



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, October 20, 2020**

Pursuant to Virginia Code Section 2.2-3708.2, as amended; the Governor's Executive Orders, as amended; and in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments, Mayor Merkel has stated that the October 20, 2020 Herndon Town Council Work Session would be by electronic means. The meeting was broadcast and recorded through Cisco Webex and details for the meeting were made available to the public on Thursday, October 15, 2020. In attendance electronically were:

- 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; Lauri Sigler, Deputy Town Attorney; John Irish, Deputy Director of Public Works; David Stromberg, Zoning Administrator; and Margie C. Tacci, Deputy Town Clerk.

**October 20, 2020
(work session)**

ANNOUNCEMENTS

The Deputy Town Clerk welcomed those listening to the October 20, 2020 work session and stated that night's regularly scheduled Herndon Town Council meeting was a virtual meeting, which was being conducted electronically pursuant to:

- ❖ Virginia Code Section 2.2-3708.2, as amended;
 - ❖ the Governor's Executive Orders, as amended; and
 - ❖ in accordance with Ordinance 20-O-23, Continuity of Governmental Operations during Pandemic Disaster (COVID-19), as amended and readopted by the Herndon Town Council on September 8, 2020, which superseded previously adopted amendments.
- Proper notice of the electronic meeting was provided in accordance with the Code of Virginia;
 - Agenda and meeting materials, along with information for viewing the meeting and submitting comments for the record are available on the town's website; and
 - Electronic meetings will begin with a roll call to determine a quorum and all votes, including adjournment, will be by roll call vote.

CALL TO ORDER

1. Roll Call & Confirmation of Quorum

Mayor Merkel called the October 20, 2020, work session to order at 7:00 p.m. and asked the Deputy Town Clerk to call the roll for attendance. Mayor Merkel asked each Councilmember to respond by clearly stating their name and indicating they were present.

Following the roll call for attendance, Mayor Merkel confirmed there was an electronic quorum present that evening. All members were present electronically, with Mayor Merkel presiding. As the Deputy Town Clerk had stated, the meeting that evening was being conducted pursuant to the appropriate laws associated with the COVID-19 pandemic disaster.

2. Comments from the Town Manager

Mayor Merkel recognized the Town Manager for comments.

**October 20, 2020
(work session)**

The Town Manager stated that the Northern Virginia region was still experiencing a low disease burden with a low transmission rate for COVID-19. Southwestern Virginia continued to have more cases, but Northern Virginia was doing better, which the county health departments he spoke to attributed to citizens' behavior in helping to stop the spread of the virus. The Town Manager stated continuing this preventative behavior would be critical for the winter when individuals would be indoors more often. He reminded those listening that if an individual tested positive for COVID, the Fairfax County Health Department would contact them to make sure individuals had everything they needed to quarantine or for social services.

The Town Manager also reiterated his encouragement of flu shots. Health Department professionals were concerned about a convergence of flu and COVID and how that would tax the health system. He stated that most of the town's stores and pharmacies had the flu shots and that it was an easy thing to do.

The Town Manager stated that staff posted about Halloween activities on the town's website, which included guidance on what were low, medium, and high risk activities. He encouraged those listening to look at the guidance from the state and county departments of health.

Additionally, the Town Manager shared that the state and county health departments had discussed the future distribution of COVID vaccines. He just received the state vaccination strategy document today, which he had not yet had the chance to fully review. He stated he would keep an eye on this moving forward into the fall and the winter.

COMMENTS & DISCLOSURES FOR THE RECORD

Mayor Merkel asked the Deputy Town Clerk whether she had received comments for the record or Transactional Disclosure Declarations from Council on any items listed on that evening's agenda, and the Deputy Town Clerk stated that she had not received any comments or any transactional disclosures for that evening's meeting.

PUBLIC HEARINGS

3. **Ordinance 20-O-58, to authorize the use of eminent domain for the acquisition of a fee simple interest and a temporary easement on property owned by The Richmond Corporation at 640 Elden Street, Tax Map #: 0162-02-0225A, located in the northeast quadrant of the Elden Street and Monroe Street intersection, for public use by condemnation for transportation facility improvements at the Elden Street and Monroe Street intersection, Herndon.**

**October 20, 2020
(work session)**

Mayor Merkel recognized the Deputy Town Attorney for the staff report. She stated the Deputy Director of Public Works was available for questions.

The Deputy Town Attorney presented the staff report and PowerPoint, dated October 20, 2020, which are on file in the Town Clerk's office. She reviewed the project's location at the Elden and Monroe Street intersection and recognized the Deputy Director of Public Works to continue the presentation.

The Deputy Director of Public Works continued the PowerPoint presentation, where he reviewed the proposed improvements ~ including a new traffic signal, brick crosswalks and sidewalks with ADA compliant curb ramp, and a revised curb return in the southeast quadrant at the intersection. To construct the improvements, the acquisition of several temporary easements were identified as necessary.

Mayor Merkel recognized the Deputy Town Attorney for further comments.

The Deputy Town Attorney continued the PowerPoint presentation. She further reviewed the property and stated that the town would compensate the property owner for one tree and 10 shrubs impacted by the improvements. She then reviewed the state requirements for the town to exercise eminent domain. As part of the requirements, the town made a written, bona fide, but ineffectual effort to acquire right-of-way in fee simple and a temporary construction easement from the landowner who did not accept the offer. Before the town could proceed with eminent domain, the Council had to have a public hearing to consider the matter and the town had to give notice to the property owner about going forward with the Certificate of Take. She outlined that process and stated that negotiations with the property owner could continue both until and after the town filed the Certificate of Take. Staff recommends approval of the proposed ordinance, as presented.

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

There was a brief question and answer session between the Deputy Town Attorney, Town Attorney, and Councilmember Friedrichs about the ordinance language, specifically regarding the use of the term "condemnation."

Following brief discussion and responding to Councilmember Friedrichs, the Town Attorney confirmed it was important to use the language as provided in the state code.

There was a brief question and answer session between the Deputy Town Attorney and Vice Mayor Olem about the notification process between the town and the property owner, which staff sent and confirmed by certified U.S. mail.

October 20, 2020
(work session)

4. Ordinance 20-O-59, to consider Zoning Map Amendment, ZMA #20-01, 450, 455, 460, 465, 470, 475, 480, and 485 Springpark Place, to consider a zoning map amendment for a Unified Commercial Subdivision. The proposed rezoning would allow for the subdivision of four parcels into eight parcels with each parcel containing a building and associated improvements. Fairfax County Tax Map Reference Numbers: 0162-02-0164B, 0162-02-0164C, 0162-02-0164D, and 0162-02-0164E. Agent: Wire Gill, LLP. Applicant: Penzance. Property Owner: Springpark Place, LLC.

Mayor Merkel recognized the Zoning Administrator for the staff report on this item.

The Zoning Administrator presented the staff report and PowerPoint dated October 20, 2020, which are on file in the Town Clerk's office. The applicant sought a rezoning to allow for a unified commercial subdivision, which the Council had the authority to approve. The site consisted of eight buildings on four parcels and was built in the 1980s. The request included proffers so that it continued to function as a single development even though it would not be under one ownership. He reviewed the location, background, proposed site division, and project details. The applicant had not proposed any changes to the zoning.

At its September 28, 2020 public hearing, the Planning Commission recommended approval. The Commission shared staff's concerns regarding shared parking and long-term infrastructure maintenance and was satisfied with the revisions the applicant made to the proffer statement. The proffers included a future property association with mandatory participation. Staff recommends approval of the proposed ordinance as presented.

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

There was a brief question and answer session between Councilmember Friedrichs and the Zoning Administrator about zoning and future ownership of the property.

There was a brief question and answer session between Vice Mayor Olem and the Zoning Administrator about future uses on the property. The Zoning Administrator indicated that the applicant could better answer that question.

Mayor Merkel stated that the applicant would be available at next week's meeting to answer questions and provide clarification on this item.

October 20, 2020
(work session)

GENERAL

5. Ordinance 20-O-60, to amend Chapter 7 (ARTS DISTRICTS), to amend the definition of an Arts Business and to create a new definition for Arts Focused Redevelopment and establish new incentives for creation and support of new arts redevelopment projects.

Mayor Merkel recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated October 20, 2020, which is on file in the Town Clerk's office. The proposed ordinance would amend Chapter 7 of the town code, in which the Council had established an arts district in January 2016. She discussed how the state code with regards to arts districts had changed since that time. The proposed amendment would create a new definition of "arts business," to add "arts business or organization" to include not-for-profit organizations. The amendment would also create a new term called an "arts focused redevelopment," and establish incentives to support the creation of arts focused redevelopment projects.

The Town Attorney discussed the specifications to qualify as an arts business or organization, which included location in the Planned Development – Traditional Downtown (PD-TD) zoning district; that greater than 50 percent of the floor area of the business or organization must be used for arts instruction, media arts, performing arts, performing arts venue, visual arts creation, or visual arts exhibit as defined in the town code; and the business or organization might engage in related, incidental retail sales, as an accessory use. An "arts focused redevelopment" would be entitled to certain economic incentives in addition to those available to an individual arts business or organization. The state code enabled all the incentives referenced in the staff report.

The Town Attorney stated that the proposed amendments would create additional opportunities to expand the type, quantity, and quality of art offerings to town residents and increase the town's presence as a destination for art activities. Staff recommends approval of the proposed ordinance, as presented.

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

There was a brief question and answer session between Councilmember Friedrichs and the Town Attorney about the incentives.

There was a brief question and answer session between Councilmember Baker, the Town Attorney, and the Town Manager. They discussed jurisdictions with established arts districts, the proposed incentives, and the financial impacts of the ordinance.

**October 20, 2020
(work session)**

The Town Attorney clarified, for everyone's benefit, that the state's term was a "tax rebate," meaning that the individual would have to pay the taxes and if they qualified for the incentives, they would be reimbursed annually for a period of up to 10 years.

Following comments from the Town Manager about the tools this would provide the Economic Development Manager, Councilmember Baker asked for the town's assistance in advising the public about these changes. She asked that the town message existing businesses and that the Economic Development Manager advertise the incentives to new businesses.

Responding to queries from Vice Mayor Olem, the Town Attorney indicated that the businesses would have to reapply for the program every year. She also stated that there were many cases around the state where the arts district incentives helped to activate the district, which that was the hope for the town.

There was a brief question and answer session between Councilmember del Aguila, Mayor Merkel, the Town Attorney, and the Town Manager. The rezoning, application, and review process were discussed; along with the anticipated utilization; policy and fiscal implications of the proposed ordinance.

Responding to queries from Mayor Merkel, the Town Attorney stated that most likely, the town's Zoning Department would verify that an applicant to the program was dedicated to an arts use. The current requirements were outlined in the town code.

Responding to queries from Councilmember del Aguila, the Town Manager stated that like any incentive, the town was trying to achieve a policy objective and the fiscal aspect was part of that. He stated that many properties in the downtown arts district were ready for redevelopment and it would be difficult to activate them without incentives. He stated that by adding the incentives, the town would not be any worse off. He stated that the revenues would not be realized initially. The end of the incentive period (one to 10 years) would end up yielding revenue if the town could incent the properties to redevelop.

The Town Manager stated that he shared Councilmember del Aguila's concerns about long term revenue and indicated that was part of the thought process.

Mayor Merkel summarized Council's discussion. She stated that rezoning was the first step, that the PD-TD zoning was more valuable, and that the land would become more valuable even if the redevelopment did not occur right away.

The Town Attorney indicated Mayor Merkel was correct and agreed that the property owner had to first rezone to PD-TD to qualify for the incentives.

**October 20, 2020
(work session)**

There was a brief question and answer session between Councilmember Dhakal, the Town Attorney, and the Town Manager about the processes, concerns, and benefits to the town.

Responding to Councilmember Dhakal's comments about the fiscal effects, the Town Manager stated that, in addition to the loss of real estate tax revenues, the impacts would include a 50 percent reduction in associated development fees, like water and sewer and building permits.

There was a brief question and answer session between Councilmember Friedrichs, the Town Attorney, and the Town Manager about how businesses or organizations would qualify for the incentives; what would qualify as redevelopment; and the tax rebate incentive.

Responding to Councilmember Friedrichs, the Town Attorney clarified that the tax rebate only applied to arts focused redevelopments, not to arts businesses and organizations. The incentives also applied only to town taxes and fees.

Responding to Councilmember Friedrichs, the Town Manager stated that the town could direct arts groups to the Fairfax County Economic Development Office for additional assistance.

Councilmember Friedrichs echoed Councilmember Baker's comments about promoting the incentives. She stated that the Fairfax County Economic Development department and Arts Fairfax could be helpful in that regard.

Mayor Merkel stated that she hoped to hear from the public and some of the arts organizations during next week's public comments.

CONSENT AGENDA

6. Resolution 20-G-48, to award Contract #D-20-01, General Engineering Services.

There was no discussion on the Consent agenda.

ROUNDTABLE

- 1. Councilmember Friedrichs:** Stated that she, Mayor Merkel, Vice Mayor Olem, and Councilmember Baker participated in the virtual Virginia Municipal League (VML) Conference this year. She enjoyed the discussion about reanimating small downtowns, in which Mayor Merkel was one of the panelists. She stated that many of those small towns had used CARES Act money to help their small businesses and organizations survive this major economic downturn. While she knew the county had used CARES Act funds, it was her understanding

**October 20, 2020
(work session)**

that the town had not yet spent all its money. Assuming there were funds that had not been allocated, she asked if the town could provide some of that money to the small businesses and non-profits.

The Town Manager stated that counties and cities were able to allocate money in this way through their economic development authorities, which the town does not have. The town has no means through which to provide this funding. He would verify with the Economic Development Manager, but he thought all town businesses that applied had received money through the county's RISE program.

Responding to Councilmember Friedrichs' query about giving some of the CARES act money back to the county, with the understanding that it would go toward town businesses, the Town Manager stated that while it was possible, the town would likely not yield dollar for dollar amount on the return back to its businesses. He stated that the Economic Development Manager was tracking the county money and how it affected the towns.

Councilmember Friedrichs understood, but she stated that even with the county money, it had not been enough, especially for vulnerable businesses.

2. **Councilmember Dhakal:** Echoed Councilmember Friedrichs' comments about the CARES Act funding. He asked if staff had communicated that town businesses could apply to the county for the RISE funds.

Councilmember Dhakal stated that he understood why video recordings of work sessions had not been provided in the past when the Council was meeting in-person in the small Hoover Conference Room, but since they were meeting virtually, he wanted to know if it staff could now provide video recordings of work sessions and post them on the website.

Responding to Councilmember Dhakal's first question, the Town Manager stated that the Economic Development Manager has continually updated the website and personally reached out to businesses to advise them of state, county, and federal grant programs during COVID.

Responding to his second question, the Town Manager stated that he thought the audio only was provided because that was the process staff followed when the Council met in-person. He did not recall staff having a conversation about it.

Councilmember Dhakal reiterated his request to post the video recording of the work sessions on the website.

Mayor Merkel stated that she did not realize the videos for work sessions had not been posted on the website. She stated that an advantage to virtual work sessions was that video recordings could be made and posted. She hoped that going forward, some of Council's work sessions could continue virtually.

**October 20, 2020
(work session)**

The Town Manager stated that staff could proceed with posting the video of the work sessions with Council's concurrence.

Following discussion and with the concurrence of Council, Mayor Merkel asked staff to post the work session audio and video recordings on the town's website.

3. **Councilmember del Aguila:** Echoed Councilmember Dhakal's comments about posting the work session video and stated he thought it should have been available all along.

Councilmember del Aguila followed up on a request from a previous work session and asked for an update on revenue that was expected versus what was collected from taxes that had been deferred due to the State of Emergency.

The Town Manager stated that he sent an email to Council approximately two weeks ago with that information.

Following brief discussion and with the concurrence of Council, Mayor Merkel asked that the Town Manager resend his email to the Council and stated that Councilmembers could follow up with him for questions.

Councilmember del Aguila stated that in speaking with many residents, the sentiment was the town was doing a good job, but the recycling fee was a concern. He stated that he had heard this complaint from numerous people.

Councilmember del Aguila stated that during the gun legislation discussion at a September work session, he recalled asking staff for a summary of how the Fairfax County Board of Supervisors acted on gun safety legislation and that he had requested a summary of the county's actions going forward.

The Town Attorney stated that she did not think she was specifically directed to do that, but she could provide such a summary.

There was brief discussion amongst Council and staff about the gun legislation discussion and what staff was asked to do at the work session.

Mayor Merkel recalled that following a lengthy discussion, the Council was waiting to meet in-person rather than virtually to further consider the matter, to which Vice Mayor Olem agreed.

Councilmember del Aguila thought that the Council was waiting for feedback, guidance, or summaries on Fairfax County's action. He did not think the Council needed to wait for a public hearing to further discuss the matter. He would like any additional information shared with the Council during a work session.

**October 20, 2020
(work session)**

Mayor Merkel and Vice Mayor Olem stated that neither of them said the Council had to wait for in-person or public hearing meetings to discuss this matter at the Council level.

There was further discussion amongst Council and staff about what had been requested during Council's discussion about gun safety legislation.

Mayor Merkel asked Councilmember del Aguila to clarify what he was requesting from staff.

Councilmember del Aguila believed that he asked the Town Attorney to obtain, evaluate, or review, Fairfax County's action on gun legislation. He thought this matter was forgotten.

Mayor Merkel did not think the matter had been forgotten, but it appeared there was confusion amongst Council about what was directed. She stated that she could look at the record, but Council was not trying to "kick the can." It was her understanding that Council wanted this to be a publicly vetted conversation when it happened.

The Town Attorney recalled that she was not directed to make a presentation to Council, and stated that she would not have been able to at that time, because the discussion had been limited to critical governmental items. If directed, she would be happy to schedule a discussion item. She would have brought this forward if that had been the direction.

There was further discussion amongst Council and staff about the work session discussion on gun legislation.

Councilmember del Aguila stated that he did not expect a formal presentation.

It was Mayor Merkel's understanding that the Council was going to have another discussion on gun legislation, which would hopefully be held in-person. There had been no date set for this discussion.

Councilmember del Aguila and Mayor Merkel each provided comments about discussing this matter in-person.

Mayor Merkel stated several of their colleagues have mentioned about how there was not as much public input from virtual meetings as the Council would like. She stated that a work session discussion on this item could happen at any time, and that she was speaking more toward taking action.

Councilmember del Aguila stated he was not ready to discuss taking action and that he wanted to discuss a potential ordinance through a work session discussion item.

**October 20, 2020
(work session)**

There was brief discussion amongst Council and staff about the types of legislation that Council wanted to review.

Following discussion and with the concurrence of Council, Mayor Merkel asked the Town Attorney to send the Council the ordinances from Northern Virginia jurisdictions that have adopted firearms ordinances pursuant to the new legislation that took effect on July 1, 2020.

4. **Vice Mayor Olem:** Echoed Councilmember Friedrichs' comments on the VML conference. During the conference, Chief DeBoard addressed some of the legislation before the state concerning law enforcement. One of the proposed changes had passed, which concerned Vice Mayor Olem. She stated that police officers would no longer be able to stop drivers if their lights were out on their vehicles.

Vice Mayor Olem congratulated Mayor Merkel, who was recognized before the Fairfax County Board of Supervisors earlier today for her service as Mayor. She stated that she was thrilled to have been part of Mayor Merkel's last four terms. She indicated that to understand what was going on at the county level, one could read the newspaper or review their website.

Mayor Merkel thanked Vice Mayor Olem for her comments and stated it had been an honor to be recognized by the county. She stated that the recording of the meeting should be posted on the county's website that next day.

5. **Mayor Merkel:** Shared that the Economic Development department released a new "open for business" video.

Mayor Merkel reminded everyone listening that there was an election in a few weeks. She stated that the number of citizens voting early was impressive. She encouraged everyone to get out and vote and encourage their neighbors to do so.

CLOSED MEETING

Mayor Merkel stated that the Council had a need to go into a closed meeting and that the Town Clerk had posted and filed the appropriate notices.

On motion of Councilmember Baker, seconded by Councilmember Friedrichs, and carried by unanimous roll call vote by electronic means, the Herndon Town Council went into Closed Meeting at 8:37 p.m., under Section 2.2-3711(A)(1) of the Code of Virginia for discussion of prospective candidates relative to appointments to boards and commissions.

Vote: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

**October 20, 2020
(work session)**

RECESS

At 8:37 p.m. Mayor Merkel called a brief recess, and at 8:40 p.m., the closed meeting reconvened by electronic meeting using Cisco Webex, all members present, and with Mayor Merkel presiding.

Mayor Merkel took attendance by roll call and asked if there was anyone present whose name she did not call. Hearing none, the closed meeting continued.

CLOSED MEETING

On motion of Councilmember Baker, seconded by Councilmember McKenna, and carried by unanimous roll call vote by electronic means, the Herndon Town Council reconvened in public session at 8:58 p.m.

Vote: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

On motion of Councilmember McKenna, seconded by Councilmember Friedrichs, and carried by unanimous roll call vote by electronic means, the Herndon Town Council approved the following Certification of Closed Meeting.

Vote: Councilmembers Baker, Dhakal, del Aguila, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting "Aye."

Certification of Closed Meeting

WHEREAS, the Town Council of the Town of Herndon has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by this Town Council that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed, or considered by the Town Council.

October 20, 2020
(work session)

VOTE:

Ayes – 7

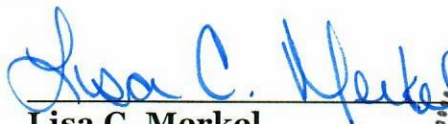
Nays – 0

ABSENT DURING VOTE: 0

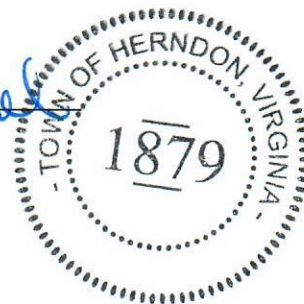
ABSENT DURING MEETING: 0

7. **ADJOURNMENT**

On motion of Vice Mayor Olem, seconded by Councilmember Dhakal, and carried by unanimous roll call vote by electronic means, the meeting of the October 20, 2020 work session was adjourned at 9:00 p.m. The vote was: Councilmembers Baker, del Aguila, Dhakal, Friedrichs, McKenna, Vice Mayor Olem, and Mayor Merkel voting “Aye.”



Lisa C. Merkel
Mayor





Amanda M. Kertz
Deputy Town Clerk

Minutes approved by Town Council: November 17, 2020.