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**HERNDON TOWN COUNCIL
Work Session
Tuesday, November 9, 2021**

At a regular meeting of the Town Council of the Town of Herndon, Virginia, held in the Herndon Police Department Community Room, 397 Herndon Parkway, Herndon, Virginia, on Tuesday, November 9, at 7:00 p.m., there were present:

- Mayor Sheila A. Olem, presiding;
- Vice Mayor Cesar del Aguila;
- Councilmember Naila Alam;
- Councilmember Pradip Dhakal;
- Councilmember Sean M. Regan; and
- Councilmember Jasbinder Singh.
- Councilmember Signe Friedrichs was absent.

Staff present during the meeting: William H. Ashton II, Town Manager; Lesa Yeatts, Town Attorney; Robert Tang, Director of Finance; Scott Robinson, Director of Public Works; Elizabeth Gilleran, Director of Community Development; Page Kalapasev, Director of Information Technology; John Irish, Deputy Director of Public Works; Mark Duceman, Transportation Program Manager; Maria Lee, Budget Manager; David Stromberg, Zoning Administrator; Jaleh Moslehi, Capital Projects Planner/Engineer; Dave Bracamonte, Systems Manager; Christopher Garcia, Development Program Planner; and Margie Tacci, Deputy Town Clerk.

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CALL TO ORDER

1. Roll Call & Determination of Quorum

Mayor Olem called the work session to order at 7:00 p.m. and asked the Deputy Town Clerk to call the roll for attendance. She asked each member of Council to indicate they were present. Following the roll call for attendance, Mayor Olem confirmed there was a quorum present.

Mayor Olem shared that Councilmember Friedrichs would be unable to attend due to a family emergency.

Mayor Olem asked Council to observe meeting decorum by showing their hand to be recognized by the chair for comments and stating their last names before providing comments and when making or seconding motions. She reminded those participating to follow the town's Meeting Guidelines that were used for all government meetings to maintain good order, which included: refraining from participation unless and until recognized by the chair; being respectful in comments; refraining from threatening or intimidating language; profane, vulgar, obscene, or threatening remarks were not permitted; and attacks on the character, motive, or other harmful remarks against individual members of Council, town staff, or the public would not be tolerated.

ANNOUNCEMENTS

Mayor's New Business Breakfast

Mayor Olem shared she hosted the first New Business Breakfast in two years and welcomed new businesses and their owners to town. Mayor Olem expressed appreciation to the town's Economic Development Manager, Dennis Holste, and other staff for their efforts in coordinating the event.

Last Day of Farmers' Market

Thursday, November 4, 2021 was the last day of the Farmers' Market. The Farmers' Market had a great season, and Mayor Olem looked forward to its return in the spring.

Bicycle Symbols

Mayor Olem said people probably noticed the bicycle symbols "sharrows" on the roads in tow and that they were from a project the town had worked on with Fairfax County since 2011.

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Veterans Day Ceremony

As a reminder, Mayor Olem stated the American Legion would host the Veterans Day Ceremony Thursday, November 11, 2021 at 11:00 a.m. on the Town Green behind the Herndon Municipal Center. She hoped many would attend the ceremony to pay tribute to their veterans.

Town Council Strategic Planning Meeting

Mayor Olem indicated the Town Clerk reached out for Council's availability for the next Town Council Strategic Planning Initiatives Meeting. Out of the dates offered, Thursday, December 2, 2021 was when everyone would be available. The Town Clerk would send an outlook and the meeting would be held in the Herndon Police Department (HPD) Community Room beginning at 7:00 pm.

TOWN MANAGER UPDATES

2. Comments from the Town Manager

The Town Manager said there was a gas main rupture on Elden Street between Center, Spring, and Station Street. A line was mismarked by three feet and hit by a contractor. The Town Manager said HPD detoured traffic and Fairfax Fire was on the scene quickly. He reported that the line had since been repaired, and he encouraged those listening to follow HPD on Twitter for updates and information.

The Town Manager said projects including the Center/Elden Sidewalk Streetscape and Herndon/Elden/Monroe Street projects were underway to support Metro. He also shared that the Transit Related Growth Area (TRG) RFP responses should be back by the end of the week, and they would bring that consulting study to Council soon.

The Town Manager reported that Dr. Gloria Addo-Ayensu said Fairfax County was experiencing moderate transmission of COVID, but regional health directors would not make any recommendations for relaxing mandates until the entire region was in moderate transmission for 28 days.

COMMENTS & DISCLOSURES

Mayor Olem asked the Deputy Clerk if there were any comments or disclosures for the record that evening. The Deputy Clerk stated comments were provided to Council and entered into the record on: Item #3, Ordinance 21-O-22, to consider Zoning Ordinance Text Amendment ZOTA #21-03.

The Clerk did not receive disclosures from Council on any item listed on the agenda that evening.

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PUBLIC HEARINGS

3. Resolution 21-G-83, to consider a special exception, SE #21-04, 148 Herndon Mill Circle, to permit an accessory dwelling unit through addition of a secondary kitchen within the first floor of the attached primary dwelling structure.

Mayor Olem recognized the Development Program Planner for the staff report. The Development Program Planner presented the staff report and PowerPoint dated November 9, 2021 which are on file in the Town Clerk's office.

Vice Mayor del Aguila said there was consensus to limit staff presentations to 10 to 15 minutes. Mayor Olem said they needed a thorough staff report. Vice Mayor del Aguila said there was consensus to limit the staff report, and he suggested a 15-minute limit. There was discussion between Vice Mayor del Aguila and Mayor Olem about the staff reports and answering questions. Mayor Olem said they would take it up later. Vice Mayor del Aguila said the consensus of the body was to limit staff reports to 15 minutes.

Councilmember Regan thought they should go into work sessions having read the staff reports. He asked the Town Manager and staff to try to structure reports to 10 minutes or less if possible. He thought that was a reasonable timeframe if people read their packets. He had a brief discussion with Mayor Olem about Council reading information.

Councilmember Singh said he made presentations never assuming people had read what he gave them, and he thought it was up to staff to give the gist of what they were going to do.

Mayor Olem again recognized the Development Program Planner for the staff report.

The Development Program Planner stated the requirement for a special exception for certain uses within residential zoning districts came from the Town's zoning ordinance. This special exception application would allow an Accessory Dwelling Unit (ADU) through addition of a secondary kitchen within the first floor of the attached primary dwelling structure that is zoned Residential Townhouse Cluster (RTC). The site was located within the Village of Herndon Mills residential subdivision, and the current use of the space was building mechanical systems space and general living space a component of the existing, primary single-family residential use.

He reviewed the zoning ordinance and regulations relevant to this special exception and outlined the specific request for this special exception and parking availability.

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The Development Program Planner said the applicant received building permits to construct a wet bar as an interim condition permitted by-right in accordance with the zoning ordinance. There would be additional changes made, upon approval of the proposed special exception. Staff reviewed this application and believed that, with the recommended conditions, the application complies with the criteria listed in Section 78-155.3(e) of the zoning ordinance that apply to all special exception applications and complies with the 2030 Comprehensive Plan.

The Development Program Planner reviewed the impacts of both denial and approval of this special exception.

He said the Planning Commission (PC) first heard this application at its work session on October 18, 2021 and again at the public hearing on October 25, 2021. During the work session, PC members discussed and requested clarification of the potential for conditioning the approval to include allowing the special exception to "run with the land" such that the secondary kitchen would not be require removal or demolition by the property owner prior to any future sale of the property.

After additional review and consideration, the Zoning Administrator determined that the resolution could be modified to allow the improvements to remain even if ZOTA #21-03 were not adopted by Council. Staff modified the draft resolution accordingly and all other recommended conditions of approval remained as presented at the PC work session on October 18, 2021. The PC expressed general support of the proposed special exception, including the revised resolution with conditions. There were no comments from the public at the PC public hearing, and they voted 6-0 to approve the application with revised staff recommended conditions with one commissioner member absent for the vote.

Staff recommended approval of Special Exception application SE #21-04, that shall run with the land and not be voided or extinguished from a change in ownership in accordance with the conditions set forth below to achieve compliance with the standards found in Sections 78-80.4 and 78-155.3: the accessory dwelling unit shall be constructed and utilized in substantial conformance with the original application and updated first floor plan received on October 12, 2021; and the site shall maintain a minimum of three standard vehicle parking spaces measuring 8.5' by 18'. Use of garage or driveway space for any use other than parking shall not be considered maintaining a space.

There was a brief question and answer session between Councilmember Regan and the Development Program Planner about the door leading out of the back of the unit. Councilmember Regan then commented on 21-O-3 passing and that the mechanism for elderly/disabled occupants goes away and these things are not allowed. The Development Program Planner said this would still be allowed as a special exception. Councilmember Regan also commented on "run(s) with the land."

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There was a brief question and answer session between Vice Mayor del Aguila and the Development Program Planner about “standard vehicle spaces” and typical parking standards in residential developments.

Councilmember Singh said he did not accept that this should be a special exception and provided comments about people using these for family members and going through this process for their own house. Councilmember Singh provided further comments and asked why this was a special exception. Responding to Councilmember Singh, the Development Program Planner referenced the Code of Virginia sections relevant to local governments enacting special exceptions to mitigate overcrowding. He said it was common in Virginia to manage overall density and added that the applicant had a verifiable disability and met the requirements to apply for these exceptions. Councilmember Singh provided further comments about a person going through an exception process for their own home.

Councilmember Dhakal asked what would be by- right for this application and what made it a special exception. The Development Program Planner said the Applicant wanted an independent living space, and the wet bar was a clear line drawn by the town which was mentioned in zoning ordinance.

Mayor Olem provided comments about the Development Program Planner feeling rushed and providing transparency for the public. Vice Mayor del Aguila interjected and said the Development Program Planner told them he did not feel rushed. Mayor Olem said Vice Mayor del Aguila was out of order. Vice Mayor del Aguila said he was not out of order.

The Deputy Town Clerk intervened because she thought there was one more question from Council.

Mayor Olem clarified she was making a comment and then going to call on Councilmember Regan again.

Councilmember Regan asked for clarification about the Development Program Planner’s answer to Councilmember Dhakal. The Development Program Planner clarified it was for cooking features to create an independent living space within the existing dwelling unit. Councilmember Regan asked if the water and HVAC was shared by the entire townhouse, and the Development Program Planner confirmed. There was further discussion about doors and accessibility through the unit, and Councilmember Regan provided additional comments about accessibility.

Councilmember Singh returned to the discussion of the wet bar. He said it was to discourage having a place to rent to other people, and it was their own home. He felt they should be able to have it if they wanted it and indicated he felt this was

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an “undue burden.” Councilmember Singh opined there were no adverse effects on public or neighbors, utilities, drainage. He thought they needed to look at special exceptions and commented on how he felt the process was unfair to owners.

Vice Mayor del Aguila asked the Parliamentarian if it was within Council’s guidance to request that staff limit presentations. The Town Attorney indicated that was not a parliamentary question. Vice Mayor del Aguila asked if it was appropriate for Council to ask. The Town Attorney said it was something Council consider and share. Vice Mayor del Aguila asked how to bring it forward. The Town Attorney said, to be considered, it would be good to send something to the Town Manager ahead of time. Vice Mayor del Aguila said there was a majority opinion on Council to spend the most time asking questions—with the assumption they read the material. He thought it was appropriate for staff to start thinking in terms of communicating within 10 to 15 minutes. Vice Mayor del Aguila commented on his corporate background and the expectations for communicating information.

4. Resolution 21-G-84, to consider a special exception, SE #21-05, 299 Herndon Parkway, Suite 108, to permit a personal service use consisting of cosmetics and aesthetic services within the first floor of a multi-tenant commercial office building.

Mayor Olem recognized the Development Program Planner for the staff report. The Development Program Planner presented the staff report and PowerPoint dated November 9, 2021 which are on file in the Town Clerk’s office

He said this special exception application was to allow a personal service use consisting of cosmetics and aesthetic services within the first floor of the multi-tenant commercial office building. The site was located within the Herndon Park Condominium Center, and the tenant space was currently vacant. They were awaiting the conclusion of this request for a special exception to reconfigure of interior spaces to support the proposed new business.

The Development Program Planner provided an overview of summary information for the application including the address, names of owners/applicants, business, zoning and land use designations, and the total area for the site, building, and tenant space. He said the applicant proposed to reconfigure the existing 966 square feet of tenant space into a cosmetics and personal services business, more specifically providing cosmetic eyelashes and skin care services. The proposed business would have a small retail sales space, customer waiting and reception areas, a unisex bathroom, storage room, spa room, two cosmetic application areas with a privacy barrier in between, and a break room area. Business operations were proposed by appointment only from the hours of 10:00 a.m. to 6:00 p.m. Mondays through Saturdays and with a proposed maximum customer count of three at any given time.

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The Development Program Planner reviewed parking and transportation related to the location. He said staff and the PC reviewed this application and believed that, with the recommended conditions, the application complied with criteria listed in Section 78-155.3(e) of the zoning ordinance that apply to all special exception applications and the with Herndon's 2030 Comprehensive Plan.

The Development Program Planner reviewed the impacts of both denial and approval of this special exception.

He indicated the PC first heard this application at a work session on October 18, 2021 and again at a public hearing on October 25, 2021. The PC expressed general support of the proposed special exception, though the PC did discuss the proposed business operations and the proposed conditions of approval. There was no public comment at the PC public hearing. The PC voted 6-0 to approve the application with staff-recommended conditions. One commissioner member was absent for the vote.

Staff recommended approval in accordance with Alternative #1 and with the following conditions: the personal services business space shall be constructed and utilized in substantial conformance with the original application and updated first floor plan received on August 17, 2021; the business operations shall be conducted by appointment only and limited to six total people, to include employees, occupying the space at any given time; and the allocation of retail sales floor space shall be limited to not more than 50 square feet within the tenant space.

Councilmember Singh asked if these two exceptions should have been approved administratively by staff. The Development Program Planner said what was permitted under current regulation was specific about use for commercial office being allowed by special exception only. He reviewed the process.

There was a brief question and answer session between Councilmember Dhakal and the Development Program Planner about the types of businesses allowed by-right in the Commercial Office (CO district) and parking related to office buildings.

Mayor Olem commented on office buildings and sharing space with zoning appropriate businesses due to the potential effects on other tenants.

Councilmember Singh supported Mayor Olem's comment about seeing how others might be affected. He thought impacts on others should be part of the staff presentations.

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5. Ordinance 21-O-22, to consider zoning ordinance text amendment, ZOTA #21-03, to amend Chapter 78 (ZONING), Article VII (Use Regulations), Article VIII (Accessory Uses), to revise or establish new limitations on size, bulk, and setbacks for accessory dwelling units; to eliminate the special exception requirement for accessory dwelling units in certain situations; and to eliminate the minimum age and physical, mental, or cognitive disability requirements for accessory dwelling units.

[This item was deferred from the October 26, 2021 public hearing.]

Mayor Olem recognized the Town Attorney to outline the process since the item was deferred from October 26, 2021. The Town Attorney reviewed that there was a motion on the floor to adopt an alternative and then a substitute to defer the matter. The motion to defer was carried and the matter was continued to the next public hearing. She reiterated she had explained that because the public hearing was closed, they could not reopen the public hearing without beginning the process again. The original motion was substituted with a motion to defer. Council would pick up at the next public hearing with a motion to possibly adopt one of the alternatives outlined.

Councilmember Singh inquired about the motion, and the Town Attorney clarified someone would have to make any motion. It could be the same motion, but it was deferred.

Councilmember Dhakal asked about the next week, and the Town Attorney clarified the process that might take place with a motion that was the same, different, or no motion at all.

Councilmember Regan asked further clarifying questions about what would take place. Mayor Olem and the Town Attorney said there would be a reminder to the public to speak during Comments from the Audience since this would not be a public hearing.

Vice Mayor del Aguila asked if this was continued, and the Town Attorney clarified it was not. Vice Mayor del Aguila asked if it would have to be first item on the agenda. The Town Attorney said in this situation, land use, it would not be.

Vice Mayor del Aguila asked if there was a lot that changed in the presentation, and the Zoning Administrator said this was really to update Council and answer any questions they might have.

Councilmember Singh began asking a question.

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Mayor Olem asked Councilmember Alam if she had any questions. Councilmember Alam indicated she would ask questions after the presentation.

Councilmember Singh asked if, after a motion was made, would it lead to normal discussion amongst Council. The Town Attorney said they would need to make a motion to discuss.

The Zoning Administrator introduced the ZOTA and reminded Council it was for amending Accessory Dwelling Unit (ADU) requirements.

The Zoning Administrator provided the background of this ZOTA and indicated Council approved Resolution 21-G-56 to initiate consideration of this Zoning Ordinance Text Amendment (ZOTA) on June 8, 2021. He said this resolution was in response to the letter from the Planning Commission (PC) dated April 29, 2021 to Council regarding the PC's support to update the regulations for Accessory Dwelling Units (ADUs). The PC held six meetings between July and September. This item came before Council the prior month and was deferred to the next set of meetings.

The Zoning Administrator then reviewed ADU uses not being mandated or prohibited by the Code of Virginia. He said it was up to each locality with zoning enabling authority, and the Code of Virginia provided factors to consider—which he outlined for Council.

The Zoning Administrator discussed requirements and existing data about effects. He said the draft was in line with changes made both regionally and nationally. The Zoning Administrator indicated the last Dispatch provided a sampling of publications with background information and how-to guides for individuals looking to construct ADUs and for local governments. He hoped that would clear up some of Council's questions. He then clarified that ADUs were not regulated as affordable dwelling units or maximum rents and were typically used for market rate rentals. They were smaller in size and the limitation in size would make them more affordable than an entire single-family home. The Zoning Administrator touched on benefits of ADUs including providing income and allowing aging homeowners the opportunity to remain, equity, and providing income. He provided brief further comments about ADUs.

The Zoning Administrator then went over a comparison chart of requirements to illustrate the proposed changes and requirements compared to adjacent localities. He also indicated he could go over coverage calculations again, if requested. The Zoning Administrator highlighted what would not be changing from the current ordinance.

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The PC recommended approval of ZOTA #21-01, by a 6-1 vote on September 27, 2021, with one additional modification—that a 10-foot setback be required between a detached ADU and any other detached accessory structure on the same lot.

Staff recommended that Council approve ZOTA #21-03.

Councilmember Dhakal had a question about slide six of the PowerPoint and about an administrative approval process for townhouses. The Zoning Administrator said the challenge was variety between townhouse communities. He indicated it was possible to have the ordinance say that an internal ADU is a by-right use, but they did not find many communities that allowed that. He thought it would be on the more permissive side, and they were trying to craft this ordinance to be in the middle with the variety of townhouses in the town. He provided further comments about problems, conditions, and administrative approval.

Councilmember Dhakal asked if, in the past five years, there was a townhouse application where the SE request was denied. The Zoning Administrator said there was none of which he was aware. There was brief further discussion between Councilmember Dhakal and the Zoning Administrator about townhouses.

Councilmember Singh commented on multifamily units and read proposed legislation from Delegate Samirah about ADUs which he said did not get through the third step in the state legislature. He said to the Zoning Administrator that he had “great doubts about what you are telling us here.”

The Zoning Administrator said this House Bill would have mandated localities to allow it, and there would have been no option to prohibit it. He further stated the bill would have said ADUs were mandatory.

Councilmember Singh asked the Zoning Administrator to “take us to what part of the state regulations specifically allow them or say they are not prohibited.” The Zoning Administrator said the Code of Virginia does not require or prohibit them. Councilmember Singh said, “it must.” The Zoning Administrator said it allows the localities the ability to have zoning to regulate and list primary and accessory use. The Zoning Administrator indicated that not every use listed in any zoning ordinance was articulated in the Code of Virginia and some uses were up to localities.

Councilmember Singh said, “You may be right. I would like to have some legal opinion or a discussion of that issue because this is a very important issue.”

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The Town Attorney said the Zoning Administrator was correct and the code section Councilmember Singh was looking for was 15.2-22-80 (General Zoning Language) in the Code of Virginia that grants localities broad authority to regulate zoning. The Town Attorney said the Zoning Administrator was correct that that legislation Councilmember Singh read was attempting to mandate, obviate, and to take away Council's power to say what did or did not apply in the town by requiring everyone to have the same rules.

Councilmember Singh said, "I accept what you're saying for the moment, but I also reserve the right to really go back and take a hard look at that because this is so fundamental." He then commented on single-family residential zoning. The Town Attorney directed Councilmember Singh to Chapter 17 in the Land Use Handbook. Councilmember Singh said he did look at that chapter.

Mayor Olem recognized Councilmember Regan, and he asked for a reminder of how many cases nearby counties had since allowing them. The Zoning Administrator said the estimate for the town was two to three per year. He provided context based on Arlington County and indicated he could provide Council with exact numbers, but the ratio worked out to .0004 percent of available single-family structures constructing an ADU in the time allowed.

Councilmember Alam's question was inaudible. The Zoning Administrator clarified that her question was how to know if the applicant's HOA allows an ADU was going to be constructed. The Zoning Administrator indicated that if the HOA's rules were more restrictive that would govern even if the zoning ordinance said it was allowed. Mayor Olem thanked Councilmember Alam for her question and indicated she planned to ask a similar question.

Councilmember Singh commented on himself looking at Fairfax County maps for residential areas and applying the setbacks. He said the yellow marks on the map he was holding could have ADUs and that was more than 50 percent. He thought that meant that over time people who could build would because they could make money. He commented on land value going up if they did. He did not know if that was desirable and he had "great concern, in this part of the town, that you would allow these things...great concern that you will destroy the way of living." He then said the white houses on his map would be at a disadvantage because they could not build anything, and they would have "taken those rights away." Councilmember Singh thought that the staff or the PC should have "take(n) a look at not only this section of the town but other section of the town and to see how many of these lots could be built upon and then see what the impact on stormwater drainage is." He further discussed what he thought should have been looked at in terms of town services. He thought that would be part of the Comprehensive Plan and they would have to go back and revise the plan to see whether this should be done. Councilmember Singh provided further comments about having a public hearing. That was his major objection, that the PC should not look at individual cases, and that this was a major change. He said it was the

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PC's responsibility and they should have initiated it, saying "I'm very disappointed because that is what their role is. Their role is not just individual stuff...evaluating individual stuff." He provided further comments on what he felt should be done first, area-wide impacts, and the stormwater drainage issues he observed.

Mayor Olem asked about whether Councilmember Singh had a question. He said, "should we not wait to do this until the proper analysis is done?"

Councilmember Regan thought Councilmember Singh brought up some points worth discussing and said he would address two things he brought up. First, Councilmember Regan said he rejected the idea of a neighbor's property becoming more valuable making someone else's property less valuable. He opined that if his neighbor's property value went up, his would too. He was certain his would not go down because his neighbors went up. Referencing Councilmember Singh's drawings, he said if the drawings were correct and he lived in a white square he thought Councilmember Singh was saying he could not create a detached ADU, but all properties could put an addition on or convert a space to create an ADU. All houses under this proposed ZOTA could create an ADU to create revenue and brings their values up.

Councilmember Regan asked if this ZOTA passed if a property owner could build more impervious surface, and the Zoning Administrator said no. The amount would still be capped at 50 percent.

Responding to queries from Councilmember Dhakal, the Zoning Administrator clarified one property owner could not have both an internal and external ADU. They were limited to one. Mayor Olem said she thought that was in a prior staff report, if Councilmember Dhakal wanted to look at that.

Councilmember Singh commented on increased covered surface with ADUs and on existing water and sewer capacity in relation to Councilmember Regan or staff's "contention." He provided further comments about stormwater and planning.

Vice Mayor del Aguila asked for confirmation that everyone knew these were not controlled affordable units and they were privately, non-regulated units for those owners. He had heard from both sides. Vice Mayor del Aguila said they had done an abysmal job addressing housing and he was coming from that view. He said he was quoting a homeowner who said it was "allowing them to age in place." For him that was paramount, he thought it might cause some unintended consequences, but he thought as a Council going forward, they could address those things. He asked the Zoning Administrator if the PC had the levels of philosophical discussion that Councilmember Singh brought up. If not, he thought he had different concerns.

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The Zoning Administrator said especially the work sessions spent several hours going through those type of things. The Zoning Administrator thought restricting to point where it is difficult would lead to people selling homes and moving away and houses being torn down, and other things being built in their place. Vice Mayor del Aguila reiterated some concerns but said it was a leap of faith doing what was best for most people.

Mayor Olem indicated one of her concerns was with individuals that have made two unauthorized ADUs in single-family homes creating three separate units with no pulled permits, inappropriate electric, and only one egress. She wanted to hear how they could look into that in the future and address health and safety issues. The Zoning Administrator said those were probably the most time-consuming for enforcement staff to go after. He said it could be difficult to get proof and then compliance from a property owner. At that time, zoning enforcement staff spent just as much time on someone who did get permits as on someone who was purposefully creating an unsafe, illegal dwelling. Mayor Olem provided further comments about things being up to code.

Councilmember Singh said what he wanted to see, as a consultant, were the calculations and the assumptions. He said he wanted real calculations, and he did not think they were difficult to do. He said he disagreed with staff saying it complied with the Comprehensive Plan and reiterated he wanted to see calculations. He provided further comments about doing this and what he thought would happen in the future with people trying to maximize profit. He wanted to see the experience of other people, how successful they were, and what the restrictions have been.

GENERAL

6. **Resolution 21-G-85, to approve the Town's participation in the proposed settlement of opioid-related claims against McKesson, Cardinal Health, AmerisourceBergen, Janssen, and their related corporate entities, and to direct the Town Manager and/or Town Attorney to execute the documents necessary to effectuate the Town's participation in the settlements.**

Vice Mayor del Aguila announced that he had a disclosure and that through his company he had done business with AmerisourceBergen. The Town Attorney clarified he would submit his disclosure to the Town Clerk. She asked if he was recusing himself. Vice Mayor del Aguila asked where to draw the line. The Town Attorney said, without a legal opinion on his personal situation being given publicly, she would say—without knowing exactly what he would be disclosing—that it would probably be best for Vice Mayor del Aguila to recuse himself from discussion and action. She said if he benefitted from the company, he had to make a personal decision about whether he could make a fair and objective

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decision. Vice Mayor del Aguila asked if they should take this offline. The Town Attorney said yes, she would have liked to. The Town Manager said, in an abundance of caution, he would suggest Vice Mayor del Aguila recuse himself that night, talk to the Town Attorney offline, and then come back.

Vice Mayor del Aguila recused himself and stepped outside.

Mayor Olem recognized the Town Attorney for the staff report.

The Town Attorney presented the staff report dated November 9, 2021 which is on file in the Town Clerk's office. She had sent information out in her Dispatch, and she would assume everyone read what she sent. She had asked for questions beforehand and would assume everyone had no questions.

The Town Attorney said that after years of negotiations, two proposed nationwide settlement agreements had been reached that would resolve all opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors, McKessen, Cardinal Health, AmerisourceBergen, and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson. The State of Virginia elected to participate in both of two national settlements and cities, counties, and towns (with population greater than 10,000) may participate if they did so by January 2, 2022. It was important that every locality that could participate did. The extent of participation would determine how much money each state and its localities received because approximately half of the abatement funds were in the form of incentive payments where the higher participation of localities in a state, the greater the amount of settlement funds that would flow into that state. Although the amount of the settlement to be received by the town was not determined, a positive financial impact of accepting this settlement was anticipated.

Staff recommended that Council approve the resolution as proposed, authorizing the town's participation in the proposed settlement of opioid-related claims against McKessen, Cardinal Health, AmerisourceBergen, Janssen, and their related corporate entities, and directing the Town Attorney to execute the documents necessary to effectuate the town's participation.

Mayor Olem provided brief comments.

The Town Attorney commented on costs for the town related to the opioid crisis and the fact HPD was most affected.

Councilmember Dhakal provided brief comments about participating. He asked if this was symbolic. The Town Attorney clarified it was not and there would be a distribution from a statewide fund primarily to address ongoing issues.

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Responding to Councilmember Singh, the Town Attorney provided further clarification about what funds might be used for.

The Town Manager clarified they could not put this on Consent Agenda because of Vice Mayor del Aguila recusing himself.

7. **Resolution 21-G-86, to adopt the Investment and Portfolio Policy for the Town of Herndon and to establish an Investment Oversight Committee.**

Mayor Olem recognized the Director of Finance for the staff report. The Director of Finance presented the staff report and PowerPoint dated November 9, 2021 which are on file in the Town Clerk's office. He stated that in October 2002, the Town of Herndon established an Investment Committee to review its investment policy and procedures with the goal of updating and refining the Town's Current Investment practices. In December 2003, the committee issued a draft investment policy and recommendations to the Town Council. By December 14, 2004, the policy was adopted by the Town Council of Herndon, Virginia. Since then, the policy had not been updated.

An investment policy describes the parameters for investment government funds and identifies the investment objectives, preferences or tolerance for risk, constraints on investment portfolio, and how the investment program will be managed and monitored. The investment policy provides and demonstrates commitment to the fiduciary care of the town's public funds, making it a crucial element in an investment program. The Director of Finance outlined what an investment policy includes such as: the parameters for investing; roles, responsibilities, and standard of care; suitable and authorized investments; investment diversification; safekeeping, custody, and internal controls; authorized financial institutions, depositories, and broker/dealers; risk and performance standards; and reporting and disclosure standards.

The investments and cash management for local government are guided mainly by Virginia Code Chapter 44 of the Virginia Security for Public Deposits Act, Chapter 45—Investments of Public Funds Act, and Chapter 46—Local Government Investment Pool Act.

The Director of Finance said the Investment Committee would be made up of one Town Council Member who Town Council Appoints, the Town Manager, the Director of Finance, a member of the Town Attorney's Office, and an Outside Citizen of the Town of Herndon who the Town Manager appoints.

Staff recommended that the Mayor and Council adopt the updated Investment and Portfolio Policy, establish the Investment Oversight Committee, and appoint one member of the Town Council to the Committee.

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There were no questions or comments from Council.

Vice Mayor del Aguila asked what the process was for the appointment for Council.

The Town Manager indicated it was up to Council to put forth a name, and they could do that at that time or defer it.

Councilmember Regan asked the Director of Finance to return to the slide showing all the members of the committee.

Vice Mayor del Aguila and Councilmember Singh both indicated they were interested in serving. Vice Mayor del Aguila said he would defer to Councilmember Singh.

Responding to Councilmember Regan, Mayor Olem and the Town Manager clarified the appointment would be for the remainder of the Council term.

Council agreed to appoint Councilmember Singh as the Council member of the committee.

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

8. Resolution 21-G-87, to endorse and approve the submission of a funding application to the Northern Virginia Transportation Authority (NVTA) for FY26-FY27 Regional Funding to be directed towards the project titled 'Herndon Parkway Improvements at Worldgate Drive Extension'.

Mayor Olem recognized the Capital Project Planner/Engineer for the staff report. He presented the staff report dated November 9, 2021 which is on file in the Town Clerk's office. The Capital Project Planner/Engineer stated the action being requested was Town Council approval of a resolution permitting staff to submit one project application form to the Northern Virginia Transportation Authority (NVTA) for funding in FY 2026-FY 2027 (current funding round) for construction of the Worldgate Drive/Herndon Parkway intersection with multimodal facilities and enhanced safety features.

The Capital Project Planner/Engineer said the resolution would approve the submittal of one project application form to the Northern Virginia Transportation Authority (NVTA) for evaluation and, if selected, inclusion into NVTA's FY 2022-2027 Six Year Program to receive House Bill-2313 Regional revenue (Attachment 1 to the agenda item). The Capital Project Planner/Engineer continued saying this year's application to NVTA was to request FY26-FY27 regional funding to construct new signalization and multimodal roadway improvements at the future Herndon Parkway / Worldgate

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Drive intersection. The effort was to seek Regional Share funding totaling \$4.581 million to be directed towards the remaining project balance. The total project cost to construct Herndon Parkway Improvements at Worldgate Drive Extension was estimated at \$6.536 million. The project has encumbered \$150,000 of NVTa Local share funding to complete the initial engineering design phase. And, since 2017, the town has accumulated \$1.805 million of NVTa approved, federal Congestion Mitigation and Air Quality (CMAQ) funding toward this project.

The Capital Project Planner/Engineer said the project scope for future Herndon Parkway and Worldgate Drive intersection included new LED traffic signalization and dedicated turning lane capacity as well as multimodal and safety improvements. Specific safety improvements would include LED signalization for pedestrians and bicyclists; mode-separation for the ADA sidewalks/curb cuts and cycle track; and street lighting and paver crosswalks. The enhanced pedestrian crossings and improved traffic flow will provide additional safety measures for motorized and non-motorized traffic modes. The project would also continue the installation of utilities underground, and the purpose was to provide additional roadway capacity to the town's street network. The need was a result of future higher density, Metrorail, the Transit-Oriented Growth (TRG) redevelopment around the Metrorail station. The design was done in concert with adjoining Bus Bay projects, and the adopted project design with its ADA sidewalks and cycle track improvements for the intersection, would extend and connect to the ADA sidewalks and cycle tracks associated with the town's two capital projects now underway at the Herndon Parkway/Van Buren intersection and at the bus bay drop-off/pick-up area. This would relieve future congestions and provides multimodal and intermodal access between metro and surrounding land use areas.

The Capital Project Planner/Engineer summarized that, if approved, \$4.581 million of NVTa's Regional share funding would be directed towards the project and its remaining project balance. There was no local match requirement.

Staff recommended approval of the resolution, as proposed.

Councilmember Regan wanted to see a slide that showed the limits of construction for this specific project. The Capital Project Planner/Engineer stated the elliptical dashed line showed the extent of this project for this application. Councilmember Regan stated he would be interested in seeing the "line of the cut of where this ends on the four roads." He said he would like to see it at the public hearing. The Transportation Program Manager indicated he had that information, and Councilmember Regan restated he would just like to see it at the public hearing to make it clear exactly what they were doing. Councilmember Regan asked if Worldgate Drive Extension was engineered yet. The Director of

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Community Development said it was a preliminary design, and the Deputy Director of Public Works concurred saying it was a conceptual design. Councilmember Regan provided further comments.

Councilmember Singh asked about the location. The Capital Project Planner/Engineer clarified the location and where the Worldgate Drive Extension would be. Councilmember Singh said it was upside down. The Town Manager clarified the locations further, and the Capital Project Planner/Engineer clarified what this resolution was for. Councilmember Singh commented on concerns that it would not work as intended.

Vice Mayor del Aguila asked about the design being roughly approved a few years ago. The Capital Project Planner/Engineer clarified that \$150,000 was used to complete survey or right-of-way and engineering. It was clarified this happened in 2016. Vice Mayor del Aguila asked if the funding requested was to address that. The Capital Project Planner/Engineer said the estimate they had was about \$6.5 million. She reviewed the funding and the additional \$4.5 million they were requesting from the NVTa regional fund to cover the deficit. Vice Mayor del Aguila asked what the estimate was in 2016, and the Transportation Program Manager said there was none, at that time, because there was no design. He clarified the 2016 effort was to obtain local NVTa funding to do the design to get to this point, and the cost estimate was prepared in-house and in concert with consulting. The Deputy Director of Public Works said it was conceptual design and did not include true engineering. It was to start the process. Vice Mayor del Aguila asked where funding would come from. The Town Manager clarified the funding would come from NVTa, and a funding pool would begin engineering the project and start things for 2026-2027. Vice Mayor del Aguila asked what the town would owe. The Town Manager and the Capital Project Planner/Engineer clarified, if Council approved this and it was granted, the amount would be zero.

Responding to Councilmember Singh, the Transportation Program Manager said NVTa received their money from the state through several tax revenue streams. The Transportation Program Manager clarified there was no guarantee to get funding, but there were things that went in their favor. The Town Manager said the Transportation Program Manager was a genius at putting these together and he was how they landed the funding they had been able to get.

Mayor Olem commented on long-term planning and all the work coming together.

The Transportation Program Manager commented briefly on a "plan b" and every effort to accumulate funding. The Capital Project Planner/Engineer commented on the amount from CMAQ being subtracted from what they need from NVTa.

Councilmember Dhakal gave brief supportive comments.

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Mayor Olem said she met someone from NVTa who was complimentary of Herndon staff.

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

Mayor Olem indicated she would make it clear what people could comment on at Comments from the Audience at the public hearing and asked other Councilmembers to let people know.

CONSENT

9. **Resolution 21-G-88, to ratify a Second Extension of Lease pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town and the Board of Supervisors of Fairfax County, Virginia.**
10. **Resolution 21-G-89, to ratify an Amendment of License Agreement pursuant to Ordinance 20-O-23 Continuity of Governmental Operations, as amended, between the Town of Herndon and Dulles Regional Chamber of Commerce d/b/a Herndon Chamber of Commerce to delete provisions relating to portable toilets and to extend the termination date of an ice machine on Town property.**

There was no discussion on the Consent agenda.

DISCUSSION

11. **Town Council Budget Guidance Initial Discussion.**

Mayor Olem recognized the Director of Finance to lead the discussion. The Director of Finance presented a PowerPoint dated November 9, 2021 which is on file in the Town Clerk's office.

The Director of Finance said this would a high-level overview. He reminded everyone of Herndon's core values and said the budget process was mandated in Virginia State Code § 15.2-2503. He said they were bringing this to Council to allow time for preparation. He shared the dates relevant to the budget which were listed in the PowerPoint. They hoped the budget would be adopted by the April 26, 2022 public hearing.

The Director of Finance began his PowerPoint presentation which listed considerations for the FY 2023 Budget that included: the pandemic persisting and the town still facing unusual fiscal uncertainty; economic impacts may be felt in revenue and expenditure categories in the coming years; in preparation for

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future fiscal stress (widening gap between resources available and needs of town) the town needs either to mobilize additional revenues or to reduce future expenditures; the volatility in resource availability might call for a "stop-and-go" strategy in implementing expenditure programs; and greater efforts might be considered to ensure a rapid response to the changing environment. Considerations for FY 2023 Budget Revenue included the General Fund being driven by real estate taxes and other local taxes that were heavily dependent on economic recovery.

The Director of Finance also reviewed real estate property tax and the water service rate. The PowerPoint stated the considerations for FY 2023 Budget Expenses included: expenditures projected to increase due to the pandemic aftermath and slow economic recoveries. The major drivers affecting O&M were: increase in inflation; cost increase in raw material; material scarcity, due to an abrupt rise in consumer demand; increasing freight prices; supply chain disruptions; trucking industry challenges; congestion in major U.S. shipping ports; difficult demand forecasting. Major drivers affecting the Personnel (biggest expenditure) were the 5.4 percent increase in Social Security benefits rate and the increase in cost of living.

The Director of Finance said other considerations included best practices recently implemented to support a strong long-term financial position including: financial policies reflective of a AAA bond rated municipality; a reserve structure to assist in mitigating the effects of economic downturns or unforeseen revenue shortfalls; use of position reclassifications rather than new hires to meet emerging needs, encouraging succession planning and minimizing increases to overhead; development of Life Cycle programs to identify the "true cost" of ongoing operations and improve forecasting/planning; and expenditure analyses designed to improve budgeting and eliminate excess.

The Director of Finance went over ongoing challenges and risk factors and other considerations for the future.

The Town Manager said the purpose of tonight's discussion was to get Council thinking. He commented on the state of the economy, inflation, and the Social Security Administration increase of 5.9 percent which was the highest ever. The Town Manager also brought up the inability to recruit and retain skilled labor which presented significant challenges to performing the services they always have. The Town Manager indicated the five-year projection would not keep pace, and he would suggest they had a significant problem.

Councilmember Singh commented on inflation and on when he thought things would become normal. The Town Manager said offloading ships was only one piece and there was a lot of stress on the trucking industry as well. The Town Manager thought February was optimistic, and there were reports that these prices would stay up and the cost-of-living increase would not come down. The

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Town Manager also commented on changes made in the past for unskilled labor that were now meaningless. He did not think inflationary pressures would abate or that costs would come back.

Councilmember Singh said people were not going back to work and accepting lower wages, and he was trying to collect data. The Town Manager commented on applications for positions everywhere and mentioned departments struggling to get qualified applications.

Vice Mayor del Aguila said he was on the record with his concern being high living expenses. He commented on the town recently refinancing debt services. He said, for him, it was a bigger indication of a bigger problem. He commented on how they look at budgets in general as a Council and felt they should be looking at this as a five- or ten-year issues. Vice Mayor del Aguila said where they were today was a result of what previous Councils did and none of this was really a surprise. He thought the question was how to get through this, and he wanted this council to be different and “bite the bullet” on what needed to be funded. He said the five-year projection should scare them and was not an overnight phenomenon. Vice Mayor del Aguila said this went back to the philosophy about Council not raising taxes. He commented on lacking vision and Council terms being four years instead of two. He reiterated he thought council should own this and proposed looking at it to fix long term. Vice Mayor del Aguila said this was sobering and gave his support for being more aggressive with proposed rates. He said not to be conservative and to look at what it would take to get better sooner. He was interested in the best-case and worst-case scenarios.

The Town Manager reiterated his comments about the five-year projection being shorter for Vice Mayor del Aguila who was out of the room during his earlier comments.

Vice Mayor del Aguila said he was concerned about this for a long time and thought they needed a clear decisive plan and to communicate to people who would be upset about their bills. He reiterated being more aggressive with proposed rate changes.

Councilmember Regan suggested moving on from this topic at this time.

Mayor Olem said things had been kicked down the road, and the current Town Manager had really gotten things on a system to be in the budget.

Councilmember Singh indicated he wanted to see the steps gone through to develop numbers and to understand the framework for the budget for Council to give suggestions. He said there were too many issues.

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The Town Manager said this effort would come back in January. He said staff was giving Council challenges and risks to put that into perspective, and people were working on budgets and objectives. He indicated they would have more analytical looks with new budget software, and they would take Council's overarching guidance and budget guidance from staff to start the document.

Councilmember Singh asked what the horizon was when they started and what effort or credence they gave to their own projections. The Town Manager said that was one reason behind getting the budget software because they had not had very good analytical tools to look at projections far out and had a general understanding of where things were trending. Councilmember Singh said in times of volatility they could not predict. The Town Manager said with certainty he could say 75 percent of costs were personnel and to keep people they needed to do something meaningful with salaries.

Councilmember Singh said he was looking for criteria for having a conversation. He reiterated his discomfort and said the challenges should be written down. The Town Manager indicated that would be part of it, and they wanted to paint the picture of what this budget would be. He said baseline costs would automatically rise. Councilmember Singh provided further comments on priorities and decisions that had to be made.

Vice Mayor del Aguila said he appreciated what the Town Manager and staff had done, but he wanted to flip ownership of the budget to Council and for them to own the success or failure. He said Council thought it was on the Town Manager and staff to get them through and asked Council to take some of that burden and look at the budget in a serious way. He felt Council owed that to staff. He said this was all strategic, and he did not think staff needed to spend all their energy there. Vice Mayor del Aguila commented on them being executives.

Councilmember Singh disagreed and said they were outsiders really, and they had other things to do, and staff was doing the work. He was not sure that Council could give the guidance Vice Mayor del Aguila was suggesting. He thought Vice Mayor del Aguila was talking about something else.

The Town Manager opined that "owning it" in this guidance resolution was Council giving him latitude to do things to look at the box differently. He commented on overarching guidance to do something that pleases Council. Vice Mayor del Aguila said by "owning it" Council was accountable to taxpayers and residents.

Councilmember Singh suggested they write a bunch of questions and give them to the Town Manager. The Town Manager said they would be glad to respond.

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Mayor Olem commented on keeping services and how people were elated about trash pickup. She summarized that members of the Council would work on questions.

The Town Manager said they would be back in a January work session.

ROUNDTABLE

1. **Vice Mayor del Aguila:** Asked for a status update on Comstock, and the Town Manager said they submitted a site plan revision based on changes that had to be made. Building permits were under review and should be out by end of month. They were working on parking, the arts center, and wanted to begin working on sewer laterals while the street was open already for the Elden/Center street project. The Town Manager said that should commence in the next couple of weeks. He also stated Fairfax County would vote on the approximately \$5 million for the redevelopment on December 7, 2021. Then an MOU would come to Council for hopeful approval. The Town Manager indicated that staff at Fairfax County were very receptive to the project and there was activity on both sides occurring at a breakneck pace.

Vice Mayor del Aguila indicated he received another email and personally witnessed a Fairfax County bus (#1471) speeding through the town. The Town Manager indicated the Director of Public Works may have a contact at Fairfax County who he could speak to about this. Vice Mayor del Aguila said he would not need an update that night, but they needed to take some action because it was dangerous, and he was concerned. He indicated he had videos and emails he could share. The Town Manager thought they might be able to pull data about the buses from the county, and Vice Mayor del Aguila clarified the event took place the prior Thursday at 2:32 p.m.

Vice Mayor del Aguila then said he wanted to comment on what they were asking of staff. He said he had a lot of corporate training and met Ross Perot when he was 19. He indicated that was his baseline, and he also said that fifteen years ago he worked with Marc Benioff of Salesforce.com. Vice Mayor del Aguila said there was always decorum and professionalism when dealing with executives and that was where he was coming from with asking staff to be mindful of Council's time. He said they were trying to work smarter not harder, and that was for staff time as well. He said being more productive and more efficient would serve them all well. Vice Mayor del Aguila asked that staff spend 10 to 15 minutes on presentations but allow Council to spend most of the time in Q&A.

2. **Councilmember Alam:** Asked the Town Manager for help with getting the DMV to come to Herndon again. She wished a Happy Diwali to families living in Herndon.

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The Town Manager said the Herndon Fortnightly Library was operating the DMV again using a county facility. Once the Herndon Community Center was back online, they did not have a great place to put something like that for multiple days on a given week. There were limitations with Council Chambers, and they looked at other places. He said he could talk to the library manager to see if the DMV would continue to come there.

3. **Councilmember Dhakal:** No comments.
4. **Councilmember Regan:** No comments.
5. **Councilmember Singh:** Commented on streets where he and his wife find discarded mattresses. He and his wife despise that, and he knew staff members used to go see what was put out there. Councilmember Singh commented on seeing things other places and mentioned Branch Drive and mattresses. He commented on them being near a Fairfax County park and his wife finding a mattress in the woods. He said it was a problem that made the town look bad, and he thought something needed to be done.

The Town Manager said to let them know when they see them.

Councilmember Singh suggested a notice to HOAs to hold people responsible and some self-enforcement.

Councilmember Singh asked where the town wants to be in 20 years and, in general, what the town needs to be in 15 or 20 years. He asked if they wanted to attract people from Reston and said they needed to have a definitive goal of some kind and then everything would fall in place from many points of view. He thought the quality of people and consultants would have to be very different to get there. He asked what streets will look like and mentioned Council initiatives. He said some things are ugly and unattractive, and he thought they needed to change the conversation. He mentioned hiring first rate urban designers and said he would be willing to budget for that.

6. **Mayor Olem:** Said the Mayor's New Business Breakfast went very well they could not be more complimentary of staff and being in town. She was also looking forward to a business moving their headquarters to Herndon. Mayor Olem mentioned redevelopment at Spring Street with the office complex and Marker 20. She was excited about Herndon and the W&OD and Metro. Mayor Olem asked Council to get their budget questions ready.

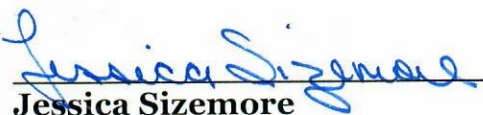
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7. **ADJOURNMENT**

On motion of Councilmember Dhakal, seconded by Vice Mayor del Aguila, and carried by 6-0 vote, the meeting of the November 9, 2021 work session was adjourned at 10:09 p.m. The vote was: Councilmembers Alam, Dhakal, Regan, Singh, Vice Mayor del Aguila, and Mayor Olem voting "Aye." Councilmembers Friedrichs was absent.


Sheila A. Olem
Mayor




Jessica Sizemore
Legislative Assistant

Minutes approved by Town Council: March 8, 2022.