting because she had to come home due to the hurricane. Mayor Merkel appreciated the Town Attorney being here this evening.

September 3, 2019
(work session)

PRESENTATIONS

1. **Proclamation, to recognize "POW/MIA Recognition Day," September 20, 2019;**
2. **Proclamation, to recognize "Virginia Bicyclist and Pedestrian Awareness Month," September 2019;**
3. **Proclamation, to express appreciation to Green Lizard Cycling; and**
4. **Proclamation, to recognize the 130th Anniversary of the Herndon Fortnightly Club.**

There was no comment on the presentations, which would be held at the September 10, 2019 public hearing.

PUBLIC HEARINGS

5. **Ordinance, to authorize the acquisition of a temporary easement on property owned by PSBP Monroe LLC for public use by condemnation for the Herndon Metrorail Access Improvements project for the purpose of construction of public transportation facilities over real estate located at 560 Herndon Parkway, Herndon, Virginia;**
6. **Ordinance, to authorize the acquisition of fee simple, permanent and temporary easements on property owned by Parkview Executive Center, Joint Venture RLLP for public use by condemnation for the Herndon Metrorail Access Improvements project for the purpose of construction of public transportation facilities over real estate located at 593 Herndon Parkway, Herndon, Virginia;**
7. **Ordinance, to authorize the acquisition of fee simple, permanent and temporary easements on property owned by Monroe Parkway Joint Venture for public use by condemnation for the Herndon Metrorail Access Improvements project for the purpose of construction of public transportation facilities over real estate located at 570 Herndon Parkway, Herndon, Virginia; and**
8. **Ordinance, to authorize the acquisition of fee simple, permanent and temporary easements on property owned by Kiddar Herndon Station LLC for public use by condemnation for the Herndon Metrorail Access Improvements project for the purpose of construction of public transportation facilities over real estate located at 575 Herndon Parkway, Herndon, Virginia.**

**September 3, 2019
(work session)**

Mayor Merkel stated that she would call for concurrent staff reports on these items at the work session and at the public hearing, with separate public hearings and roll call votes at next week's meeting. She recognized the Town Attorney to start staff's presentation.

The Town Attorney provided a brief introduction. She recognized the Deputy Director of Public Works and introduced Courtney Harden, of Briglia Hundley, outside counsel, who would provide input on these items. She recognized the Deputy Director of Public Works for the staff reports.

The Deputy Director of Public Works presented the concurrent staff reports and PowerPoint dated September 3, 2019, which are on file in the Town Clerk's office. He discussed the history, background, location and details of the project. The Herndon Metrorail Access Improvements at the Herndon Metro Station on Herndon Parkway is a long-standing CIP item. The town identified several interests of land it needed to acquire to construct the improvements, which included four different property owners. He highlighted the different areas that the town would have to take in various forms of property rights, as provided in the PowerPoint. There were three different categories of the property rights, which were: temporary construction easements; fee simple transactions; and permanent easements. He discussed the appraisal process and how the town arrived at the proposed actions. The Deputy Director of Public Works recognized Ms. Harden to continue the presentation.

Ms. Harden stated that as the Town Attorney mentioned in her introduction, she had an appointment from the Attorney General's office to do eminent domain work. She further discussed the appraisals, which were done by a certified real estate appraiser, who determined the fair market value. She stated that she was in active negotiation with the property owners. The process the town is using is a mechanism under the law, by which the town could file the certificate of take and start the project. Indefeasible title, or the total transfer of the property, would not occur until the town and the property owner agreed on a price, or when a jury decides the fair market value. She further reviewed the process and stated that negotiations would continue.

The Town Attorney stated that the proposed ordinances would authorize her, the Town Manager, and Ms. Harden, to file the necessary paper work in court to "stop the clock." The town would deposit the fair market value of funds for the properties that were determined by the appraisals into court. This would allow the town to begin the project and to proceed with any necessary details, legal or otherwise, to move the project along. The town would continue negotiations with the property owners. Staff recommends approval of the proposed ordinances, as presented.

**September 3, 2019
(work session)**

The Town Manager stated it would be important for the town to start the project because it would be an integral part of the transportation network connected to the Herndon Metrorail Station, which would be opening soon. He stated that the majority of the project was grant funded. The town was receiving pressure from the granting agency to start work on the project. The town could potentially lose the grant funding for this project if it did not start soon.

There was brief discussion amongst Council and staff on these items.

There was a brief question and answer session between Councilmember Baker, the Town Manager, and the Deputy Director of Public Works about the legal process.

There was a brief question and answer session between Councilmember Friedrichs, Ms. Harden, the Town Attorney, and the Town Manager about the eminent domain process for the town.

In response to queries from Councilmember Friedrichs, the Town Attorney stated that staff had discussed having Ms. Harden speak at next week's meeting. Mayor Merkel agreed that it would be a good idea to have Ms. Harden speak next week.

The Town Manager stated that since this was the town's project, the town would be the agency that had to go through the eminent domain process.

Councilmember Friedrichs asked that staff discuss at next week's meeting why the town would use eminent domain in these cases. She asked them to emphasize that it would be a "quick take" for a public purpose and that eminent domain is a difficult process in Virginia. She also asked staff to clarify the use of the term "condemnation."

There was further discussion on these items.

Councilmember McKenna discussed the difficulty of using eminent domain in Virginia.

There was a brief question and answer session between Vice Mayor Olem, the Town Attorney, the Deputy Director of Public Works, and Ms. Harden about the project.

There was a brief question and answer session between Councilmember del Aguila, the Town Attorney, Ms. Harden, and the Town Manager about the use of the terms "condemnation" and "eminent domain."

Councilmember del Aguila stated, for the record, that he would like the town to use the term "eminent domain" in the agenda titles for future projects like this, to provide greater clarity for the public.

**September 3, 2019
(work session)**

The Town Manager stated that staff was new to this process and he was trying to model it after what other jurisdictions have done.

In response to queries from Councilmember del Aguila, Ms. Harden stated that she did not have a budget number for this process, but she could estimate an amount fairly quickly. She stated that she does not recommend that the town go to a trial on this matter, unless they and the property owners are very far apart in negotiations.

In response to Councilmember del Aguila, the Town Attorney stated that staff would come back to the Council throughout the process to advise them where the town was with the negotiations. If additional funding was needed or there were other major concerns, the Town Manager would bring that matter back before the Council.

Vice Mayor Olem provided brief comments about the condemnations.

Ms. Harden stated that the discussion with Council had been helpful and she would prepare her comments for next week's meeting accordingly. She would provide her comments in advance to ensure she was covering all the issues that needed to be reviewed.

Councilmember McKenna suggested looking at the experience of Potomac Yards.

COMMENTS FROM THE CHIEF OF POLICE

Mayor Merkel asked if the Council would agree to add a quick briefing from the Chief of Police to the agenda. With the concurrence of Council, the work session agenda was amended to include comments from the Chief of Police about an incident that occurred yesterday evening.

The Chief of Police stated that she would share the information she was able to publicly discuss. Last night, September 2, at approximately 7:20 p.m., there was an officer involved shooting in town. She first thanked the Herndon Police Department (HPD) for handling the situation amazingly well. They did a tremendous job, with challenging resources, in a dangerous situation. She stated that HPD had not released the name of the Officer involved yet because of procedures the town needed to go through first. She discussed the incident, which occurred when the officer was sitting in his car and working on follow-up paperwork behind the Herndon Fire Station. An armed robbery had just occurred at one of the businesses in the area. When the two subjects came out of the business, the officer pursued them. One of the subjects fired at the officer, and the officer had to return fire. Thankfully, no one was hit, but the first subject fled. Two off-duty officers and one EMT came to the officer's aid and tackled the subject that took off on foot. Shortly after this incident, HPD received a call about

**September 3, 2019
(work session)**

an armed carjacking near Guapos in town. Virginia State Police were monitoring the dispatch radio and were able to take the suspect, who was still on the scene at Guapos, into custody.

The Chief of Police called Fairfax County to help the town and stated that the county would be taking over the criminal investigations for all three events. Following the criminal investigation, HPD would conduct an internal investigation. She discussed possible charges that could be brought against the subjects and stated that the body camera footage would be helpful in this scenario. The Chief of Police thanked the Council for providing them the funds for AVL, or vehicle locator system, which assisted the dispatchers in locating the officers last night. She had thanked the assisting agencies for their help, as well.

The Town Manager stated that the outcome from this incident resulted from incredible hiring practices, training, leadership, standards and accountability for the HPD officers.

The Chief of Police provided further comments about the county's role in the investigation.

There was brief discussion amongst Council and staff.

There was a brief question and answer session between Councilmember del Aguila and the Chief of Police.

There was a brief question and answer session between Councilmember Friedrichs and the Chief of Police.

Mayor Merkel, Councilmembers Baker, del Aguila, McKenna, and Olem provided brief comments.

The Chief of Police stated that HPD and Fairfax County would provide updates once they were available.

Mayor Merkel echoed her colleagues comments and was glad the incident was resolved quickly and safely. She stated that Council could share the update provided this evening with the public.

GENERAL

9. Resolution, to establish the Town Council meeting schedule for January 1, 2020 to December 31, 2020.

The Town Clerk presented the staff report dated September 3, 2019, which is on file in the Town Clerk's office. She stated that there would be a revision to the

**September 3, 2019
(work session)**

resolution for next week's meeting. In the third bullet, the change would reflect the "...2020 **federal**, state and Fairfax County elections..."

The Town Clerk stated that with the development of the 2020 annual town calendar underway, there was an opportunity to consider modifications to the meeting schedule to reflect the meeting dates in the 2020 town calendar. The proposed meeting schedule was modified to accommodate participation in National Night Out, the annual Virginia Municipal League Conference, federal, state and county elections, and Thanksgiving holiday travel. She reviewed the proposed schedule and pointed out the suggested changes, as provided in the staff report. Staff recommends approval of the proposed resolution, as presented.

There was brief discussion amongst Council and staff on this item.

Councilmember Baker asked staff to add the word "town" to the updated bullet about the 2020 election.

Mayor Merkel suggested moving the work session and public hearing dates in November to Tuesday, November 10 and Tuesday, November 17, rather than moving the work session to the Wednesday after the election.

Councilmember Baker would prefer to leave the schedule as proposed.

Councilmember del Aguila could support Mayor Merkel's suggestion. He asked that the town also cancel classes at the Herndon Community Center on Election Day to facilitate voting.

Councilmember Friedrichs would support Mayor Merkel's suggestion to keep the meetings on Tuesdays.

Councilmembers McKenna and Dhakal agreed with Mayor Merkel's suggestion.

With the concurrence of Council, Mayor Merkel asked that the resolution be revised with the changes to the November schedule for next week's meeting.

The Town Clerk stated that with the 2020 VML Conference, the public hearing would be on a Wednesday night rather than a Tuesday. Staff would ensure this change was publicized and that citizens were reminded of the different day.

There was brief discussion amongst Council and staff about whether to move the first October public hearing to accommodate the VML Conference.

Following discussion and with the concurrence of Council, Mayor Merkel stated that the October 2020 schedule would remain as proposed. She asked staff to make sure to spread the word about the Wednesday public hearing that month.

**September 3, 2019
(work session)**

The Town Clerk stated that she would work with the Chief Communications Officer to ensure the public knew about the meeting change for the Wednesday, October 14, 2020 meeting.

Vice Mayor Olem asked if anyone wanted to change the meeting on March 17, 2020, for St. Patrick's Day, as had been done in years past. She asked that if someone wanted to change it, to do so now, so schedules could be updated.

Following brief discussion and with the concurrence of Council, Mayor Merkel stated that there would be no change to the March 2020 meeting schedule.

Following further discussion, the Town Clerk confirmed that she would make these changes to the proposed resolution for next week's meeting:

- Add "federal" and "town" to the bullet point about changing the November meetings to accommodate the 2020 election;
- Change the Wednesday, November 4 work session **TO Tuesday, November 10**; and change the public hearing originally scheduled for November 10 **TO Tuesday, November 17, 2020**;
- Work closely with the Chief Communications Officer to publicize the meeting schedule changes; and
- Send an email to the Town Manager reminding him of the request to cancel classes at the Herndon Community Center on Election Day.

Following brief discussion and with the concurrence of Council, staff was asked to place this item on the Consent agenda for next week's meeting.

CONSENT AGENDA

10. **Resolution, to endorse and authorize a funding application to the Virginia Department of Transportation for the allocation of Revenue Sharing funds to be directed towards the East Elden Street Project;**
11. **Resolution, to endorse and authorize a funding application to the Virginia Department of Transportation for the allocation of Revenue Sharing funds to be directed towards the East Spring Street Project;**
12. **Resolution, to award Contract #19-14, Bulk Curbside Trash Collection Service;**
13. **Resolution, to award Contract #B-20-01, Chandon Park Trail Improvements; and**

**September 3, 2019
(work session)**

14. **Resolution, to authorize a Standard Project Administration Agreement between the Town and the Commonwealth of Virginia Department of Transportation for the administration of the SGR Primary Extension Paving FY2020 project.**

Councilmember Friedrichs asked that the resolution awarding the contract for the Chandon Park Trail Improvements be added to the General portion of the agenda.

Following brief discussion and with the concurrence of Council, staff was asked to add the item regarding Chandon Park Trail Improvements to the General portion of the agenda for next week's meeting. Staff was requested to provide a brief overview of the item at tonight's meeting.

Resolution, to award Contract #B-20-01, Chandon Park Trail Improvements.

The Deputy Director of Public Works presented the staff report dated September 3, 2019, which is on file in the Town Clerk's office. This project was developed under the Herndon Metrorail Station Access Management Study (HMSAMS) program administered through Fairfax County. The Chandon Park Trail Improvements project would provide an eight foot wide asphalt multimodal trail to connect the Dulles Glen Apartments to Worldgate through Chandon Park, to facilitate access to the Herndon Metrorail Station. Following the bid process, the apparent lowest bidder, The Kauffman Group, Inc., has been found to be responsive and responsible. Staff recommends approval of the proposed resolution, as presented. Assuming this resolution was approved, the town would try to complete the project by the end of the year.

There was no discussion on the other Consent agenda items.

ROUNDTABLE

1. **Councilmember McKenna:** Provided comments about the town's Labor Day Festival, which was held yesterday, Monday, September 2. He stated that he had a great time. He suggested that in the future, the town consider the tasting fee to cover wine or beer tastings, as had been done in years past.

Councilmember Baker stated that the Herndon Woman's Club decided the cost. She had heard the same suggestion from individuals, as well.

2. **Councilmember Friedrichs:** Thanked the organizers and volunteers who assisted with the Labor Day Wine Festival.

Councilmember Friedrichs thanked staff for providing the Council with a copy of the CIP.

**September 3, 2019
(work session)**

Councilmember Friedrichs asked for an update on where the town was in the process of revising the Heritage Preservation Review Board (HPRB) Guidelines.

The Director of Community Development stated that two weeks ago, staff met with the consultants on this project and reviewed the latest draft. Staff had asked the consultants to incorporate some comments and to update illustrations. She stated that it was nearing completion and she had anticipated having a new schedule at this point. However, there was not a new schedule yet. She would provide Council with an update as soon as she had more information.

In response to a query from Councilmember Friedrichs about timing, the Director of Community Development stated that she hoped it would be done in two months.

Councilmember Friedrichs asked staff to slow down speaking when giving presentations, so that the public could better understand what they were saying.

3. **Councilmember Baker:** Stated that two individuals sent the Council letters about the risks of 5G wireless. She asked if staff had more details about where those emails were coming from.

The Town Manager stated that he saw some of those emails. To even look at blocking 5G access in town would have serious legal implications because of state law and FCC regulations.

The Town Attorney stated that she thought that this was a grassroots organized movement about 5G wireless that was also occurring in other parts of the country. She would check how other jurisdictions were handling this matter.

The Town Manager stated that the FCC ruling limits what the locality can do to restrict access.

Councilmember del Aguila provided brief comments. He stated that the regulations were a result of lobbying. While he did not plan to respond to the letters, he planned to research the risks of 5G wireless on the website ~ 5Gsummit.com.

Councilmember McKenna suggested reviewing the NIST website when doing research on 5G wireless.

The Town Attorney stated that she could provide Council with any information they would like about the origin of those letters.

Councilmembers del Aguila and Dhakal supported the Town Attorney providing that information.

**September 3, 2019
(work session)**

There was further brief discussion amongst Council and staff on the letters concerning 5G.

Councilmember Baker asked about the town's response to a citizen question about beehives in town.

The Town Manager stated that staff was struggling with a response to that citizen because it did not seem that the Council was interested in pursuing regulations for bees in town.

Councilmember Baker stated that a citizen was putting together a "Herndon Family Tree," which wanted to bring it to Council's attention. The group was looking for donations to buy trees for a large planting event in town. She stated that if anyone was interested to talk to her or the citizen who was organizing it. Councilmember Baker stated that she was looking into how the town could get involved with this event.

4. **Councilmember del Aguila:** Stated that he received an email from a citizen who loved the Labor Day Festival.

Councilmember del Aguila stated he was asked where the pavers on Center Street and Fortnightly Boulevard were listed in the CIP.

The Deputy Director of Public Works pointed out where this project was listed in the CIP.

5. **Vice Mayor Olem:** Echoed her colleagues' comments about the Labor Day Festival.

Vice Mayor Olem stated that she thought the new trash pick-up days were going very well for town residents.

Vice Mayor Olem stated that she had information about bees if the Council was going to discuss that issue.

Vice Mayor Olem stated that she saw a social media post about the HPRB being against WIFI, which she did not think was in their purview. Vice Mayor Olem stated that she would send the information to the Town Manager.

The Director of Community Development stated that the HPRB might have opposed a dish or something similar on the roof our outside the home. The HPRB cannot prohibit anyone from picking up the WIFI signal.

Vice Mayor Olem stated that she watched the last HPRB public hearing. She stated that the applicant did not like what occurred and they could not find the

**September 3, 2019
(work session)**

appeal form online. Vice Mayor Olem could not find the form either. She asked staff to make the form to appeal an HPRB decision easier to find.

In response to Vice Mayor Olem, the Director of Community Development stated staff would look at the website for improvements.

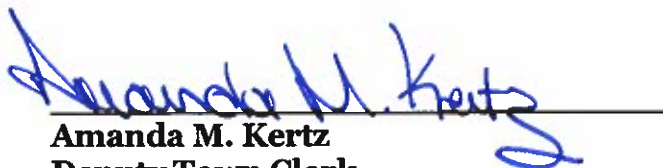
6. **Mayor Merkel:** Expressed thanks to Barbara Glakas, town resident and community volunteer, who recently found former Mayor Kidwell's photo and updated the project of displaying photos of mayors in the Hoover Conference Room. She thanked Ms. Glakas for her efforts in finding the photo, which had been difficult to obtain.

ADJOURNMENT

There being no further business, the meeting adjourned 8:29 p.m.



Lisa C. Merkel
Mayor



Amanda M. Kertz
Deputy Town Clerk



Minutes approved by Town Council: September 24, 2019