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Enriching the Quality of Life and Promoting a Sense of Community

HERNDON TOWN COUNCIL

Tuesday

May 11, 2010

The Town Council met in public session on Tuesday, May 11, 2010, at 7:00 p.m. in the Ingram Council Chambers, located at 765 Lynn Street. In attendance were:

Mayor:

Stephen J. DeBenedittis

Councilmembers:

Dennis D. Husch
 Connie Haines Hutchinson
 David A. Kirby
 William B. Tirrell, Sr.
 Charlie D. Waddell

Absent:

Richard F. Downer

Town Manager:

Arthur A. Anselene

Town Attorney:

Richard B. Kaufman

Chief of Police:

Toussaint E. Summers, Jr.

Town Clerk:

Viki L. Wellershaus

Deputy Town Clerk:

Margie C. Tacci

Director of Community Development:

Elizabeth M. Gilleran

Director of Finance:

Mary K. Tuohy

Director of Golf:

Gene A. Fleming

Director of Human Resources:

Linda A. Simmons

Director of Information Technology:

William H. Ashton, II

Director of Parks and Recreation:

Cindy S. Roeder

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Director of Public Works:
Robert B. Boxer
Public Information Officer:
Anne P. Curtis
Police Captains:
Bradford C. Anzengruber
R. Larry Presgrave
Police Sergeant:
Stephen J. Thompson
Senior Police Officer:
James J. Passmore
Police Officer First Class:
James W. Rider
Transportation Program Manager:
Mark E. Duceman
Senior Planner:
Dana E. Heiberg
Aquatics Services Manager:
Kerstin Severin
General Services Administrator:
Charlie Kemp
Program and Project Coordinator:
Rich Sharkey
Utility Equipment Technician:
Mike Farr
Administrative Assistant:
Michelle J. Flores

The meeting was called to order at 7:00 p.m. with all members present and with Mayor DeBenedittis presiding. Mayor DeBenedittis led the audience in the Pledge of Allegiance to the Flag of the United States of America.

1. ANNOUNCEMENTS

Absence -- Mayor DeBenedittis announced that Councilmember Downer is out-of-town and would not be present this evening.

Birthday Wishes -- Mayor DeBenedittis asked everyone to join him in extending happy birthday wishes to Councilmember Tirrell who would be celebrating his birthday on May 14th and to Robert B. Boxer, Director of Public Works, who is celebrating his birthday today.

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Election – Mayor DeBenedittis congratulated everyone on the May 4 Town Council election. He expressed his appreciation to Councilmember Husch for his long tenure and many attributes that he has brought to the Town Council over the years. He also expressed his appreciation to Councilmember Waddell for his enthusiasm, energy and sense of humor and to Councilmember Kirby for his hard work and thoughtfulness while on the Town Council. He stated that he hopes that those individuals who were not elected would continue their service to the citizens of Herndon.

2. APPROVAL OF MINUTES

Councilmember Husch moved approval of the minutes from the Town Council public session of April 13. This motion was seconded by Councilmember Waddell and carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

3. PRESENTATIONS

Resolution 10-G-62, Official Recognition, “NATIONAL AQUATIC MONTH,” May 2010.

Vice Mayor Hutchinson moved approval of Resolution 10-G-62, which:

- Recognizes May 2010 as *National Aquatic Month* in the Town of Herndon; and
- Urges all residents to recognize the importance of aquatics in overall health and well-being, the first rate aquatics program offered by the Herndon Department of Parks Recreation, and to work together to ensure that quality recreation opportunities continue to be available to all Town residents.

This motion was seconded by Councilmember Tirrell.

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Vice Mayor Hutchinson stated that it is easier to exercise in the water than on land and it is a great activity for all ages. The Herndon Community Center has an exceptional pool and facility that is run by a competent and professional staff.

Mayor DeBenedittis echoed the comments from Vice Mayor Hutchinson and stated that he and his family benefit from the many programs offered at the Herndon Community Center.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Mayor DeBenedittis called upon Arthur A. Anselene, Town Manager; Cindy Roeder, Director of Parks and Recreation; Kerstin Severin; Aquatics Services Manager; Bruce Anderson, Swim Coach; members of the Commanders Swim Team; and Parks and Recreation staff present this evening to come forward to join him and Vice Mayor Hutchinson for the formal presentation.

Ms. Roeder expressed her appreciation to the Mayor and Town Council for this recognition.

Ms. Severin expressed her appreciation to the Mayor and Town Council for their continued support over the years. She stated that safety is the number one concern at the Community Center and that the lifeguards would be put to the test when they compete in the Lifeguard Challenge Cup in July. She recognized several of the members of the Commanders Swim Team who were present. She stated that the Aqua Easter Egg Hunt was such a success that it would become an annual event and she briefly discussed some of the activities planned for National Aquatic Month. She stated it is important for patrons to enjoy the facility and know that they are in a safe environment.

10-G-62 Resolution, Official Recognition, “NATIONAL AQUATIC MONTH,” May 2010.

WHEREAS, individual and group forms of organized recreation, in addition to the creative use of free time, are vital to the happiness and well-being of all citizens; and

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WHEREAS, the Town of Herndon's educational, athletic and recreational programs encompass a variety of activities that promote family unity and help increase confidence, personal accomplishment and self-satisfaction for all residents, regardless of background, ability, level or age; and

WHEREAS, swimming and aquatic related activities provide a vital role in the development of good physical and mental health and richly enhance the lives of all participants; and

WHEREAS, the Town of Herndon is extremely proud of its Department of Parks and Recreation, its aquatics programs, swim teams and community swimming facility; and

WHEREAS, the citizens of Herndon recognize the ongoing efforts and commitments to educate the public on pool and spa safety issues and initiatives by the pool, spa, waterpark, recreation and parks industries; and

WHEREAS, the Herndon Commanders Swim Team includes 256 swimmers who broke 33 team records this season, had five members qualify for the sectional championships, 32 Junior Olympic qualifiers, 15 Senior Champ qualifiers, one Zone Championship qualifier, and an assistant head coach to the Zone Championship Team; and

WHEREAS, the multitude of swimming and aquatics programs that the Herndon Department of Parks and Recreation offers give the community safe and healthy opportunities to recreate, a place to learn, to swim, to build self-esteem and a sense of self-worth, all of which contribute toward bettering the quality of life for all members of our community.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby recognizes May 2010 as "***NATIONAL AQUATIC MONTH***" in the Town of Herndon, and urges all residents to recognize the importance of aquatics in overall health and well-being, the first rate aquatics program offered by the Herndon Department of Parks Recreation, and to work together to ensure that quality recreation opportunities continue to be available to all Town residents.

Resolution 10-G-63, Official Recognition, "*BICYCLE SAFETY MONTH*," May 2010.

Councilmember Waddell moved approval of Resolution 10-G-63, which:

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- Recognizes May 2010 as *Bicycle Safety Month* in the Town of Herndon; and
- Encourages a public/private partnership among public officials, law enforcement agencies, associations, community and health groups and businesses to work together to ensure that both bicyclists and motorists obey the law.

This motion was seconded by Vice Mayor Hutchinson.

Councilmember Waddell stated that he chairs the Pedestrian and Bicycle Advisory Committee (PBAC), which consists of an exciting and dynamic group of people who share the same passion for walking and biking. He stated that the committee has come up with a number of suggestions to make for a safer community. He stated that Friday, May 21 is *Bike to Work Day* and there would be a bike valet at the Herndon Festival for those who ride their bikes instead of driving. He recognized Jason Trust and Ian McDonald who are members of the PBAC.

Councilmember Kirby stated that he has concerns with the areas on the W&OD Trail that intersect with vehicular traffic. He stated that cyclists seem to think that they have a right-of-way and do not stop at the stop signs. He is concerned that there would be a serious accident if the cyclists are not stopped and ticketed. Of particular concern to him is the intersection of Station Street and the W&OD Trail.

Councilmember Tirrell reiterated Councilmember Kirby's comments and stated that a stop sign on a road applies to all who use the road, including bikes and a stop sign on the bike trail is for bikes. He urged all who ride bikes to stop at stop signs and urged parents to counsel their children as to bike safety.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Mayor DeBenedittis called upon Arthur A. Anselene, Town Manager; Toussaint E. Summers, Jr., Chief of Police; Cindy Roeder, Director of Parks and Recreation; Bradford C. Anzengruber and R. Larry Presgrave, Police Captains; members of the Pedestrian & Bicycle Advisory Committee; Guy Masters, President, and Members of the Herndon Police Citizens Support Team Members of the Herndon Police Department present this evening; Pierre Pelletier, Owner, Hefler

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Performance Training; Keith Gates, owner, A-1 Cycling; and Sarah Velasquez and her husband to come forward to join him and Councilmember Waddell for the formal presentation.

Mayor DeBenedittis stated that Mr. and Mrs. Velasquez are sponsoring and coordinating the Bike to Work Day Herndon Pit stop. In observance of Bike to Work Day, VDOT would not be performing any construction activities that would affect trail traffic using the W&OD Trail bridge at Pacific Boulevard.

Mr. Trust expressed his appreciation to the Mayor and Town Council for this recognition. He stated that he is a daily user of the W&OD Trail and roads in Virginia and agrees that safety is a two-way street. Cyclists must be more aware of their surroundings and be more courteous to drivers and pedestrians. He stated car drivers must realize that they are not the only users of the road and must act with patience and restraint. He stated that 40 percent of all accidents involving cyclists occur during the summer months. Individuals under the age of 16 account for 13 percent of those killed and 25 percent of those injured. More than one-third of all fatalities involve alcohol of either the driver or the cyclist. He stated that 63 percent of all cyclist fatalities are due to head injuries.

Mr. McDonald expressed his appreciation to the Mayor and Town Council for this recognition. He stated that bike safety is critical to him and he reminded everyone that bicyclists have every right to be on the roads. He stated that he personally obeys traffic signals and traffic laws, but acknowledged that there is a need for many other bicyclists to be more obedient of the laws. He also stated that drivers of motor vehicles should be more aware of bicyclists on the road. He expressed appreciation to Councilmember Waddell for his participation on the PBAC.

Ms. Velasquez expressed her appreciation to the Mayor and Town Council for recognizing *Bicycle Safety Month*. She stated that there were 114 registered bicycle riders for the Herndon Pit Stop on Bike to Work Day, which far exceeds her goal of 40. She stated she looks forward to continuing to work with the Town on other bicycle related projects.

Sergeant Thompson expressed his appreciation to the Mayor and Town Council for this resolution. He urged bicyclists to wear a helmet and visible clothing, to obey the rules of the road and to educate those who are not aware of the rules.

10-G-63 Resolution, Official Recognition, "BICYCLE SAFETY MONTH," May 2010.

WHEREAS, there are about 60 million adult and 50 million children bicyclists in the United States; and

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WHEREAS, the latest available statistics indicate that 716 bicyclists were killed in traffic accidents in 2008, a slight increase from 2007, accounting for approximately two percent of traffic fatalities and 14 percent of all non-occupant traffic fatalities for the year; and

WHEREAS, the average age of bicyclists killed in traffic accidents in 2008 was 41 and the average age for those injured was 31; and

WHEREAS, there was a 21 percent increase in the number of bicyclists injured in 2008, totaling 52,000; and

WHEREAS, since 1932, more than 53,000 bicyclists have died in traffic crashes in the United States; and

WHEREAS, each year, bicyclists pay a visit to the emergency room with serious injuries, including head injuries and broken bones, that are serious enough to require hospitalization; and

WHEREAS, driver and bicyclist negligence are often to blame for accidents resulting in bicyclist injury or death and strict enforcement of the law is one of the most effective tools toward changing the behavior of both motorists and bicyclists.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby designates the month of May 2010 as “**BICYCLE SAFETY MONTH**” in the Town of Herndon, and encourages a public/private partnership among public officials, law enforcement agencies, associations, community and health groups and businesses to work together to ensure that both bicyclists and motorists obey the law.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby supports and encourages the Herndon Police in their efforts to promote and visibly enforce compliance with bicycle safety laws to save lives, reduce injury and conserve taxpayer dollars.

Resolution 10-G-64, Official Recognition, “NATIONAL POLICE WEEK,” May 9 through May 15, 2010 and PEACE OFFICERS’ MEMORIAL DAY,” May 15, 2010.

Councilmember Tirrell moved approval of Resolution 10-G-64, which:

- Recognizes May 9 through May 15, 2010 as *National Police Week* and May 15, 2010 as *Peace Officers’ Memorial Day* in the Town of Herndon; and

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- Urges all citizens to honor the brave individuals who protect our freedom, lives, and property, especially honoring those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty.

This motion was seconded by Councilmember Waddell.

Councilmember Tirrell stated that the Open House would be held at the Herndon Police Station located at 397 Herndon Parkway. He stated that it is very sad that police officers have a memorial day. He stated that 116 police officers died last year in the line of duty, something most individuals do not face when going to work each day. He stated that he has the utmost respect for all police officers and he expressed his appreciation to them for all they do to protect citizens.

Councilmember Waddell expressed his appreciation to all police officers for a job well done and for their dedication to the community. He stated that police work is a 24 hour per day job.

Mayor DeBenedittis echoed the comments of Councilmembers Tirrell and Waddell and stated that the more he has gotten to know the Herndon Police Department, the more respect he has for the police officers. He also expressed appreciation to the spouses and families of police officers. He recommended that all individuals take the opportunity to participate in the Citizens Police Academy, which provides an excellent opportunity to learn more about the department.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Mayor DeBenedittis called upon Arthur A. Anselene, Town Manager; Toussaint E. Summers, Jr., Chief of Police; Bradford C. Anzengruber and R. Larry Presgrave, Police Captains; Guy Masters, President, and members of the Herndon Police Citizens Support Team; and members of the Herndon Police Department to come forward to join him and the entire Town Council for the formal presentation.

Captain Presgrave expressed his appreciation to the Mayor and Town Council for this resolution and for their continued support of law enforcement. He stated that although a 16 percent reduction in the number of police officer deaths calls for

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some satisfaction, the number is still too high. Through training and better equipment, law enforcement officials are trying to eliminate all deaths of police officers in the line of duty.

Mr. Masters stated that the Herndon Police Citizens Support Team is in their 34th year of providing support to the Herndon Police Department and the Town. He stated that without the continued support from the Town, the Support Team would not be able to continue to provide support. He stated that the Support Team helps to alleviate some of the work load of the Police Department. The Support Team also has a bicycle patrol and all individuals on that patrol are required to go through a training program.

**10-G-64 Resolution, Official Recognition, “NATIONAL POLICE WEEK,”
May 9 through May 15, 2010, and “PEACE OFFICERS’
MEMORIAL DAY,” May 15, 2010.**

WHEREAS, the week of May 9 through May 15, 2010 has been designated in the United States and Canada as *Police Week* to honor all those who devote their lives to enforcing our laws, bringing criminals to justice and making our communities safer; and

WHEREAS, in 1962, President John F. Kennedy designated May 15 as *National Peace Officers’ Memorial Day*, to honor Federal, State and municipal officers who have been killed or disabled in the line of duty, and *National Police Week* is designated in the calendar week in which May 15 falls; and

WHEREAS, *National Police Week* is a collaborative effort involving the National Law Enforcement Officers Memorial Fund (NLEOMF), Concerns of Police Survivors (COPS), the Grand Lodge Fraternal Order of Police (FOP) and the FOP Auxiliary; and

WHEREAS, 116 law enforcement officers were killed in the line of duty in 2009, which represents a 16 percent reduction from 2008 and represents the lowest year of officer fatalities since 1959; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards and sacrifices of our law enforcement agencies, and that members of our law enforcement agencies recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder; and

WHEREAS, all of the men and women of the Herndon Police Department are among America's greatest heroes, working devotedly and selflessly, night and day, to safeguard our rights and freedoms and to protect our families, homes, businesses and communities; and

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WHEREAS, the Town of Herndon invites all citizens to partner with the Herndon Police by joining together in a Neighborhood or Business Watch to assist the police in keeping our community safe; and

WHEREAS, in observance of *National Peace Officers' Memorial Day* and *National Police Week*, all residents are encouraged to lower the flags at their homes and work places on May 15, in recognition of the service and sacrifice of law enforcement officers.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby designates the week of May 9 through May 15, 2010 as "**NATIONAL POLICE WEEK**" and May 15, 2010 as "**PEACE OFFICERS' MEMORIAL DAY**" in the Town of Herndon, and urges all citizens to honor the brave individuals who protect our freedom, lives, and property, especially honoring those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, invites all citizens, in commemoration of "**NATIONAL POLICE WEEK**" and "**PEACE OFFICERS' MEMORIAL DAY**" to attend the Herndon Police Department's open house on Monday, May 10 from 5:00 pm until 7:00 pm, and on Thursday, May 13, from 5:00 pm until 7:00 pm, to tour the facility, meet members of the Herndon Police Department and see the equipment used in modern law enforcement.

**Resolution 10-G-65, Official Recognition, "CLICK IT OR TICKET WEEKS,"
May 24 through June 6, 2010.**

Councilmember Kirby moved approval of Resolution 10-G-65, which:

- Recognizes May 24 through June 6, 2010 as *Click It or Ticket Weeks* in the Town of Herndon; and
- Supports and encourages the Herndon Police in their efforts to promote and visibly enforce compliance of seat belt and child safety seat laws to save lives, reduce injury and save taxpayer money.

This motion was seconded by Vice Mayor Hutchinson.

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Councilmember Kirby stated that he remembers his first car, which did not have seat belts and he remembers installing seat belts in another car he owned. He stated that now whenever he gets in his car, someone always reminds him to put on his seat belt.

Vice Mayor Hutchinson stated that when her first child was born, the car seats for children offered little, if any, protection. She stated that technology has come a long way to protect children, but safety seats do not do any good if they are not used.

Councilmember Tirrell stated that he was in a car accident years ago and he is convinced that he survived the accident because he had his seat belt on.

Councilmember Waddell stated that one of his hobbies takes him into automobile wrecking yards and he stated he can tell from the vehicles there which drivers were wearing seat belts and which drivers were not.

Mayor DeBenedittis stated that all individuals should put on their seat belts before they leave their driveway.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Mayor DeBenedittis called upon Arthur A. Anselene, Town Manager; Toussaint E. Summers, Jr., Chief of Police; Bradford C. Anzengruber and R. Larry Presgrave, Police Captains; Guy Masters, President, and members of the Herndon Police Citizens Support Team; and members of the Herndon Police Department to come forward to join him and Councilmember Kirby for the formal presentation.

Captain Anzengruber expressed his appreciation to the Mayor and Town Council for their continued support of the Herndon Police Department. He recognized Senior Police Officer James J. Passmore and called on him to provide further comments.

Officer Passmore stated that last year during *Click It or Ticket Weeks*, almost 500 tickets were written in Herndon. He stated that every six months a seat belt check is done at the intersection of Elden and Monroe Streets. At the recent check, 91

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out of 100 cars checked had occupants who were wearing seat belts, which is a high number. He expressed his appreciation to the Mayor and Town Council for their continued support and to Captain Anzengruber for his kind words.

10-G-65 Resolution, Official Recognition, “CLICK IT OR TICKET WEEKS,” May 24 through June 6, 2010.

WHEREAS, *Click It or Ticket* (CIOT) is the most successful seat belt enforcement campaign ever, helping create the highest national seat belt usage rate of 84 percent in 2009, a one point increase from 2008, and coast to coast, day or night, the message is simple - *Click It or Ticket*; and

WHEREAS, men ages 18 through 34 are specifically targeted in the Click It or Ticket campaign, as research has shown they are the least likely to buckle up amongst all age groups in this country; and

WHEREAS, for passenger vehicle occupants who died in traffic crashes between the nighttime hours of 6:00 p.m. and 5:59 a.m., 64 percent of those passenger vehicle occupants killed were not wearing their seat belts at the time of the fatal crashes, according to the National Highway Traffic Safety Administration; and

WHEREAS, the National Highway Traffic Safety Administration has designated May 24 through June 6 as the weeks for national mobilization and calls on police departments throughout the nation to adopt a zero tolerance in regards to persons not wearing a seat belt; and

WHEREAS, strong enforcement of adult seat belt laws saves the lives of both adults and children and reduces the strain on the nation's health care and emergency response systems; and

WHEREAS, the American Academy of Pediatrics found that a restrained driver was three times more likely to restrain a child and observational research shows that when a driver buckles up, the children buckle up; and

WHEREAS, a pproximately one in five American motorists still fail to wear a seatbelt on a regular basis while driving or riding in a motor vehicle, with a similar rate found in Virginia; and

WHEREAS, increasing seat belt use, especially at night, remains the single most effective way to save lives and reduce the number of injuries in crashes on America's roadways, and the 2010 Click It or Ticket campaign will include day and night enforcement activities to encourage everyone to buckle up each time they are in a vehicle; and

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WHEREAS, a study by the National Highway Traffic Safety Administration has affirmed that states with standard enforcement laws have significantly higher rates of seat belt and child safety seat use, that the correct use of seat belts contributes to a decrease in the number of fatalities, and correctly installed child safety seats greatly reduce potential deaths and injuries among infants and children.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby designates the weeks of May 24 through June 6, 2010 as “**CLICK IT OR TICKET WEEKS**” in the Town of Herndon, and encourages the public-private partnership among public officials, law enforcement agencies, associations, community and health groups, and businesses to work to ensure that all children and adults buckle up.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby supports and encourages the Herndon Police in their efforts to promote and visibly enforce compliance of seat belt and child safety seat laws to save lives, reduce injury and save taxpayer money.

Resolution 10-G-66, Official Recognition, “PUBLIC WORKS WEEK,” May 16 through May 22, 2010.

Councilmember Husch moved approval of Resolution 10-G-66, which:

- Recognizes May 16 through May 22, 2010 as *Public Works Week* in the Town of Herndon; and
- Expresses appreciation to all Department of Public Works employees for their efforts and significant contributions to enhancing the quality of life for all our residents.

This motion was seconded by Councilmember Tirrell.

Councilmember Husch stated that several years ago he had the privilege of serving on the State Corporation Commission’s (SCC) Underground Utility Damage Prevention Advisory Committee, which is Miss Utility for Virginia. They set and enforce the rules for marking utilities prior to any excavation. He stated there were many times while he was on the committee that damage was caused and lives were lost because people did not follow the rules and call for utility markings before excavating. He stated that the Town marks all water and sewer lines in Town to support development, construction and excavation. He stated that there are only a few Department of Public Works (DPW) employees who actually know where all the gas lines in Town are. Periodically, there are

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conflicts between the gas company and DPW concerning where the gas lines are. Professional public works departments are the key to the health and safety of the community.

Councilmember Tirrell echoed the comments of Councilmember Husch and stated that the DPW staff does jobs that most of us do not see the benefit of and most of the time, we do not notice unless the job is not done. He expressed his appreciation to the entire DPW staff for all of their efforts.

Councilmember Kirby stated that outside of the Town, the Virginia Department of Transportation (VDOT) is responsible for plowing streets in Fairfax County following a snow storm. He stated that Herndon is very fortunate to have its own DPW. He stated that when people ask why he lives in Herndon where he has to pay extra taxes, he tells them that the three departments recognized this evening: Parks and Recreation, the Herndon Police and DPW, are well worth the additional taxes. He expressed his appreciation to Robert B. Boxer, Director of Public Works, and his staff for the excellent job they continue to do.

Councilmember Husch stated that DPW staff work at all hours of the day and in all types of weather and many times citizens were unaware there was a problem because it was fixed before they even woke up.

Mayor DeBenedittis stated that he receives many compliments on DPW staff and their friendliness and willingness to serve the citizens.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Mayor DeBenedittis called upon Robert B. Boxer, Director of Public Works, and his staff to come forward to join him, Arthur A. Anselene, Town Manager, and the entire Town Council for the formal presentation.

Mr. Boxer expressed his appreciation to the Mayor and Town Council for this recognition. He stated that the DPW staff is very dedicated and they enjoy serving the citizens of Herndon. He recognized Charlie Kemp, who was the recipient of the recent DPW Supervisory Award and Mike Farr, who was the recipient of the Director's Award. Mr. Boxer showed a brief PowerPoint of Big Truck Week, which is on file in the Town Clerk's office. He stated there were

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close to 5,000 people who attended Big Truck Week this year, which was a record for the department. DPW also was able to collect over 350 bags of food during Big Truck Week, which were donated to LINK.

10-G-66 Resolution, Official Recognition, “PUBLIC WORKS WEEK”
May 16 through May 22, 2010.

WHEREAS, since 1960, the American Public Works Association (APWA) has sponsored *National Public Works Week* to promote appreciation of the contributions and accomplishments of public works staff to the health, safety and comfort of the community; and

WHEREAS, this year’s theme ~“*Public Works: Above, Below & All Around You*” ~ promotes a celebration of the hard work and dedication of the many public works professionals who maintain the infrastructure and services collectively throughout the nation; and

WHEREAS, the support of an understanding and knowledgeable public is fundamental to the efficient operations of the Town of Herndon’s Department of Public Works staff, who perform daily tasks involving water, sewer, streets, snow removal, traffic engineering, public building maintenance, grounds maintenance including parks and sports fields, general services including vehicle and equipment maintenance, engineering including site plan review, stormwater management, project management, building inspections, solid waste management and recycling; and

WHEREAS, the Department of Public Works staff regularly participates in regional emergency response training and simulations, bringing regional resources to Town citizens in the event of an emergency; and

WHEREAS, over the years the Department of Public Works have been an integral part of the community by sponsoring “Big Truck Days,” working with Herndon High School’s Students Against Global Abuse (SAGA) and many other community outreach efforts; and

WHEREAS, the efficiency of the qualified and dedicated staff of the Department of Public Works is fundamentally influenced by the citizen’s attitude and understanding of the importance of the work they perform; and

WHEREAS, the best way to ensure a productive and safe future for all communities is to invest today in the infrastructure that is tomorrow’s vision through invention, investment, innovation, maintenance and motivation; and

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WHEREAS, public works efforts are vital to enriching the well-being of citizens and promoting a sense of community, which are integral parts of our everyday lives.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby designates May 16 through May 22, 2010 as "*PUBLIC WORKS WEEK*" in the Town of Herndon and expresses appreciation to all Department of Public Works employees for their efforts and significant contributions to enhancing the quality of life for all our residents.

Resolution 10-G-67, Official Recognition, "SMALL BUSINESS WEEK," May 23 through May 29, 2010.

Mayor DeBenedittis moved approval of Resolution 10-G-67, which:

- Recognizes May 23 through May 29, 2010 as *Small Business Week* in the Town of Herndon; and
- Celebrates the achievements of small businesses and encourages the development of new small businesses in our community.

This motion was seconded by Vice Mayor Hutchinson.

Mayor DeBenedittis stated that Herndon is fortunate to have a number of small businesses that provide valuable services for the Town and many of which are active volunteers in Town.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Mayor DeBenedittis called upon Don Owens, Vice President, and members of the Herndon Chamber and Dulles Regional Chamber; Anselm Griffiths, Owner O'Sullivan's Pub; Naren Aryal, Owner, Mascot Books; Jon Helm, Owner, ARCPoint; and Pierre Pelletier, Owner, Hefler Performance Training, to come forward to join him for the formal presentation.

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Mr. Owens expressed his appreciation to the Mayor and Town Council for this recognition. He stated that the Herndon Chamber represents approximately 1,000 businesses, most of which are small businesses and are active participants in Town events.

Mr. Griffiths expressed his appreciation to the Mayor and Town Council for this recognition and for welcoming him into the neighborhood. He stated that Herndon is a beautiful Town and he is quickly getting to know everyone.

Mayor DeBenedittis stated that ARCPPoint is another new company in Town and that they perform drug testing.

10-G-67 Resolution, Official Recognition, "SMALL BUSINESS WEEK,"
May 23 through May 29, 2010.

WHEREAS, every year since 1963, our nation sets aside a week to honor those Americans whose entrepreneurial drive epitomizes the spirit of the American Dream; and

WHEREAS, Congress established the United States Small Business Administration (SBA) in 1953 to protect the interests and concerns of small businesses and created the Office of Advocacy of the SBA in 1976 to function as an independent voice for small business within the federal government; and

WHEREAS, the SBA's Office of Advocacy defines a small business as an independent business having fewer than 500 employees; and

WHEREAS, the more than 27.2 million small businesses in the United States comprise an essential part of our nation's economy and reflect the attributes that make our nation great: vision, creativity, responsibility, dedication and a willingness to work hard; and

WHEREAS, according to the most recent statistics from the SBA's Office of Advocacy, in 2006 there were 111,752 small business employers in the Washington, DC Metropolitan Area and there were 153,033 small business employers in the state of Virginia; and

WHEREAS, the Town of Herndon is proud of its small business community, and according to data collected by the Department of Finance, there are approximately 814 small businesses in the Town that employ an estimated 5,263 employees; and

WHEREAS, in 2010, the total amount in BPOL license fees paid to the Town by businesses with less than 500 employees and less than \$25 million in annual gross receipts was approximately \$1,131,140; and

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WHEREAS, *Small Business Week* is a time to celebrate the successes of small businesses and to thank America's small business owners for their contributions to our communities, our economy and our nation.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby designates May 23 through May 29, 2010, as "**SMALL BUSINESS WEEK**" in the Town of Herndon.

BE IT FURTHER RESOLVED that the Town Council of the Town of Herndon, Virginia, hereby celebrates the achievements of small businesses and encourages the development of new small businesses in our community.

4. COMMENTS FROM THE TOWN MANAGER

Congratulations, Mary K. Tuohy – Arthur A. Anselene, Town Manager, stated that for the past eight years the Town has participated in the Northern Virginia Local Government Fellowship Program at George Mason University, where professional staff can obtain their Master's Degree in Public Administration. He expressed his congratulations to Mary K. Tuohy, Director of Finance, who would be receiving her degree this week after having completed the program.

5. COMMENTS FROM THE TOWN COUNCIL

Various – Councilmember Waddell wished a happy belated Mother's Day to all moms. He stated that last week the Town held its election and 25 percent of registered voters turned out to vote, which is an excellent amount. He expressed his appreciation to all residents who voted and stated that it was a very close election. He congratulated those who won and urged those who did not win to try again.

Councilmember Tirrell – With the concurrence of the Mayor and Town Council, Councilmember Tirrell requested to defer his comments until after the Comments from the Audience portion of the agenda.

Farmer's Market – Mayor DeBenedittis reminded everyone that the Farmer's Market would take place every Thursday from 8:00 a.m. until noon on Lynn Street.

Lyme Disease Summit – Mayor DeBenedittis announced that there would be a Lyme Disease Summit at the Fairfax County Government Center on Saturday, May 15 from 10:00 a.m. until noon.

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Yard of the Month – Mayor DeBenedittis reminded everyone that nominations would begin for Yard of the Month, which is sponsored by the Herndon’s Cultivating Community Committee. This program provides an opportunity to recognize resident’s yards for awards. Winners would receive gift certificates from Meadows Farms and would be recognized by the Mayor and Town Council at public meetings. Nominations for the June Yard of the Month Award are due May 20. Further details are available on the Town’s website.

DPW to Repair Sewer System Infrastructure – Mayor DeBenedittis announced that faulty segments in the sewer system infrastructure were found during routine maintenance and would undergo repairs beginning the week of May 17. Repairs should be completed by mid-June. Notice would be given to occupants before work takes place as there may be a disruption in service for several hours.

6. **COMMENTS FROM THE AUDIENCE**

Skate Park – Mark Moore, 1112 Shannon Place, Herndon, expressed his opposition to the proposed skate park and turned in a petition with signatures from 100 citizens also opposing the park, which is on file in the Town Clerk’s office. He stated that he is opposed to the skate park because it would create too many activities in a small space and would attract individuals from outside of Town. He stated that it also is too expensive to build in these tough economic times and could be a liability to the Town.

Mayor DeBenedittis announced that the following individuals submitted comments regarding the skate park, which have been entered into the record for tonight’s meeting:

- Jeff Davidson
- Yisheng Gong
- Laura Jones
- Adarsh Kaur Khalsa
- Darshan Khalsa
- Sally Kline
- Larry and Martha Langrehr
- Gordon Livengood
- Henry & Margaret McMullen
- Mark Moore
- Kevin Peltz
- Beau Sigrist
- Kathleen Spiegelberg

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Skate Park – Jeff Davidson, 1156 Lisa Court, Herndon, expressed his opposition to the proposed skate park in Trailside Park. He stated that the park is perfect now and 4,200 square feet of concrete would ruin it. He requested the Town Council to defer this matter for 90 days.

Skate Park – Jean Deavers, 1120 Shannon Place, Herndon, expressed her opposition to the proposed skate park. She stated that the Town should not be taking on another facility to maintain during these tough economic times. She stated that she also is concerned with the noise that the skate park would bring to the area.

Skate Park – Shakta Kulsa, Bond Street, Herndon, expressed her opposition to the proposed skate park and concurred with Mr. Davidson's comments.

Skate Park – Kathleen Spiegelberg, 1160 Lisa Court, Herndon, expressed her support of the proposed skate park in Trailside Park. She stated that any noise generated from the skate park could not be any worse than the cars and trucks on Crestview Drive. She stated that this is a chance to give back to children, who would be taxpayers before too long. She stated that she has been hearing about a skate park for four years and does not understand why so many others have not. She requested that the Town Council award the contract this evening and not defer the vote.

Skate Park – Patty Hurst, Northern Virginia citizen, stated that she is a mother, a government attorney and a skate boarder and she commended the Town Council and staff for doing an excellent job in working with the citizens on the skate park. She stated that she and others involved in the skate park are not familiar with the contractor or sub-contractor that would be awarded the contract this evening and there is no evidence that they have ever built a skate park. She stated the skate park could be dangerous if not built properly. She stated she is in favor of deferring the award of contract.

Skate Park – Tamera Noonan, 1008 Page Court, Herndon, expressed her opposition to the skate park in its proposed location. She stated that it does not belong in Trailside Park. She stated that eliminating trees to build a skate park is strange for a Town known as a "Tree City."

Skate Park – Marcia Gattoni, 1129 Waterford Place, Herndon, expressed her opposition to the proposed skate park in Trailside Park. She stated that the park is full of activities on the weekends and is a beautiful place. She is concerned with the type of people who would be drawn to a skate park, the noise levels that a skate park would bring, increased trash levels and liabilities to the Town.

Skate Park – A resident of Shannon Place, Herndon, expressed her opposition to a skate park being built in Trailside Park. Ideally, a skate park should be built in a more open area that is easily accessible.

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Skate Park – Gordon Livengood, 1300 Lopp Court, Herndon, expressed his opposition to a skate park being built in Trailside Park. He has complete faith in the Herndon Police Department, but feels that it would not benefit the Town if they were continually being called to the skate park. He stated that the costs for maintenance, repairs and liabilities in the out years would be much higher than the \$175,000 initial costs. He stated that very few people were aware of this project prior to several months ago and that even today, there is much unknown about it. He requested the Town Council to defer their decision.

Skate Park – Amber Hill, 1205 Bond Street, Herndon, stated that she is looking forward to using Trailside Park when her baby is born, but having a skate park there would influence her to find another more peaceful place for her to go to. She expressed her opposition to a skate park in the proposed location, and stated it could be a good idea if attached to the Herndon Community Center.

7. **ORDER OF AGENDA**

(Note: Councilmember Tirrell previously requested to defer his comments until after the Comments from the Audience portion of the agenda.)

Various – Councilmember Tirrell stated that for citizens who are interested in how the Town matches up against other areas in Fairfax County in terms of how it cares for its water system and how it assesses charges, they should read a copy of the study dated May 7 from the Fairfax County Office of Consumer Protection Study of Water Service Providers Serving Citizens of Fairfax County. He congratulated the Mayoral candidate and the 12 Council candidates who took the time and energy to put themselves before the voters in Town. To those who were not elected for this term, if they are still interested, he urged them to stay involved in the Town. He stated that this was his eleventh consecutive election in Town. In 1990, when he first ran for office, his two mentors were Rick Thoesen and John DeNoyer. He expressed his disappointment when, this year, Mr. DeNoyer ran an advertisement in the Herndon Observer, personally attacking the Mayor when for years Mr. DeNoyer indicated that Herndon runs “gentlemanly” elections. He stated those “gentlemanly” elections have been lost since 2006 and he hopes the Town can resurrect nonpartisan elections instead of “them versus us” campaigns. He urged those who would like to run in future elections, to run a campaign that is based on personal virtues and not on attacking opponents and neighbors. He commended and congratulated those who won in this year’s election and stated there would be many issues to deal with during the next two years. He extended a special appreciation to those who helped him run his campaign, especially Councilmember Waddell, who assisted him while he was recuperating from knee surgery.

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8. **PUBLIC HEARINGS**

FY11 Proposed Budget

The Town Council held public hearings to receive comments from the public during the development of the FY 2010-2011 annual budget on February 16 (rescheduled public hearing from February 9 because of inclement weather), February 23, March 9 and March 23. Public hearings on the advertised recommended budget were held on April 13 and April 27. On April 13, the Council directed staff to advertise a public hearing on a proposed increase to the cigarette tax rate for April 27. At the April 27 public hearing, the Council moved to continue the public hearings on the FY 2011 budget until May 11.

Mayor DeBenedittis stated that he would call public hearings on the first five items of the FY 2011 Proposed Budget separately and then concurrent public hearings on the remaining two items.

Disclosures:

- Vice Mayor Hutchinson stated, for the record, that she is an employee and President of the Herndon Dulles Visitor's Center; therefore, she stated she would recuse herself from any portion of the discussion or action that relates to the Herndon Dulles Visitor's Center.
- Councilmember Tirrell stated, for the record, that his wife serves as a paid employee for Herndon Community Television (HCTV) Corporation; therefore, he stated he would recuse himself from any portion of the discussion or action that relates to HCTV.

Mayor DeBenedittis stated, for the record, that the following individuals submitted comments, which have been entered in the record for tonight's public hearings:

- Sophie Du
- Barbara Glakas
- Lisa Kelly
- Emma Patton
- Barbara Penkava
- Jo Sorrell

He questioned if the Town Manager had any comments he would like to make or if the Town Council had questions of staff?

Arthur A. Anselene, Town Manager, stated that the Q&A for the FY 2011 Proposed Budget is available on the Town's website.

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Ordinance 10-O-11, Levying Taxes on Real Estate and Manufactured Homes, and Other Subjects for the Fiscal Year 2011 Annual Budget;

A Certificate of Publication was filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 2, 2010 issue.

The public hearing was held and the following individual presented testimony:

- Jasbinder Singh, 804 Third Street, Herndon, stated that he ran his campaign individually and on the issues. One of the issues he took door-to-door was that he is opposed to any tax rate increase. He stated that once he takes office, he would do whatever he could to convince other Councilmembers to vote against any tax increases.

Following the public hearing, Councilmember Waddell moved to continue the public hearing on Ordinance 10-O-11 until the May 25 public hearing. This motion was seconded by Councilmember Husch.

Councilmember Tirrell stated that he has presented four budget items to the members of Council. He stated that his Option 1 contained no changes from the Town Manager's budget. His Option 2 recognized three sources of revenue, two of which would not require a tax increase. It also suggested a pay scale adjustment for employees who are currently below the bottom of the pay scale, reinstated the fall clean-up and reinstated a modified version of Big Truck Days and made other minor adjustments. His Option 3 contained a real estate tax increase, but no cigarette tax increase. His Option 4 was a combination of the others and included a cigarette tax increase, a decrease in the proposed real estate tax rate to \$.2650 and a meals tax of 2.5 percent to be implemented on January 1. Option 4 allowed the incoming Council some latitude to adjust the meals tax rate at mid-year, if necessary.

Councilmember Kirby expressed his appreciation to Councilmember Tirrell for his memorandum and the options he provided. He stated that he is personally concentrating on Option 2. He stated that if the real estate tax rate were raised by \$0.0075, in accordance with the Town Manager's current proposed budget, 62 percent of Town residents would not see an increase in their real estate tax bill. If the real estate tax rate were raised by \$0.0050, 75 percent of the residents in Town would not see an increase in their real estate tax bill. Therefore, Councilmember Tirrell's Option 2 is more favorable to him. If the cigarette tax were increased by \$0.15 per pack, he believes an additional \$67,000 in revenues would be produced. By increasing the cigarette tax \$0.20 per pack an additional \$89,000 in revenues would be produced. Those revenues could be added to Councilmember Tirrell's Option 2 to bring back some items that are proposed to be cut.

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Vice Mayor Hutchinson stated that staff was supposed to compile a list of the cuts that would have to be made if the \$0.26 real estate tax rate were to remain the same, which she has not seen.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Ordinance 10-O-12, Amending Chapter 30 (Finance and Taxation), Section 30-401 (Levy), Meals Tax.

A Certificate of Publication was filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 2, 2010 issue.

The public hearing was held and the following individuals presented testimony:

- Jasbinder Singh, 804 Third Street, Herndon, expressed his opposition to an increase in the meals tax. He requested a copy of Councilmember Tirrell's memorandum to see how he was making up a \$2 million deficit.

Councilmember Tirrell stated that his memorandum covers possible changes to the existing Town Manager's proposed budget, not a \$2 million deficit.

Mr. Singh stated that many restaurants are struggling and going out of business, which is why he opposes an increase in the meals tax. He stated that raising it sends the wrong message to restaurants and makes it appear that the Town does not support their businesses. He stated that it would be unfair in these times of economic crisis to increase the meals tax rate.

- Anselm Griffiths, owner of O'Sullivan's Irish Pub, stated that he wanted to clarify comments he made at a previous meeting and that he does see more Town residents dining at his restaurant than non-Town residents. He stated that people in Herndon eat in Herndon and that the increase in the tax is going to be a cost increase to Town residents. He stated a meals tax increase would mean he would have to increase his prices.

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Following the public hearing, Councilmember Tirrell moved to continue the public hearing on Ordinance 10-O-12 until the May 25 public hearing. This motion was seconded by Councilmember Kirby.

Councilmember Tirrell stated that the meals tax is levied by the Town and is collected by the restaurants above and beyond the price of the meal. It does not come out of what the restaurateur charges for goods and services, but is an add-on that the restaurant collects and provides to the Town. The restaurant is paid a small amount for their time and recording keeping.

Councilmember Waddell stated that at a previous meeting, he indicated that the restaurants were able to keep three percent of the meals tax that they collect, but in fact it is six percent.

The question was called on the motion, and carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Ordinance 10-O-13, Chapter 42 (Motor Vehicles & Traffic), Section 42-327 (Town Vehicle License Fees).

A Certificate of Publication was filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 2, 2010 issue.

Following the public hearing (there were no comments from the audience), Councilmember Tirrell moved to continue the public hearing on Ordinance 10-O-13 until the May 25 public hearing. This motion was seconded by Councilmember Husch.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes

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Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Ordinance 10-O-14, Chapter 62 (Solid Waste), Section 62-10(b)(1) (Schedule of fees), Quarterly Recycling Fee.

A Certificate of Publication was filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 2, 2010 issue.

Following the public hearing (there were no comments from the audience), Councilmember Waddell moved to continue the public hearing on Ordinance 10-O-14 until the May 25 public hearing. This motion was seconded by Councilmember Husch.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Ordinance 10-O-16, Chapter 30 (Finance & Taxation), Section 30-142 (Levy and rate), to increase the Cigarette Tax.

A Certificate of Publication was filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 16, 2010 issue.

Following the public hearing (there were no comments from the audience), Councilmember Tirrell moved to continue the public hearing on Ordinance 10-O-16 until the May 25 public hearing. This motion was seconded by Councilmember Kirby.

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Mayor DeBenedittis stated that this tax was not in the Town Manager's original proposed budget, but was suggested by a citizen and was added to the list of items to consider.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Resolution 10-G-49, Fiscal Planning Resolution Adopting the FY 2011 Budget for the Town of Herndon; and

Ordinance 10-O-15, Appropriation of Funds to Implement the FY 2011 Budget for the Town, Establishing the Pay Plan, and Reserving On-Going and Capital Funds for this Fiscal Year.

Certificates of Publication were filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 2, 2010 issue.

Vote on Resolution 10-G-49

Following the public hearing (there were no comments from the audience), Councilmember Waddell moved to continue the public hearing on Resolution 10-G-49 until the May 25 public hearing. This motion was seconded by Vice Mayor Hutchinson.

Councilmember Tirrell stated that, in his estimate, staff has provided the Council with the Town Manager's recommended budget. If someone wants to make cuts to that recommended budget, they should be able to say where they think it should be cut and not put that burden back on the Town Manager.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes

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Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Vote on Ordinance 10-O-15

Following the public hearing, Councilmember Tirrell moved to continue the public hearing on Ordinance 10-O-15 until the May 25 public hearing. This motion was seconded by Councilmember Husch.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

Resolution 10-G-68, Comprehensive Plan Amendment, CPA #10-01, Downtown Master Plan.

Certificates of Publication were filed from the Editor of the *Herndon Observer Newspaper* showing that notice of said public hearing had been duly advertised in the April 23 and 30, 2010 issues.

Mayor DeBenedittis stated, for the record, that the following individuals submitted comments, which have been entered in the record for tonight's public hearing:

- Justin Britt
- Phil Jones
- Jason Trust
- Bob Vuong

Elizabeth M. Gilleran, Director of Community Development, reviewed her memorandum to Arthur A. Anselene, Town Manager, dated February 4, and presented a PowerPoint, which are on file in the Town Clerk's office. She stated that the 2030 Vision Statement calls for a vibrant, thriving downtown with a variety of mixed uses and that the proposed plan closely matches that Vision

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Statement. The plan amendment would change the current language, make it more specific and it would serve as a guide for future planning and development. The comprehensive plan amendment does not have any immediate change in the zoning of property in the downtown. That potential step would come at a later date. She stated that the process began with the selection process and a Request for Proposal (RFP) was issued in accordance with state and local laws and regulations. The project team chosen was Urban Design Associates (UDA), Streetsense, Frazier Associates and Bohler Engineering. The Downtown Master Plan Steering Committee was formed, consisting of downtown business, residents and members of the Planning Commission and ARB/HPRB. There was a large public outreach effort during the planning process. Ms. Gilleran stated that the outreach effort tried to capture what most people would like to see in the downtown in the future. Heritage preservation had to be considered and the determination was made as to what must stay, should stay or did not need to be kept in the downtown. Utilities and roads must be able to support the new downtown. One of the highest preservation priorities is the Subaru dealership building. Ms. Gilleran introduced Paul Ostergaard, UDA and John Eisen, The Eisen Group and Chris Gay, VHB.

Mr. Ostergaard expressed his appreciation to the Town Council and staff for the opportunity to work with the Town. He stated that the first step in their process was to come to the Town as a team to learn as much about it as they could and then to prepare an analysis. During phase two they set up a design studio in the Town to develop design alternatives. Then they refined the plan to its current form. He stated that Herndon is very unique and real, dating back to the Civil War. Many of the surrounding areas have been built in the last 30 or so years.

Mr. Eisen reviewed the market analysis, which is on file in the Town Clerk's office. He stated that after studying the Metrorail and its impact on the region, they did an analysis from a residential, office and retail perspective. He stated there are an overwhelming number of home ownerships in Town. He stated that the Town is missing the higher end rental apartments that could bring professionals and future home buyers to the Town. Regarding the office buildings in Town, some are old and have run their course and could be redeveloped in the downtown. He stated there are too many strip malls up and down Elden Street that basically have the same types of stores.

Mr. Ostergaard stated they would like to work with as many existing buildings as possible since they make the character of the Town. The Pines Shopping Center was considered one of the worst areas in Town. UDA held a design workshop at ArtSpace and they developed some different ideas for existing parcels in Town. He stated that for the purposes of their Option A, they assumed the Element Hotel would be built. He stated that most individuals were concerned with preserving the character of the Town and not overwhelming it with tall buildings. He stated that they would like to incorporate outdoor restaurant seating and courtyards in the downtown. He suggested that a three or four story assisted living or active adult center could be put on the property on Center Street next to the existing

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neighborhood. In Option B, they were reviewing townhomes on the property on Center Street next to the existing neighborhood. A number of options were considered for the Pines Shopping Center, including the creation of a residential neighborhood with a small amount of commercial property. Mixed use development also was considered for that area. He stated that he had heard horror stories from developers who tried to deal with Herndon in the past. Now, however, with a community vision, it would be easier to develop guidelines and tools to make it clearer to developers what would be allowed. He stated that developers would then be able to almost build by-right.

Mr. Gay stated that his firm, VHB, was asked to perform an analysis of the potential impacts that Option A and Option B would have on the Town and on traffic. He stated that Option A would generate more vehicle trips during peak hours. Some driving trips could be eliminated with a mixed use development. Regarding the level of service, there would not be much difference between Option A and Option B. He stated there are some relatively inexpensive options that the Town could consider to ease some of the "hot spots" of traffic, such as utilizing under-utilized turn lanes.

Ms. Gilleran stated that several individuals have asked how the JPI development compares to what is currently being proposed. She stated that the JPI proposal only dealt with four land areas, which were the areas south of the bike trail on the west of Center Street; the area where ArtSpace currently is; the block where the Town's parking lot, TPI building and Subaru dealership are; and the southerly block across the street from the TPI building. In just those four blocks, the JPI proposal called for 600 dwelling units. Under the current proposal Option B, would call for less than 100 dwelling units, and Option A would call for approximately 250 dwelling units. JPI had proposed approximately 80,000 square feet of commercial property on those 4 blocks. Both Option A and B under the current proposal would call for under 60,000 square feet of commercial property on those four blocks. Ms. Gilleran stated that the Steering Committee was not unanimous in their recommendation, but the majority of the vote was for Option A. On April 5, the Planning Commission unanimously recommended Option A, with single family detached homes along Jefferson Street and with the recommendation that once the plan is adopted, a marketing brochure should be developed by the Town to let people know what the Town's vision is. The Planning Commission also recommended a comprehensive rezoning for the plan areas. This would save the developers time and money and they would know in advance exactly what the Town would or would not allow to be built. She stated that staff recommends deferral at this point, since it is such a major addition to the Comprehensive Plan. Staff is looking into grant funding and alternative resources to help with some of the improvements since this project is not as dense as those in the past were.

Councilmember Kirby questioned if the Steering Committee accepted the proposal of an arts center in the downtown, or was it further discussed?

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Ms. Gilleran stated that there was not any discussion on whether or not to include an arts center, but the RFP included an arts center, because at the time it was still in the policy statement. While an arts center was included in both options, there was nothing that stated who would build it.

Councilmember Kirby stated that the project shows what the public wants, but what he reads is that after all is said and done, there is not enough density in Option A or B to get an arts center, undergrounding of utilities or a parking garage that were offered in the JPI proposal. Under the JPI proposal, the Town would have sold some of its property. He requested that staff come back before Council and provide an evaluation of what the Town's property is worth under Option A or B.

Councilmember Husch stated that a copy of his memorandum dated May 10 to Arthur A. Anselene, Town Manager, was provided to the Town Council this evening which asked the same questions that Councilmember Kirby rose. A copy of his memorandum is on file in the Town Clerk's office. He stated that there is a set of public facilities that are part of the vision plan, and the value of the land the Town owns and the value of proffers that may come from developers must be considered. The combination of the value of the Town's land and the value of the proffers, when subtracted from the cost of the public facilities, tells the capital commitment that the Town would assume by accepting either Option A or Option B. That commitment could be offset by grants or transportation funds, but the magnitude should be known. He stated that if the Town's land is not worth much more than it is as currently zoned, there would already be a shortfall. He expressed concern that the Town would be maximizing its debt capacity. He stated that in 2009, he attended a meeting at the Fairfax County Government Center, which was specifically on Tax Incremented Financing (TIF's). He stated that by the end of the meeting, he realized that Fairfax County was warning everyone to stay away from TIF's, because it is a way for developers to push all the risks onto the government in case things go bad and they cannot complete the project. He stated that he understands why a developer would want a comprehensive rezoning, but it takes away the opportunity for the developer to work with staff, the Planning Commission and the Town Council to complete the vision. He stated that if something is missed in the development process, the taxpayers get stuck with the bill and he would argue against that.

Councilmember Tirrell stated that Frazier Associates did the very first historical listing of buildings for the Town, which lends credibility to their work. He stated that funding equals density and developers would invest what they can to make a profit. If the density is not high enough, developers would not provide proffers or amenities other than what is required. He stated that he would need more convincing before he would agree to a by-right development in the downtown. He expressed his support to defer this matter for several weeks.

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Vice Mayor Hutchinson stated that she would need a better description of the historical building designations. She stated that it would be useful to know the current zoning and the FAR of all properties in the downtown area that are being reviewed. She stated that none of the traffic studies showed what the level of service would be during the noon rush hour. She expressed concern that the backup of traffic at Monroe and Elden Streets during the afternoon was not shown on the simulations. She stated that on Saturdays, Elden Street is congested all day long and she would like assurance that increasing residential properties in the downtown would not make Saturday traffic worse. She requested comparisons on the JPI proposal and the new proposal showing how the whole downtown would be affected.

Ms. Gilleran stated that staff could show comparisons of Option A and B to the previous JPI proposal. She stated that when the Diamond Hotel was being discussed and JPI was still an active proposal, there were more calls coming in regarding the redevelopment of the Pines Shopping Center. She stated that often development brings more development. She stated that a 2.5 FAR would be unlikely to occur throughout the downtown.

Vice Mayor Hutchinson stated that, in her opinion, a second PPD district with a bonus district would throw out the whole vision plan. A vision was worked on at a certain FAR and density and this would possibly allow more.

Vice Mayor Hutchinson stated that she received an email from Tim McGrath stating his ideas on how the downtown should be redeveloped and she questioned if staff would be replying to that email within the next few weeks?

Arthur A. Anselene, Town Manager, stated that staff is in the process of reviewing Mr. McGrath's ideas and would be preparing a follow-up response in the next few weeks.

Councilmember Kirby requested a definition of "*green tape municipal ideology*."

Mr. Eisen stated that "*green tape*" means to have a more expeditious way of getting through a process. He stated that there was a tremendous amount of backlash from developers who stated that coming to Herndon was not a pleasant experience.

Councilmember Waddell commended staff, UDA and the Downtown Master Plan Steering Committee for their hard work. He stated the process was exemplary. He stated that Councilmember Husch's memorandum lays the foundation for where to begin the consideration. He stated that question five in Mr. Husch's memorandum is what this decision is about, "Does UDA believe that the density proposed in the Downtown Master Plan Option A will be sufficient to attract a developer? Option B?" Councilmember Waddell questioned how many parking spaces there would be in the downtown and he questioned what a carriage house is?

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Mr. Eisen stated there are 182 parking spaces required in Option A. He stated that parking demands come from additional density. They have proposed a large parking structure with five decks. He stated that with an FAR of 2.5, the most dominant use in the downtown would be parking, but there is not enough land to support a structure that large.

Councilmember Waddell expressed concern that with a low FAR in the downtown, developers would not be willing to build.

Mr. Eisen stated that higher densities require a change in construction classification, which means higher costs, more parking, and would require an increase in the income level. He stated that development is based on the income it brings in and it would make no sense to build a 2.0 FAR if the income it would bring in is a 1.0 FAR.

Mr. Ostergaard stated that the proposed garage in Option A Block D would hold 570 cars. In Option B, it would hold 426 cars. He encouraged the Town Council not to use the FAR as a form of criteria. He stated that the FAR on a half acre parcel is completely different than it would be on a five acre parcel. He stated that FAR's are an abstract number that people find hard to associate with.

Mr. Eisen stated that JPI stopped their process because of the market and because their strategy was not feasible, which was not due to opposition.

Mr. Ostergaard stated that a carriage house is a small single family residential unit, sometimes above a garage.

The public hearing was held and the following individuals presented testimony:

- Les Zidel, on behalf of the Board of Directors of the Herndon Foundation for the Cultural Arts, stated that the Foundation was happy to have participated in the process so far and he commended all who participated in the workshop. He stated that those who have been working on an arts center for several years never thought it would be funded through proffers or a public-private partnership. He stated that the primary concern for the downtown is parking and that must be addressed to get development. He stated that when the Pines Shopping Center redevelops, the option to continue Center Street into Monroe Street and then into the area of the Pines should be reviewed. He stated that he likes Option A because of what it would do for the Vine Street property. He also likes the development along Elden Street at the Pines Shopping Center with the parking in the rear. For the past 18 months, the Foundation has been experimenting and it has determined that the arts center would not belong over the parking lot next to the library as has been proposed. He stated that a building would have to be built all in one phase if it were put there, but an arts center needs to be built in phases based on demand and function. That is part of the reason the Foundation recommended the final arts center be built at its current location.

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- Jasbinder Singh, 804 Third Street, Herndon, stated that this plan was developed rather quickly and he considers it a starting point for further discussion and consideration. He stated that, on a block by block basis, three things should be discussed: its compatibility with neighboring properties; its economic feasibility and how that feasibility is determined; and the government commitments to the development. He stated he is not convinced that there is the kind of retail out there that would last in Herndon as proposed by UDA.
- Mike Pritchett, 224 Herndon Station Square, Herndon, expressed his opposition to building an apartment complex on Center Street, because that would only drive nearby residential prices down further. He stated that all the realtors he has spoken to have agreed that the prices would drop.
- Jason Trust, 124 Fortnightly Square, Herndon, stated that he is not opposed to density, but he requested that developers be sensitive to the current landowners and not build apartments. He would prefer to have apartments closer to the Metro stops and not in the downtown.
- Barbara Glakas, 935 Barton Oaks Place, Herndon, stated that she has been following this from the beginning, has found it to be very exciting and commended UDA on their work. Many citizens, including herself, the Downtown Master Plan Steering Committee and the Planning Commission prefer Option A. She stated that she was disappointed that the conversation turned to obstacles and that the zoning issue was not brought up earlier, but a vision is being adopted, not a site plan. She stated the Town cannot afford not to redevelop the downtown. When this item is deferred she would like to see a date set for it to come back before the Council and not be left open-ended.

Following the public hearing, Councilmember Husch moved to continue 10-G-68, until the May 25 public hearing. This motion was seconded by Councilmember Waddell.

Councilmember Husch stated that a lot of clarity has been brought to the vision. This is an excellent opportunity to bring in the form based zoning initiative, which may satisfy a lot of the confusion related to the communication of the vision. He encouraged Mr. Zidel to send his ideas to the Town Council so they would have time to review them.

Councilmember Waddell stated that he is looking forward to some of the critical answers.

The question was called on the motion, which carried by a vote of 6-0. The vote was:

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Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

8. **GENERAL**

Resolution 10-G-69, Award of Contract #10-09 – Parks and Recreation Quarterly Brochure Design and Layout Services.

Cindy S. Roeder, Director of Parks and Recreation, briefly presented the staff report dated May 11, which is on file in the Town Clerk's office. She stated that a Request for Proposal was developed to obtain a fixed price for the services of a contractor to design and layout the quarterly brochures for the Herndon Parks and Recreation Department, as well as the Rec Express and the summer camp brochure. The term contract would be for one year after the award with an option of four, one-year renewals. Proposals were received from 21 vendors. The evaluation committee reviewed all proposals and identified the top nine, checked references and compiled scores. Rankings were based on a sample design, creativity, original artwork, delivery, years of experience and references. The committee interviewed the two highest rated firms and rescored the two proposals. The combined scores ranked Media Ventures, Inc. as the preferred awardee. Staff recommends approval of Resolution 10-G-69, as presented.

Councilmember Husch moved approval of Resolution 10-G-69, Award of Contract #10-09 – Parks and Recreation Quarterly Brochure Design and Layout Services. This motion was seconded by Vice Mayor Hutchinson.

Councilmember Tirrell stated that he is uncomfortable approving this contract when the funds would not be available unless approved in a budget that had not been approved yet.

Ms. Roeder stated that the contract would indicate that it would be contingent on the approval of appropriate funds.

Mary K. Tuohy, Director of Finance, stated that all of the Town's standard contracts have non-appropriation clauses, so if money was not allocated for a particular service, the contract would be null and void.

The question was called on the motion, which carried by a vote of 5-0. The vote was:

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Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	absent from dais
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

10-G-69 Resolution, Award of Contract for RFP 10-09, Quarterly Brochure Design and Layout Services.

WHEREAS, a request for proposal was developed to secure the services of a qualified vendor to design and layout the quarterly program brochure, RecExpress and summer camp brochure; and

WHEREAS, the proposal was issued to vendors known to have the capacity to provide such services, and through the eVA on line procurement system; and

WHEREAS, proposals were submitted as follows:

Vendor	Total
Media Ventures, Inc	\$ 8,200
Willow Marketing	\$ 8,200
Balmar, Inc	\$10,500
Catstone Press	\$10,920
MarCom Group, Inc	\$12,000
Pete St Johns	\$12,800
eCommPlus, LLC	\$13,453.20
Design and Integration	\$13,800
Graphic Perspectives	\$19,360
Grace Design, LLC	\$19,510
Imagewerks LC	\$20,400
College Designs	\$20,400
CSE Identity Design, Inc	\$21,600
Freeman Design	\$22,620
tgD Communications	\$25,582
Kohl Designs	\$28,000
Charles Ryan Associates	\$54,400
JADA Creative	\$58,880
GovPartners, LLC	\$66,550
West & Associates	\$89,800; and

WHEREAS, the proposal received from Media Ventures, Inc is both responsive and responsible; and

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WHEREAS, the bid received from Media Ventures, Inc is within the available funds for this project.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that it hereby awards a contract to Media Ventures, Inc in response to request for proposal 10-09, Quarterly Brochure Design and Layout.

Resolution 10-G-70, Award of Contract, IFB #10-10 - Custodial Services for Herndon Municipal Center and Town Hall Facilities.

Robert B. Boxer, Director of Public Works, briefly presented the staff report dated May 11, which is on file in the Town Clerk's office. He stated that the purpose of the award is to establish a term contract for the services of a contractor, licensed and qualified, to provide custodial services for the Herndon Municipal Center and the Town Hall Facility. The period of this contract would be one year from the date of the award. The Town reserves the right to renew this contract for four additional years, one year at a time. In order to execute custodial services for Herndon Municipal Center and Town Hall Facilities, the department solicited bids for custodial services. An Invitation for Bid was posted on eVA Commonwealth of Virginia procurement website to maximize fullest competition. Ten bids were received and the apparent lowest bidder, Blue Chip Service, was found to be responsive and responsible. Staff recommends approval of Resolution 10-G-70, as presented.

Vice Mayor Hutchinson moved approval of Resolution 10-G-70, Award of Contract, IFB #10-10 - Custodial Services for Herndon Municipal Center and Town Hall Facilities. This motion was seconded by Councilmember Husch and carried by a vote of 6-0. The vote was:

Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

10-G-70 Resolution, Award of Contract IFB #10-10, Custodial Services for Herndon Municipal Center and Town Hall facilities.

WHEREAS, the Public Works Staff developed a fixed unit price contract for the custodial service requirements; and

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WHEREAS, the Invitation for Bid was posted March 29, 2010 on eVA Commonwealth of Virginia procurement website to maximize fullest competition; and

WHEREAS, ten bids were received on April 14, 2010 and the bid award was based on the lowest extended cost with the results as follows:

**TOTAL BID BASED ON
ESTIMATED QUANTITIES**

1. Blue Chip Service	\$ 9,456.00
2. J & H Maintenance	\$ 14,400.00
3. First Lady Janitorial	\$ 14,944.80
4. New World Cleaning	\$ 19,344.00
5. XP Services	\$ 20,157.60
6. Commercial & Construction Cleaning	\$ 23,609.52
7. JCC Enterprises	\$ 23,916.00
8. Walker's Janitorial Service	\$ 24,990.00
9. Allied Cleaning Services	\$ 28,800.00
10. NOVA Building Service	\$37,200.00;
and	

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

WHEREAS, it is the staff's recommendation to award the contract to the lowest responsive and responsible bidder, Blue Chip Service; and

WHEREAS, funds to support the work with bid item unit costs established by the contract are available in the following FY 10 Budget accounts: Building Maintenance Contract Services 001/0884/441/20-61; and

WHEREAS, contingent upon approval of the FY 2011 budget, funds will also be available in the following FY 2011 budget accounts: Building Maintenance Contract Services 001/0884/441/20-61; and

WHEREAS, other budget and reserve accounts as needed are available to fund the work under this contract.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that Contract IFB #10-10, Custodial Services for Herndon Municipal Center and Town Hall facilities be awarded to Blue Chip Services.



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Resolution 10-G-71, Award of Contract, #B-10-04, Herndon Skate Park Project.

Robert B. Boxer, Director of Public Works, briefly presented the staff report dated May 11, which is on file in the Town Clerk's office. The Herndon Skate Park Project is included in the Comprehensive Plan and is currently a project listed in the Capital Improvement Program (CIP). The project consists of the construction of a 4,200 square foot concrete skate park in Trailside Park. Approximately 85 percent of the allocated funds for this project are from dedicated proffers.

In July 2009, Request for Proposal #D-10-01, Proposal for Professional Design Services-Herndon Skate Park Project was advertised, which resulted in Grindline being selected as the most qualified skate park designer. Grindline combined skate park committee and community recommendations to develop a skate park design that was completed in March 2010.

On March 30, contract #B-10-04, Herndon Skate Park Project, was advertised. A pre-bid conference was held on April 20 and was attended by 3 firms. On April 27 the following bids were received:

<u>Contractor</u>	<u>Bid</u>
Hammerhead Construction of Virginia, Inc.	\$124,000.00
ADIRA Construction, Inc.	\$137,508.55
Hardcore Shotcrete Skateparks, Inc.	\$185,300.00

The apparent lowest bidder, Hammerhead Construction of Virginia, Inc., has been found to be responsive and responsible. The low bid exceeded the project budget established for this work. Per Section 30-308 (h) (2) of the Town of Herndon's Code of Ordinances, Public Works staff entered into negotiations with Hammerhead Construction of Virginia, Inc. Negotiation took place from April 28 through May 6 and resulted in a reduced contract price of \$119,196.00. Staff recommends approval of Resolution 10-G-71, as presented. Staff also recommends the authorization of an \$11,000.00 contingency, which is approximately nine percent of the bid.

Councilmember Waddell stated that \$175,000 was the proffered amount that was dedicated to the skate park.

Mr. Boxer stated that \$175,000 was the total amount budgeted for the project. The proffer was for \$150,000 and \$25,000 came from the General Fund. To date, approximately \$41,000 has been spent on design and other charges.

Vice Mayor Hutchinson stated that some concerns were mentioned this evening regarding Hammerhead's lack of having built a skate park and she questioned if they did or did not have experience with skate parks?

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Mr. Boxer stated that he does not believe that Hammerhead has experience building skate parks. When preparing the bids, staff was given names of suggested contractors from the architect, designer and the committee. There were nine contractors listed, none of which were in Virginia, and all were invited to bid on the contract. He stated that they expanded the invitations to bid to those they felt were capable of building a skate park. He stated that it was made clear that this would be for a skate park and would have certain criteria that would have to be met.

Vice Mayor Hutchinson questioned if there was any special finishing that would be required, such as sanding and smoothing?

Mr. Boxer stated that staff had discussions with the architect and tried to quantify the artistic feature, but it was difficult to put on a set of plans. The sub-contractor for Hammerhead, Top Gun, has built many swimming pools and has been in business for 15 years. They have built significant pools for private contractors, worked on the pools at Lake Fairfax and have done concrete sculptures in Arlington. He stated that Hammerhead and staff felt that the sub-contractor could do the job well.

Vice Mayor Hutchinson questioned if the second bidder had any skate park experience?

Mr. Boxer stated that part of Top Gun's resume was a skate park at Potomac Mills Mall, which is no longer in existence. The second low bidder is a general contractor and the sub they were proposing to use was out of North Carolina, but they did not bid because they do not have a Virginia Contractor's License.

Councilmember Kirby stated there were comments made that nothing was posted at Trailside Park indicating that a skate park would be built there. He questioned if that was true, and if so, should a sign have been posted and is there a legal requirement to do so?

Mr. Boxer stated that he does not believe any information was placed at the skate park, but there was literature and a letter hand delivered to neighbors in that area. There also have been several public hearings on the skate park.

Richard B. Kaufman, Town Attorney, stated that there are no requirements for a physical posting on the site of the future skate park with regards to the procurement before the Town Council this evening. If there was a comprehensive plan review or site plan review, it would be posted. There are no legal requirements to post procurement, which is what the Town Council is reviewing this evening.

Councilmember Tirrell questioned if the Town would be placing itself in jeopardy for insurance liability by having an unattended skate park?

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Mr. Kaufman stated that this skate park would involve a recreational activity for the Town and there is governmental immunity for all recreational activities that are a part of governmental operations. The only case where there would be liability would be in the case of "gross negligence," which would not happen in this Town. He stated that although he believes that the Town would probably be sued at some point, those suing would not win and being sued would not adversely affect the Town's liability insurance.

Councilmember Tirrell stated that there was discussion that the skate park would attract people from other areas and possibly present a parking nightmare at Trailside Park. He stated that he does not recall any discussion indicating that 100 people a day would be attracted to the skate park. He thought that one of the greatest benefits of the location was its proximity to the W&OD Trail.

Ms. Roeder stated that Councilmember Tirrell's comments are accurate and they had not estimated how many people would be attending the skate park on a daily basis. She stated that she does not think people would be coming to the skate park from very far away and that it is a relatively small park. She stated there are approximately 20 parking spaces at Trailside Park and staff is hoping that people would walk, ride or skate to get there. If parking becomes an issue, it would be addressed in the future.

Councilmember Tirrell stated that he was delighted that so many people came out to speak on the skate park issue and stated that he wished they had spoken when discussions were taking place regarding where it would be located. He stated that there were discussions as to whether or not the skate park would be a gang hang-out and he questioned if it would be visible from the street so police could monitor it?

Ms. Roeder stated that there would not be any change to the visibility from Crestview Drive. Herndon Parkway has trees and shrubs and there was never any intention of pulling them out. The skate park would be located where the current volleyball court is, which is wide open. Previously, Officer Giron provided comments to the committee and stated that no plantings or shrubs should be put in that would block the site.

Councilmember Tirrell stated that he is familiar with the skate park on Duke Street in Alexandria, which is close to a pretty nice residential area. He stated he never heard of any issues related to that park. He questioned if serious consideration had been given to other locations in Town?

Ms. Roeder stated that over a year was spent looking at potential sites for the skate park. She stated that in 2007, staff came before the Town Council with three potential sites, which included Trailside Park. Considerable time was spent reviewing other options and in 2008, the committee still considered Trailside Park as one of three locations suitable for a skate park. Realistically, with the criteria being reviewed, Trailside Park was the best choice. Coral Road was given

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consideration, but it is a long and narrow strip of land that would have presented permitting issues with Fairfax Water and Northern Virginia Regional Park Authority, among other concerns.

Councilmember Tirrell stated that 85 percent of the dedicated funds for this project are from dedicated proffers. He questioned if the proffer money could be used for any recreational facility the Town would choose?

Mr. Boxer stated that it was his understanding the proffers could be used for any recreational facility the Town would choose.

Responding to Councilmember Waddell's query, Mr. Boxer stated that his hope is that the skate park would be a low maintenance facility.

Responding to Mayor DeBenedittis' queries, Ms. Roeder stated that the skate park would fall within the existing hours of Trailside Park, so it would close at dark. She stated that it is not a fee based facility and it would be unsupervised. She stated that the Town has a very responsive procedure for addressing graffiti, which would apply at the skate park as well. Skaters have assured staff that they would keep the park clean, because they cannot skate on it if there is debris. She stated that concrete is the quietest material that could be used for the skate park and that from 100 feet away, no excessive noise from it could be heard. She stated that the 4,200 square feet of the skate park would only cover 1.2 percent of Trailside Park, which is well within the required guidelines of coverage for impervious surfaces. She stated that Virginia Paving Company approached the Town and volunteered to do some clean-up efforts in some of the parks in Town. They took out five truck loads of debris, painted picnic tables, power-washed the shelter, pulled out tree stumps and mulched the playground at Trailside Park. Ms. Roeder stated that staff put together a list of projects for Virginia Paving Company to choose from and they did all the projects on the list. In addition, Virginia Paving Company has offered to help with the skate park and are now clearing and grading the area. There are only a few trees that have been taken down and some of them were dead.

Councilmember Kirby stated that the flyer that was handed out in the neighborhood was filled with misinformation and should not have been distributed as written.

Responding to Mayor DeBenedittis' query, Ms. Roeder stated that Wakefield Skate Park is fee based, is staffed and is much larger than the Town's would be.

Arthur A. Anselene, Town Manager, stated that Wakefield Skate Park has above ground ramps and is not meant for street skating. The Leesburg Skate Park facility is approximately 10,000 square feet and consists of a series of above ground ramps. It is no longer a fee based facility. He stated there is a charge to use the Wakefield facility because it is supervised. He stated that the Leesburg facility is staffed some of the time, but not always.

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Mayor DeBenedittis stated that it is very important to have citizen input no matter when it is. He stated that it was great to hear so many people speak on the matter this evening.

Ms. Roeder stated that staff is looking into skate camps, clinics and demonstrations that would generate revenue. She stated that from the beginning, all community meetings were publically advertised and posted on the website, numerous articles were written in various newspapers regarding the skate park and once identified as the prime location, Trailside Park was on the cover of one of the local papers. There is a mailing list of almost 100 individuals who have been following this and receive updates from staff. In February, a letter was sent to approximately 500 residents surrounding Trailside Park inviting them to an informational meeting, which only three citizens attended.

Responding to Mayor DeBenedittis' query, Ms. Roeder stated that when discussion on the skate park first began, a concrete park was not considered. At the previously considered Coral Road location, it would not be recommended that a concrete skate park be built over a sanitary sewer line, which is now in place for the Stanley Martin Darlington Oaks project.

Councilmember Tirrell moved approval of Resolution 10-G-71, Award of Contract #B-10-04, Herndon Skate Park Project. This motion was seconded by Councilmember Kirby.

Councilmember Tirrell stated that he would like to have heard several years ago what he heard tonight. He stated the Town does what it can to get information out to people to keep them informed of what is going on in Town. The subject tonight is not about whether or not to build a skate park at Trailside Park, but to whom the bid to build it would go to.

Mayor DeBenedittis stated that given what has been said, he does have significant concerns.

The question was called on the motion, which carried by a vote of 5-1. The vote was:

Councilmembers:

Downer	absent
Husch	no
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

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10-G-71 Resolution, Award of Contract #B-10-04, Herndon Skate Park Project.

WHEREAS, the Herndon Skate Park Project is a project in the Capital Improvement Program (CIP); and

WHEREAS, the design of the Herndon Skate Park Project was completed in March 2010; and

WHEREAS, Contract #B-10-04, the Herndon Skate Park Project, was advertised on March 30, 2010; and

WHEREAS, the following bids were received and opened on April 27, 2010 at a public bid opening:

<u>Contractor</u>	<u>Bid</u>
Hammerhead Construction of Virginia, Inc.	\$124,000.00
ADIRA Construction, Inc.	\$137,508.55
Hardcore Shotcrete Skateparks, Inc.	\$185,300.00; and

WHEREAS, the bid received from Hammerhead Construction of Virginia, Inc. is both responsive and responsible; and

WHEREAS, the lowest bid received exceeded funds budgeted for the project and a negotiated price of \$119,196 is recommended; and

WHEREAS, staff recommends, in addition to the contract amount, that a contingency of \$11,000, which is approximately 9 percent of the bid, be authorized; and

WHEREAS, funds to support this contract are available in the CIP project account, number 015-0885-441-91.68.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that Contract #B-10-04, Herndon Skate Park Project, is hereby awarded to Hammerhead Construction of Virginia, Inc. in the amount of \$119,196.

BE IT FURTHER RESOLVED that a contingency of \$11,000 is authorized.

BE IT FURTHER RESOLVED that the Director of Public Works may approve contract modifications (change orders) that increase project scope and costs, utilizing the project contingency.

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Resolution 10-G-72, Hiring the law firm of Sands, Anderson, Marks & Miller, PC to represent the Town in The application of Verizon South, Inc. filed with the State Corporation Commission for review and correction of alleged erroneous assessment of property subject to local tax for 2009.

Richard B. Kaufman, Town Attorney, briefly presented the staff report dated May 7, which is on file in the Town Clerk's office. He stated that Verizon South, Inc. filed a request for tax relief as to the taxes it pays on real estate and certain personal property (called "central office equipment") to the Town and many other localities with the State Corporation Commission (SCC). Though the Town does not assess a personal property tax, the SCC assesses Verizon's real estate and "tangible personal property" (which excludes motor vehicles) "at the [Town's] real estate rate..." The tangible personal property includes "central office equipment" and excludes automobiles and trucks, since the Town does not tax such vehicles and that type of property is treated separately from "central office equipment." Verizon asserts that the amount of assessment of the taxed tangible personal property is too high in the Town and many other localities. Verizon has asked the SCC to lower the assessment. The VML reports that the SCC assessment of Town taxable property is \$46.8 million; Verizon's asserted value is \$6.8 million. If the SCC agreed with Verizon, the Town could end up losing approximately \$103,000 per year in tax revenue. At the suggestion of the VML, many affected localities have retained the law firm of Sands, Anderson, Marks & Miller, PC, in the name of partner Daniel M. Siegel. Mr. Siegel's firm would represent with the Town and other localities in a two phased approach: by May 14, 2010 filing the Town's notice of participation with the SCC and performing an initial assessment of the Town's exposure and legal merits of the Town's case, for a \$750 fee; and representing the Town among others in the tax abatement litigation before the SCC for a reasonable and customary fee to be derived later and approved by the Town Manager, if the Town's continued involvement is warranted. Since litigation before the SCC is a specialized field, the time to react is short and the Town appears to be facing the possibility of losing significant revenue, staff recommends that the Town Council authorize the Town to hire Sands, Anderson, Marks & Miller, PC, as outlined above.

Responding to Councilmember Waddell's query, Mr. Kaufman stated at least 15 to 20 localities were using the same law firm.

Councilmember Husch moved approval of Resolution 10-G-72, hiring the law firm of Sands, Anderson, Marks & Miller, PC to represent the Town in the application of Verizon South, Inc. filed with the SCC for review and correction of alleged erroneous assessment of property subject to local tax for 2009. This motion was seconded by Councilmember Waddell and carried by a vote of 6-0. The vote was:

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Councilmembers:

Downer	absent
Husch	yes
Hutchinson	yes
Kirby	yes
Tirrell	yes
Waddell	yes
Mayor DeBenedittis	yes

10-G-72 Resolution, A resolution hiring the law firm of Sands, Anderson, Marks & Miller, PC to represent the Town in The Application of Verizon South, Inc. filed with the State Corporation Commission for review and correction of alleged erroneous assessment of property subject to local tax for 2009.

BE IT RESOLVED by the Council for the Town of Herndon that:

1. With an estimated \$100,000 per year at stake, the Town Council approves the hiring with other localities facing the same litigation of the law firm of Sands, Anderson, Marks & Miller, PC, per Mr. Daniel M. Siegel, partner, to represent the Town in the Application of Verizon South, Inc. filed in the State Corporation Commission for review and correction of an alleged erroneous assessment of property subject to local tax for 2009. The initial phase of representation will involve the filing of the Town's notice of participation, a review of the Town's specific situation and posture, and a recommendation for a course of action in this case. The second phase of the representation would involve (on approval by the Town Manager) this law firm's full representation with other localities in this proceeding before the State Corporation Commission.
2. The fee for this initial work will be \$750; and the fee for eventual representation in subsequent litigation will be the reasonable and customary fee (whether based on hourly rates or set amount) negotiated by the Town Attorney and approved by the Town Manager.
3. The Mayor, Town Manager, or Town Attorney is authorized to sign and deliver on such form approved by the Town Attorney any instrument or pleading necessary or convenient to evidence this retention contract or to advance the Town's interests in this litigation.
4. This resolution shall be effective on and after the date of its adoption.

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9. *ADJOURNMENT*

There being no further business, the meeting adjourned at 12:31 a.m. on Wednesday, May 12, 2010.

Michelle J. Flores

Michelle J. Flores
Administrative Assistant

Stephen J. DeBenedittis
Stephen J. DeBenedittis
Mayor

Minutes approved by Town Council: July 13, 2010