TOWN OF Herndon VIRGINIA

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HERNDON TOWN COUNCIL
Work Session
Tuesday September 17, 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 17, 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; Elizabeth Gilleran, Director of Community Development; Anne Curtis, Chief Communications Officer; Page Kalapasev, Director of Information Technology; Scott Robinson, Director of Public Works; Cindy Roeder, Director of Parks and Recreation; Tammy Chastain and John Irish, Deputy Directors of Public Works; Bryce Perry, Deputy Director of Community Development; Michael Wallick, Transportation Planner, Department of Community Development; David Stromberg, Zoning Administrator; Cory Laws, Housing Neighborhood Improvement Coordinator; and Margie C. Tacci, Deputy Town Clerk.

DISCUSSION

1. Housing

Mayor Merkel stated that comments received on this item have been entered into the record and are on file in the Town Clerk's office.

Mayor Merkel recognized the following individuals who were invited to provide input for tonight's discussion:

- Melissa Jonas, Chair of the Herndon Planning Commission; Vice-Chair of the Fairfax County Redevelopment and Housing Authority; and Co-Chair of the Fairfax County Affordable Housing Resource Panel;
- Cynthia Bailey, Deputy County Attorney for Fairfax County; and
- Tom Fleetwood, Director of the Fairfax County Department of Housing and Community Development.

The Town Manager stated that several members of Council were interested in affordable housing. Staff thought it would be valuable to bring a robust group to help educate and discuss this topic with the Council. Last week, he sent an email asking for Council's questions and concerns related to affordable housing. He compiled and categorized the responses, which are on file in the Town Clerk's office. The Town Manager provided an overview of tonight's presentation and discussion. He stated that ultimately, the Council would discuss policy options to help facilitate the town's role in affordable housing. Staff hoped to further understand Council's perspective and what they were looking for moving forward. The Town Manager recognized the Director of Community Development to continue the discussion.

The Director of Community Development presented a PowerPoint titled "Herndon Housing," dated September 17, 2019, which is on file in the Town Clerk's office. In the PowerPoint, she provided an overview of the town's current trends and how the town compared to the county on affordable housing. Following her comments, she recognized Mr. Fleetwood with Fairfax County to continue the presentation.

Mr. Fleetwood stated that he would review affordable housing from a county-wide perspective. He presented a PowerPoint titled "Town of Herndon – an Affordable Housing Conversation," dated September 17, 2019, which is on file in the Town Clerk's office. In the PowerPoint, he reviewed affordable housing and its challenges.

There was a brief question and answer period between Councilmember Friedrichs and Mr. Fleetwood about page five of Mr. Fleetwood's PowerPoint.

Mr. Fleetwood continued his PowerPoint presentation and discussed how the county was addressing affordable housing ~ including the roles of the Fairfax County Redevelopment and Housing Authority, Department of Housing and Community Development, and the Affordable Housing Resources Panel. He focused on measures that the county implements in and with the town. Mr. Fleetwood outlined the county's inclusionary land use program, which included both Affordable Dwelling Unit Program and Workforce Dwelling Unit Policy.

The Director of Community Development continued her PowerPoint presentation. The second portion of the PowerPoint focused on affordable housing in town ~ current statistics, trends, and future growth possibilities. She highlighted the Housing and Neighborhood Improvement Coordinator's role in preserving affordable housing. The Director of Community Development provided several options to improve affordable housing in town. This included expanding protection and housing options for lower and moderate income residents; preserving older neighborhoods in town, while protecting internal neighborhood diversity; working with Fairfax County and the state to save and expand threatened affordable housing resources in town; and potentially using proffers as units or cash towards affordable/workforce units.

There was brief discussion amongst Council, staff and Fairfax County about the paths forward for affordable housing in town, with a focus on development and proffers.

There was a brief question and answer period between Councilmember Friedrichs and Ms. Bailey regarding the term "economically neutral."

There was a brief question and answer period between Councilmember del Aguila, Ms. Bailey, and the Director of Community Development, about the terms "affordable housing" and "workforce housing," along with development and proffers. Ms. Bailey stated that she could only discuss proffers related to Fairfax County.

There was a brief question and answer period between Councilmember Friedrichs, Ms. Bailey, and the Town Attorney about development and proffers.

Responding to Councilmember Friedrichs, the Town Attorney emphasized that Ms. Bailey was relaying information related to proffers in Fairfax County and while the two localities are nearby each other in proximity, the town's situation was different. She discussed proffers in town and stated that the town does not have a proffer policy like the county.

Ms. Bailey provided stated that the county's proffer policy exists in its comprehensive plan and provided more information on it.

There was a brief question and answer period between Councilmember Dhakal and the Director of Community Development about proffers.

Mr. Fleetwood agreed with the Director of Community Development's statement that the county's policy was to provide one unit for every workforce housing unit proffered, up to a certain cap.

Responding to Councilmember Friedrichs, Mr. Fleetwood stated that the county could utilize this policy is because it is voluntary, as opposed to a statutory ordinance. Proffers cannot be mandatory.

The Director of Community Development provided comments about density in the Herndon Transit Oriented Core (HTOC) area.

The Town Manager provided comments about density and the commercial/residential ratio in the HTOC.

There was a brief question and answer period between Councilmember Friedrichs and the Director of Community Development about workforce housing and density.

Mayor Merkel stated that the questions that were asked during tonight's discussion are ones that she thinks Council would want staff to provide more information on in the future. She asked staff to continue its presentation.

The Director of Community Development finished her PowerPoint and reviewed other affordable housing opportunities. This included expanded use of accessory dwelling units, which are currently allowed by special exception for elderly or disabled inhabitants. She reviewed the challenges with using this option for addressing affordable housing.

Mayor Merkel provided comments about how using accessory dwelling units are impacting the City of Minneapolis.

The Director of Community Development stated that it would be difficult to avoid having homeowners use an accessory dwelling unit for extra income. One way to influence this could be to regulate the size of the units.

There was a brief question and answer period between Councilmember del Aguila and the Director of Community Development about accessory dwelling units.

Vice Mayor Olem provided comments about some of the challenges that could be expected by expanding accessory dwelling units.

The Director of Community Development concluded her PowerPoint presentation by reviewing the final slide, which helped provide a starting point for policy discussion.

The Town Manager stated that staff was looking to identify the problems the Council wanted to solve, along with policies that would address those issues.

There was discussion amongst Council, staff and Fairfax County on affordable housing policies.

Vice Mayor Olem provided comments about the "no net loss" and preserving and expanding affordable housing in town, especially close to the Metro.

The Town Manager asked Council for direction in the area that they would like to see more affordable housing near the Metro.

Councilmember del Aguila suggested that the Council hold a strategic planning session on what it would like to achieve in addressing affordable housing.

Councilmember McKenna provided comments about a Harvard University Study related to poverty, transportation and cities. He would like to look at the Metro plan to help map where the town should have workforce housing.

Councilmember Dhakal provided comments. He stated that after Metro's arrival, housing costs would be critical. He wanted to address how the town could help housing prices to remain affordable. He thought the Council needed more time to think about a strategic vision for affordable housing. Councilmember Dhakal asked staff for more information about proffers; how the town and Fairfax County compare on proffers; and if the town could direct some of the tax money Fairfax County collects for affordable housing back into the town.

Planning Commissioner Jonas stated that many of the programs in town that the county highlighted tonight were already funded by the allocated tax fund, the "penny fund."

Mr. Fleetwood emphasized that the county's inclusionary land use programs assisted middle income individuals. As Commissioner Jonas stated, Fairfax County has been successful in making investments with the penny fund throughout the county. As far as further investment in Herndon, Mr. Fleetwood stated that the county needed a project.

Mayor Merkel stated that the Council received a lot of information and suggested that the Council have another discussion on affordable housing, either at a future work session, or as a special work session. She stated that she needed time to digest the information and that the town had a great opportunity to make things happen.

Councilmember del Aguila seconded Mayor Merkel's suggestion.

Mayor Merkel stated that she wanted to look at how the town could work with Cornerstones and work efficiently with the county; the number of affordable units; how to best utilize the Housing Neighborhood Improvement Coordinator; and comprehensive plan language.

The Town Manager suggested holding a separate work session to continue the affordable housing discussion.

In response to queries from Councilmember Baker, the Town Manager stated that staff and the county representatives tried to answer Council's submitted questions in the presentation.

In response to queries from Councilmember Baker about rental units, Mr. Fleetwood stated he would find out the percentage of rental properties in Fairfax County as compared to the town.

The Director of Community Development stated that she included the number of multifamily units for the county in her presentation.

There was brief discussion amongst Council and staff on the timing of the special work session.

Councilmember McKenna suggested holding the work session after the Virginia Municipal League (VML) conference.

Mayor Merkel agreed that she would like to hold the meeting after VML, but before the town's next community roundtable meeting.

Following discussion and with the concurrence of Council, staff was directed to schedule a special work session on this topic in the timeframe discussed.

RECESS

At 8:53 p.m., Mayor Merkel called a brief recess, and at 8:58 p.m., the work session meeting reconvened in Herndon Council Chambers Building, all members present, and with Mayor Merkel presiding.

WORK SESSION (CONTINUED)

September 17, 2019
(work session)

PRESENTATIONS

2. **Proclamation, to recognize "Hispanic Heritage Month";**

3. **Proclamation, to recognize "Herndon Arts Week"; and**

4. **Certificate of Congratulations, Ian Nordling, HYAC.**

There was no comment on the presentations scheduled for the September 24, 2019 public hearing.

PUBLIC HEARINGS

5. **Ordinance, to authorize the acquisition of a fee simple interest, permanent and temporary easements on property owned by James Gallagher Tax Map #016-2-22-0151 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon;**

6. **Ordinance, to authorize the acquisition of a temporary easement on property owned by The Montessori Country School, Inc. Tax Map #016-2-02-0149C for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon;**

7. **Ordinance, to authorize the acquisition of temporary and permanent easements on property owned by Presidents Court Homeowners Association Tax Map #016-4-19-0000-A1 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon;**

8. **Ordinance, to authorize the acquisition of fee simple interest and temporary easements on property owned by Vassili Fedousov Tax Map #016-2-02-0149 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon; and**

9. **Ordinance, to authorize the acquisition of a fee simple interest and temporary easement on property owned by Rosario E. Rivera Tax Map #016-2-22-0007 for public use by condemnation (eminent domain) for transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway, Herndon.**

Mayor Merkel stated that the next five ordinances related to transportation facility improvements on Van Buren Street, from Spring Street to Herndon Parkway. She would call for concurrent staff reports on these 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 the presentation.

The Town Attorney provided comments. As Council was aware, she stated that localities have the power of eminent domain to conduct condemnation of properties to obtain interests for public use or projects. The public project was the Van Buren Street Improvement Project, which is a long-standing CIP item. The town intends to construct certain transportation facility improvements to Van Buren Street from Spring Street to Herndon Parkway.

To construct the improvements, the acquisition of several interests in land were identified as necessary, mostly as temporary easements. The town made a bona fide effort to acquire the properties and the landowners did not accept these offers. The town would file a Certificate of Take and prosecute to completion a condemnation action against the land, for the town's condemnation of these necessary interests in land so that construction of this critical project could begin. The Town Attorney stated that negotiations were ongoing with the property owners. She stated that Ms. Harden, outside counsel, would be involved in this case. She recognized the Deputy Director of Public Works for the staff reports.

The Deputy Director of Public Works presented the concurrent staff reports and a PowerPoint dated September 17, 2019, which are on file in the Town Clerk's office. He discussed the history, background, location and details of the project. He stated that this was an effort to ensure that the town could use the grant funds allocated for this project. The granting agency was looking to see that the money was being spent. Following his review of the project, the Deputy Director of Public Works stated that staff was hoping to start utility relocation this fall. He reviewed the timeline and funding for the project, as provided in the PowerPoint. Staff recommends approval of the proposed ordinances, as presented.

The Town Manager stated that similar to the Herndon Parkway bus bay project the Council considered last week, this was a locally administered project, so the town was responsible for some of the actions that the Virginia Department of Transportation (VDOT) usually undertakes. He stated that there might be questions regarding why the town waited to start this process. He explained that the town had to wait for VDOT and Virginia Dominion Power to finalize their engineering before the town could determine what land it needed to acquire. The other arm of VDOT was asking the town to use the grant funds that they provided for the project.

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

There was a brief question and answer period between Councilmember Friedrichs and staff about the temporary easements and the project's funding.

10. **Resolution, to consider authorization of an application to the Commonwealth Transportation Board for Virginia Department of Transportation (VDOT) – Transportation Alternatives Set-Aside funding for federal fiscal years 2021 and 2022 and endorsement of the "Central Elden Walkability Improvements" project.**

The Transportation Planner presented the staff report and PowerPoint dated September 17, 2019, which are on file in the Town Clerk's office. The Central Elden Walkability Improvements project would improve pedestrian safety, accessibility, and overall walkability along a road segment serving as a vital pedestrian connection between downtown and the south Elden commercial corridor.

There was a brief question and answer period between Councilmember Friedrichs and the Transportation Planner about the location.

The Transportation Planner outlined the project, which would include redesigning and reconstructing the streetscape on the south side of Elden Street, between Center Street to the east, and opposite Main Drive to the west. The town would seek funding for this project through the VDOT administered Transportation Alternatives – Set Aside (TA Set-Aside) Program. In accordance with the program's procedures, the town must provide a resolution to VDOT for consideration under the program. Staff expected construction to begin in 2026.

Councilmember del Aguila asked if the town should consider making the median turn lane one-way during rush hour.

The Transportation Planner stated staff had not considered that option. He stated that measure would not be included under this project.

Councilmember del Aguila provided comments and stated that even if it was not under this project, he had wondered if the town should explore that option.

The Transportation Planner concluded his PowerPoint. Staff recommends approval of the proposed resolution, as presented.

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

There was a brief question and answer session between Councilmember Dhakal and the Transportation Planner about the project.

September 17, 2019
(work session)

11. **Resolution, to consider an appeal of the Heritage Preservation Review Board's Decision on HPRB #19-29. The decision, made at the HPRB public hearing on August 21, 2019, approved, with conditions, an application for a Certificate of Appropriateness to replace metal shingles on an existing single-family house located at 631 Oak Street. The HPRB approval required that the replacement material be standing seam metal panels instead of architectural asphalt shingles as originally requested in the application. Property Owner/Appellant: Ann Vayda Null.**

Disclosures:

- Mayor Merkel stated, for the record, that she is an owner of real estate on Elden Street, which is in the Heritage District. She stated that she is able to participate in the discussion and action on this application fairly, objectively, and in the public interest and she has filed the appropriate disclosure with the town clerk and town attorney.

- Councilmember Baker stated, for the record, that she is an owner of real estate on Herndon Station Square, which is in the Heritage District. She stated that she is able to participate in the discussion and action on this application fairly, objectively, and in the public interest. She has filed the appropriate disclosure with the Town Clerk and Town Attorney.

- Councilmember del Aguila stated, for the record, that he is an owner of real estate on Herndon Station Square, which is in the Heritage District. He stated that he is able to participate in the discussion and action on this application fairly, objectively, and in the public interest. He has filed the appropriate disclosure with the Town Clerk and Town Attorney.

Mayor Merkel stated that because this was an appeal, there was no staff report. The appellant will present her case and the staff will present its report at next week's public hearing. She recognized the Town Attorney to outline the appeal process.

The Town Attorney stated that the appeal would be heard at the public hearing on September 24. At that time, the appellants or appellant's agent could present their appeal and identify any materials or evidence in the record to support it. Staff would have the opportunity to respond to the appellant and the public may provide comments. At the conclusion of the hearing, the Town Council may affirm, modify, reverse, or remand the case to the HPRB. The decision is based in the standards found in the Town Code and the Council's decision would be appealable to the Circuit Court.

There was brief discussion amongst Council and staff about the appeal process.

In response to queries from Mayor Merkel, the Town Attorney stated that she could send the Council a link to the Town Code section about HPRB appeals. She would send her usual attorney-client materials to Council. She stated that in the motion next week, Council needed to provide the reason for its decision, specifically if it remanded the decision. The Council shall not reverse or modify the decision unless there was evidence in the record that the HPRB's decision was not correct. She discussed the standards under which that could fall.

12. **Resolution, to approve a temporary license agreement to use a designated public space in the alley adjacent to Jimmy's Old Town Tavern for outdoor seating for an event.**

The Town Attorney presented the staff report dated September 17, 2019, which is on file in the Town Clerk's office. Jimmy's Old Town Tavern was requesting authorization to use designated alley public space located between 689 and 681 Spring Street for outdoor seating during an event from 11:00 am to 11:00 pm on October 6, 2019. The applicant has requested a Temporary Use Permit pursuant to the Zoning Ordinance. Staff recommends approval of the proposed resolution, as presented.

There was no discussion on this item.

13. **Resolution, to approve a temporary license agreement for the use of the Town public parking lot located behind Mediterranean Breeze at 781 Station Street, for a Saturday Anniversary event for Mile 20 at Mediterranean Breeze.**

The Town Attorney presented the staff report dated September 17, 2019, which is on file in the Town Clerk's office. She stated that the applicant, Mile 20, was requesting authorization to use the town public parking lot behind the Mediterranean Breeze on September 29, from 12:00 p.m. to 10:00 p.m., to hold a one-year anniversary event. The applicant also requested a Temporary Use Permit, pursuant to the Zoning Ordinance. The parking lot was behind the Mediterranean Breeze and it contains 38 public shared parking spaces. A portion of the parking lot would remain open to the public and will have signs posted stating it is not to be used for event parking. Staff recommends approval of the proposed resolution, as presented.

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

In response to queries from Councilmember Friedrichs, the Zoning Administrator stated that the applicant had to notify their neighbors.

The Town Attorney stated that she did not know if the applicant had notified everyone that has public shared parking interests in that lot.

There was further brief discussion on this item.

GENERAL

14. Resolution, to accept the State of the Town Report, Fiscal Year 2019.

The Town Manager stated that he would provide the full report at next week's public hearing. He stated that the brochure highlighting the report would be sent to residents in the mail.

CONSENT AGENDA

15. Resolution, to Authorize an Application to the Virginia Department of Transportation (VDOT) for the Allocation of Revenue Sharing Funds.

There was no discussion on the Consent agenda.

ROUNDTABLE

1. **Councilmember Friedrichs:** Asked for clarification on what the Town Attorney needed from Council on the legislative agenda.

   The Town Attorney stated that she was looking for ideas for the legislative agenda. She stated that she bases the town's legislative agenda heavily off of VML's program.

   Councilmember Friedrichs had several suggestions. She provided a paper copy with highlighting her ideas for the legislative program to the Town Attorney.

   In response to Mayor Merkel, the Town Attorney stated that the Council could email her suggestions for the legislative program.

   Councilmember Friedrichs stated she watched a recent HPRB public hearing, where a couple on Grace Street had asked to demolish a shed on their property. They were granted permission, but were told they would have to pay someone to historically document and photograph the shed before it was torn down. She did not think the town should place that burden on the homeowner.

   In response to Councilmember Friedrichs, the Town Attorney stated that this process was outlined in the Town Code.

   Mayor Merkel asked if documenting a historic structure was required every time one was torn down.

The Director of Community Development stated that it was standard practice for structures built in the town's period of significance. The party that pays for the preservation is not specified by the state.

The Deputy Director of Community Development stated this was standard practice and he reviewed what was required.

The Town Attorney agreed with her colleagues.

Councilmember Friedrichs stated that she would like to consider studying those who spend a lot of money on their homes for the benefit of the town.

Vice Mayor Olem stated that those programs exist and homeowners could apply for them from the state and federal government.

The Town Attorney stated that she understood Councilmember Friedrichs to be asking if staff could study this possibility.

There was brief discussion amongst Council and staff.

Councilmember del Aguila provided comments and thought this issue could be part of the Council's strategic planning around the affordable housing issue.

Mayor Merkel asked if this issue could be added to the discussion of the updated HPRB Guidelines. She stated that this could be part of the overall vision of making the Guidelines easier to use.

The Director of Community Development provided comments and reviewed the status of the HPRB Guidelines. She said some of this policy might fit with the guidelines, but issues of cost would not be part of that discussion.

There was further discussion amongst Council and staff.

Councilmember McKenna suggested that staff look at Alexandria as a sample.

The Town Manager stated that he could meet with Mayor Merkel, the Town Attorney, and the Director of Community Development, to discuss addressing these fees. He would come back to Council with more information, possibly at the next work session.

Councilmember del Aguila encouraged Council to view a documentary about San Francisco that showed how high tech and money can influence an area.

2. **Vice Mayor Olem:** Congratulated the newly promoted officers at the Herndon Police Department.

Vice Mayor Olem stated that the Herndon Chamber Committee meeting was held earlier in the day and the Town Manager and representatives from Comstock attended. She stated that parking was discussed, and she clarified that the town was not charging for public parking.

COMMENTS FROM THE TOWN MANAGER

The Town Manager stated the town was closing roads for milling and paving in the downtown. Lynn Street paving would continue into next week because of scheduling issues.

After the Town Attorney stated that Fairfax County would not hold court tomorrow, Wednesday, September 18, the Town Manager stated that paving on Lynn Street would commence tomorrow.

The Town Manager stated that Aslin Brewery's current building permit would allow them to restore what came down. Then they would need to get new permits. He noted that a wall had been constructed on the property. He stated that town would follow up with Aslin.

The Town Manager stated that he was scheduled to speak at the Herndon Youth Advisory Council meeting. He received an email from Lucy Brown, one of the members, and was impressed that she reached out.

Mayor Merkel stated that the HYAC members were impressive. She encouraged those that had not attended a HYAC meeting to do so.

Councilmember McKenna stated that Lucy was doing music therapy for her Girl Scout Gold Award at the Herndon Harbor House.

ADJOURNMENT

There being no further business, the meeting adjourned 10:02 p.m.

Lisa C. Merkel
Mayor

TOWN OF HERNDON, VIRGINIA 1879

Amanda M. Kertz
Deputy Town Clerk

Minutes approved by Town Council: September 24, 2019.