



Copies of video recordings of meetings of the Herndon Town Council (except work session meetings) are available for review and can be purchased upon request. Please call HCTV at 703-689-2323.

Enriching the Quality of Life and Promoting a Sense of Community

HERNDON TOWN COUNCIL

Tuesday

January 11, 2011

The Town Council met in public session on Tuesday, January 11, 2011 at 7:00 p.m. in the Ingram Council Chambers, 765 Lynn Street. In attendance were:

Mayor:

Stephen J. DeBenedittis

Councilmembers:

Connie Haines Hutchinson

Lisa C. Merkel

Sheila A. Olem

Jasbinder Singh

William B. Tirrell

Grace Han Wolf

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 Human Resources:

Linda A. Simmons

Director of Parks and Recreation:

Cindy S. Roeder

Public Information Officer:

Anne P. Curtis

Zoning Administrator:

Mark R. Holland

January 11, 2011
(public session)

Police Captain:
Bradford C. Anzengruber
Police Sergeant:
Jerry Keys
Senior Police Officer:
Dave Patterson
Police Officers:
Heather A. Parker
Scott R. Stein
Accreditation Manager:
Arlene Garcia
Senior Planner:
Dana E. Heiberg
Community Inspector:
Fermina Rochac
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 called upon Boy Scouts who were present to come forward to lead the audience in the Pledge of Allegiance to the Flag of the United States of America.

1. MOMENT OF SILENCE

Mayor DeBenedittis asked everyone to join him in a moment of silence for the six people killed and 14 injured, including Representative Gabby Giffords, this past Saturday in Tucson, Arizona. He requested everyone to keep the families and loved ones of the victims in their thoughts and prayers.

2. ANNOUNCEMENT

Mayor DeBenedittis announced that early this week, Jack Corkey passed away suddenly. He and his wife, Laurie, retired in January 2010 after many years as owners of the Great Harvest Bread Company. He stated that the Corkey's were outstanding corporate citizens and the Town has lost a true friend. He asked that everyone keep Laurie and her family in his or her thoughts and prayers.

January 11, 2011
(public session)

3. APPROVAL OF MINUTES

Councilmember Hutchinson moved approval of the minutes from the October 26 and November 9 public sessions, the November 2 work session and the November 5, 6 and 7 Town Council Retreat. This motion was seconded by Councilmember Tirrell and carried by a vote of 7-0. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

4. PRESENTATIONS

'Dress Up Herndon for the Holidays' Winners.

Mayor DeBenedittis called upon former Councilmember Lee Powell, who is a member of the Cultivating Community Initiative, to come forward to introduce the 'Dress Up Herndon for the Holidays' winners.

Ms. Powell announced the names of the following winners, some of whom were present this evening, and the categories. Those who were not able to attend the meeting this evening would be invited to attend a future Town Council meeting.

- The De Celis Home - Lights Category;
- The Heglar Home - Nativity Category;
- The Linck Home - Elegant Category;
- The Mayhugh-LeBlanc Home - Classic Category;
- The Odeh Home - Whimsical Category;
- The Quintanilla Home - Townhouse Category;
- The Strother Home - Christmas Card Category; and
- The Updike Home - Red, White and Blue Category.

January 11, 2011
(public session)

Certificates of Responsible Citizenship to the Graduates of the 16th Session of the Herndon Citizens Police Academy.

Mayor DeBenedittis called upon Toussaint E. Summers, Jr., Chief of Police, to come forward to provide information on the 16th session of the Herndon Citizens Police Academy.

Chief Summers stated that he is very impressed by the citizens who give up their personal time to learn more about the Herndon Police Department. He recognized Senior Police Office Dave Patterson to introduce the graduates.

Officer Patterson announced that the following individuals successfully graduated from the 16th session of the Herndon Citizens Police Academy and he called upon those present this evening to come forward:

- Bryan Arriaga;
- Will Becker;
- Michelle Berens;
- Brian Gilleran;
- Manuel Gomez;
- Chris Goode;
- Mark A. Massey;
- Jenn Rhoads; and
- Daniel B. Vigil.

Mr. Vigil, president of the graduating class, expressed his appreciation to the Mayor, Town Council, Chief Summers, Captains Presgrave and Anzengruber and Officer Patterson and stated it was an honor and privilege to participate in the class. He stated that all the students graduated with a deeper appreciation of daily police operations and the role that each officer plays in the community and he shared a few words from some of his classmates. Will Becker indicated that he felt it was amazing to hear the true-life stories of a police officer and he got a heightened sense of appreciation for their dedication. Manual Gomez indicated that he learned and now enjoys the benefit of the education he received from great police officers and detectives. Mark Massey wrote that the course was exciting and dynamic and he gained a better perspective on what it takes to run a police department.

Councilmember Tirrell expressed his appreciation to the graduates for taking the time and opportunity to enroll in the course.

January 11, 2011
(public session)

Introduction of Herndon Police Officers Scott R. Stein and Heather A. Parker.

Mayor DeBenedittis called upon Toussaint E. Summers, Jr., Chief of Police, to come forward to introduce the new Herndon Police Officers, Heather A. Parker and Scott R. Stein.

Chief Summers requested all police officers who were present to come forward while he introduced Officers Parker and Stein. He stated that both officers have been with Herndon for quite some time. Both Officer Parker and Officer Stein were employed with the George Mason University Police Department prior to coming to the Herndon Police. Officer Stein is a State certified intoxilyzer and possesses an Associate's Degree in Criminal Justice. Chief Summers called upon Viki L. Wellershaus, Town Clerk, to administer the Oaths of Office.

Following the Oaths of Office administered by Ms. Wellershaus, Chief Summers requested all police officers present to come forward to take the law enforcement Oath of Honor.

Officer Parker expressed her appreciation to the Mayor and Town Council for the opportunity to be part of the Herndon community and part of the family at the Herndon Police Department. She stated that she is Hispanic, speaks fluent Spanish and is very sensitive to non-American cultures. She stated that she believes that community policing is essential and a fundamental policy of policing, which is one of the reasons she wanted to work in Herndon.

Officer Stein stated that one reason he wanted to be a police officer in Herndon was due to the size, and because a lot of community policing could be done in a small jurisdiction. He stated that he has been with Herndon since September and has enjoyed it so far.

Recognition of the Herndon Police Re-Accreditation Achievement presented by the Commission on Accreditation for Law Enforcement Agencies, Inc.

Mayor DeBenedittis called upon Toussaint E. Summers, Jr., Chief of Police, to come forward to provide information on the Herndon Police Re-Accreditation Achievement.

Chief Summers stated that the Herndon Police were first accredited in 1986, and went through its 7th re-accreditation in August 2010. He introduced Craig Hartley, the Deputy Director of Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) and called on all police officers who were present and Arlene Garcia, Accreditation Manager, to come forward.

January 11, 2011
(public session)

Mr. Hartley stated that it was nice to come to a town where new police officers are being recognized, holiday light programs are being highlighted and Boy Scouts are present to start the Pledge. He stated that it gives him hope for our nation to see that these types of events are taking place. He stated that CALEA was created in 1979 as a body to ensure that professional policing standards were being met. Since its inception, CALEA has accredited thousands of organizations under the standards created by some of our nation's best public safety practitioners and leaders. CALEA's goals are to strengthen crime prevention and control capabilities, formalize central management procedures, establish fair and non-discriminatory personnel practices, improve service delivery, solidify inter-agency cooperation and coordination and increase community and staff confidence in the agency. He stated that the certificate he would be presenting to Herndon this evening recognizes the Herndon Police Department's efforts to achieve accredited status and willingness to change to effectively address contemporary public safety concerns. It represents a commitment to doing the right thing, the right way and at the right time. He recognized Mayor DeBenedittis, Chief Summers and Ms. Garcia and formally presented the certificate to them.

5. COMMENTS FROM THE TOWN MANAGER

There were no comments from the Town Manager.

6. COMMENTS FROM THE TOWN COUNCIL

Safety – Councilmember Olem encouraged everyone to be cautious while driving, since the roads are slick.

Various – Councilmember Wolf wished everyone a Happy New Year. She announced that there were opportunities for the youth in the community to receive scholarships and requested that interested individuals contact her for more information.

Various – Councilmember Tirrell echoed Councilmember Olem's comments and announced he would be absent from the January 18 work session.

Street Solicitation Ordinance -

Main Motion (APPROVED)

Councilmember Singh moved to:

January 11, 2011
(public session)

- Authorize staff to advertise for public hearing proposed amendments to Chapter 66 (Streets, Sidewalks & Certain Other Public Places), Article IV (Street Solicitations), as drafted by the Town Attorney, for work session discussion on February 1 and for public hearing on February 8; and
- Authorize staff to immediately release to the public the proposed amendments to Chapter 66 as drafted by the Town Attorney.

This motion was seconded by Councilmember Olem.

Councilmember Singh stated that many people have asked him what the Town Council did during the closed session last Tuesday. He stated that the main topic in the closed meeting was traffic safety issues. He stated that high school students holding signs for car washes, politicians carrying signs and day workers on the side of the road had not caused any traffic accidents in the past 10 or 15 years. However, people stepping into the roadway to sell services or merchandise do have the potential to cause serious accidents. He stated that the Town Attorney has proposed amending the existing ordinance to address the real and potentially serious issues in the roadways. The amended ordinance also would be consistent with State law and should be immune to constitutional challenges. It would help to save hundreds of thousands of dollars in litigation costs and several months of staff time.

Councilmember Olem stated that after discussions with the Chief of Police regarding the different type of problems with pedestrian traffic over the last 10 years, people standing on sidewalks did not present a problem. If approved, the amended ordinance would allow for carwashes and other matters that the current ordinance does not.

Councilmember Tirrell stated that this entire effort is to address a contrived problem that has been dreamt up by an outside organization and he would have no part of it. He stated that he would rather this ordinance remain as written for several years before it is reviewed again. He stated that he does not respond well to threats, including litigation and he would not support the motion.

Vice Mayor Merkel stated that over the past several months, people have spoken passionately on this ordinance and she would like everyone who has come forward, whether for or against it, to know that she has listened to each of them. She stated that her interest is in the people who have come forward and expressed concern and not a lawsuit. She stated that the purpose of the closed session last week was to hear legal advice from the Town Attorney and not to have secret discussions or to take any action. She stated that the Town Attorney had several options for the Town Council to review, one of which was to do nothing and keep the ordinance as is. She stated that the Town Attorney did make a recommendation to consider the amended ordinance, as mentioned earlier by

January 11, 2011
(public session)

Councilmember Singh. She stated that discussing this matter would be in the best interest of the Town, since the Town Council has not made any public comment or recommendation on this matter.

Councilmember Wolf stated that she would be willing to entertain a conversation on this matter, but she would like to see some additional time on the books to see what the impact might be. She also understands that there is some unclear wording in parts of the ordinance. She stated that from the Council's perspective, the ordinance is about street safety and nothing more. It would be a fantasy for anyone to infer anything else and keeping motorists and pedestrians safe on Town streets is of utmost concern. She stated her primary concern is not the threat of a lawsuit, but rather the safety of every resident and visitor to Town. She stated that she looks forward to strengthening and clarifying the language in the current ordinance.

Councilmember Hutchinson stated that the previous Council worked long and hard to get the language in the current ordinance through the General Assembly. The bill was changed so it could be adopted by any municipality in the State, because there were numerous communities who also thought they could benefit from it. The bill had major support in both houses and she stated that it was fairly and constitutionally implemented. She stated that to revisit the ordinance at this point is unnecessary and she would not support the motion.

Councilmember Singh stated that many similar ordinances in other municipalities are consistent with State law and with the proposed amended ordinance. He stated that he is not afraid of any lawsuit, but at some point the cost versus the benefit must be weighed and considered.

Mayor DeBenedittis stated that this ordinance, as written, is consistent with State law. He stated that there is no lawsuit against the Town to date, only a threat of a lawsuit, and responding to threats is a bad way to make public policy. He stated that the Town Attorney offered alternatives to the current ordinance because of a perceived desire on the parts of some Councilmembers. Doing nothing and leaving the ordinance as written would be as legally defensible as making a change. He stated this matter has been discussed at almost every public hearing and he does not think that it should be added to the upcoming agenda. He stated that he would like to clarify that he serves the people of Herndon and not any outside interest groups.

Vice Mayor Merkel clarified that while the Town Attorney made suggestions because some members of Council requested him to, he did make a recommendation of one of those suggestions to the Council in closed session last week.

Substitute Motion **(FAILED)**

Mayor DeBenedittis moved the following substitute motion:

January 11, 2011
(public session)

- Review possible amendments to Chapter 66 (Streets, Sidewalks & Certain Other Public Places), Article IV (Street Solicitations), after the current ordinance has had time be to in effect and to authorize staff to schedule for work session discussion on June 5, 2012 and for public hearing on June 12, 2012.

This motion was seconded by Councilmember Hutchinson.

Mayor DeBenedittis stated that he was offering this motion in response to comments made by Councilmembers Tirrell and Wolf in regards to reviewing the ordinance after it has been in effect for several years.

Councilmember Hutchinson stated that she does not think it is necessary to review the ordinance at all, but in light of concerns, it would be fair to give it time on the books and then review it.

Councilmember Olem stated that she would not support “kicking the can down the road.” Many citizens have spoken, emailed and called and she feels there should be a public debate regarding this matter.

Councilmember Tirrell stated that he would support the substitute motion. He stated that when 287(g) was originally being discussed, people had many reasons people had to not support it. Now three years later, at least 300 criminals have been taken off the Town’s streets, which to him is proof positive of the value of the Memorandum of Understanding and the action taken by the former Town Council. He stated that no time has been given to see how the current ordinance would function. He stated there have been arguments on both sides of the matter, but the tenor has been the contrived argument that it is an ordinance that is bigoted against day laborers, which is categorically wrong.

Councilmember Singh stated that, at this point, the discussion is about traffic safety issues and not criminals that have been taken off the streets. He stated that it does not make any sense to wait any longer to amend the ordinance when the way it is currently written is divisive and prevents people from coming together.

Vice Mayor Merkel stated that the public has implored the Town Council to move on from this matter, but for six months people have commented on it at every public hearing. She stated that waiting would not help the Council to move on. She would like it to be placed on the agenda, discussed and voted on.

Mayor DeBenedittis stated that he offered the substitute motion, not because it was a good idea, but he felt it was a better idea than working on this matter next month. He would prefer to revisit the matter after it has been on the books for a period of time. He stated that the ordinance is fine, as written.

January 11, 2011
(public session)

Vote on Substitute Motion **(FAILED)**

The question was called on the motion, which failed by a vote of 3-4. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	no
Olem	no
Singh	no
Tirrell	yes
Wolf	no
Mayor DeBenedittis	yes

Councilmember Wolf stated that although she would like to give the ordinance some more time on the books, she agreed that the Council should move on.

Mayor DeBenedittis stated that actions such as this, where Councils have acted to place something on the agenda, just began with the 2010 Council. He stated that he is not saying whether that is good or bad, but it is a relatively new phenomenon.

Vote on Main Motion **(APPROVED)**

Main Motion restated for clarity:

- Authorize staff to advertise for public hearing proposed amendments to Chapter 66 (Streets, Sidewalks & Certain Other Public Places), Article IV (Street Solicitations), as drafted by the Town Attorney, for work session discussion on February 1 and for public hearing on February 8; and
- Authorize staff to immediately release to the public the proposed amendments to Chapter 66 as drafted by the Town Attorney.

The question was called on the motion, which carried by a vote of 4-3. The vote was:

Councilmembers:

Hutchinson	no
Merkel	yes
Olem	yes
Singh	yes
Tirrell	no
Wolf	yes
Mayor DeBenedittis	no

January 11, 2011
(public session)

Various – Vice Mayor Merkel stated that on Friday, January 21 at 1:00 p.m. there would be a joint work session between the Town Council and the Planning Commission to discuss the Metro. The work session would take place at the Herndon Fortnightly Library and she encouraged citizens to provide their comments. She stated that the Herndon Metro sign that would be placed on Herndon Parkway to designate where the Metro stop would be has been ordered. She wished everyone a Happy New Year.

Various – Mayor DeBenedittis announced that Town offices would be closed on Monday, January 17 for the Martin Luther King, Jr. holiday. Schedules for the Community Center, Golf Course and refuse collection are available on the Town's Web site.

Mayor DeBenedittis stated that Town Manager Art Anselene would be hosting an Open House ~ 'Your Town - Your Budget' ~ for citizens to receive information about Town operations. Directors from the Departments of Public Works, Parks & Recreation, Community Development, Finance, Police, Town Attorney, Town Clerk, Public Information, Human Resources, Information Technology and Golf would be present to discuss the services provided by their respective departments and associated costs with citizens. The Open House would be held on Tuesday, February 1, from 6:00 p.m. until 7:30 p.m. in the Ingram Council Chambers lobby.

Mayor DeBenedittis stated that the Council and Planning Commission would be holding a joint work session to discuss the future Herndon – Monroe Metrorail Station with the project consultants from Vanasse Hangen Brustlin, Inc. (VHB). The joint work session would be held on Friday, January 21, from 1:00 p.m. until 6:00 p.m., in the ground floor meeting room at the Herndon Fortnightly Library located at 768 Center Street.

Mayor DeBenedittis stated that House Bill 1587 would allow the cities of Virginia Beach and Chesapeake to provide relief from license taxes for two years to any business locating there for the first time. He questioned if Council would support an amendment to add the bill to the Town's legislative agenda?

Councilmember Tirrell stated that having the ability to provide relief from license taxes for two years to any business locating here would give the Town some advantage in an economic development sense. He expressed his support to amend the Town's legislative agenda.

Vice Mayor Merkel expressed her support to amend the Town's legislative agenda. She stated it would help make the Town more business-friendly and competitive.

Councilmember Wolf expressed her support to amend the Town's legislative agenda. She stated it would help invite businesses looking to relocate.

January 11, 2011
(public session)

Mayor DeBenedittis questioned if Council's acclamation would suffice or would a resolution be required to amend the Town's legislative agenda?

Richard B. Kaufman, Town Attorney, stated that Council's acclamation would suffice at this time. He stated he would draft a letter from the Mayor to Senator Howell and Delegate Rust requesting their support to amend House Bill 1587 to add the Town of Herndon. He stated that he would like to have this matter placed on the upcoming agenda so a formal resolution could be done.

7. **COMMENTS FROM THE AUDIENCE**

Mayor DeBenedittis stated that prior to tonight's meeting the following individuals submitted written comments, which would be entered into the record:

- Jennifer Boysko;
- Bob Bruhns;
- Bill Campenni;
- Kathleen Campenni;
- Julie Capiello;
- Ann Csonka and John DeNoyer;
- Janet and Andy Devine;
- Judy Downer;
- Dennis and Mary Drum;
- Suzanne Flegal;
- Barbara Glakas;
- Beverly Harris;
- Erna Hochstein;
- Nancy Husch;
- Phil Jones;
- Dave Kirby;
- Ann Null;
- Arturo Prieto;
- Ruth Robertson;
- Rick Schneider;
- Robert Searle;

January 11, 2011
(public session)

- Aubrey Stokes;
- George Taplin;
- Ruth Tatlock;
- Charlie Waddell; and
- Frieda Wolf.

Street Solicitation Ordinance – Barbara Glakas, 935 Barton Oaks Place, Herndon, stated that the street solicitation bill that was taken to the Virginia Assembly is not the same as the Town's current street solicitation ordinance. The Virginia Code pertains to highways, but the Town extended it to include sidewalks and physical gestures. She expressed her appreciation to the Council for their willingness to discuss this matter openly and stated that she would support the Town's adoption of the Virginia Code.

Street Solicitation Ordinance – Lisa Hernandez, 541 Florida Avenue, Herndon, stated she has lived in Herndon for eight years and is a teacher in the Fairfax County school system. She expressed support for revisiting the street solicitation ordinance and requested that it be rescinded. She stated she is a veteran of the United States Navy Reserves and she requested the Council not to judge people by their appearances or their names.

Street Solicitation Ordinance – Joel Scalzo, 615 Center Street, Herndon, stated he would like the Town Council to move forward. He stated the street solicitation ordinance is fine the way it is written and it complies with Virginia law. He stated that Herndon laws should be written by the Town Council and not by outside influences.

Street Solicitation Ordinance – Bill Campenni, 1104 Iron Ridge Court, Herndon, presented a PowerPoint, which is on file in the Town Clerk's office. He stated that the Town Council is being influenced by the Virginia New Majority. He stated that Herndon is back in the national news and not for good reasons.

Street Solicitation Ordinance – Richard Downer, 44354 Oakmont Manor Square, Ashburn, stated that Mr. Campenni's comments and PowerPoint presentation were disgusting. He stated that Ms. Hernandez, the Virginia New Majority and Councilmember Hutchinson were wrong about the street solicitation ordinance. He stated that the ordinance is unconstitutional, but it should not be rescinded, just perfected.

Vice Mayor Merkel stated that it is true that an outside group has come to Town and has tried to make the case in the press that Herndon is still divided and that immigration is at the forefront of every thought the Council has. The Virginia New Majority is attempting to use Herndon to push their agenda forward and have openly stated that. She stated that she has a good relationship with Mr.

January 11, 2011
(public session)

Campenni, who seems to know more about John Liss than anyone in Herndon, but she is surprised that anyone would assert that Mr. Liss has more power than the Mayor. She assured the public that any consideration that she is giving to this matter or any other matter is not motivated by a special interest group. She stated she is not intimidated or influenced by the tactics of the Virginia New Majority and she is trying to make the best decision for the whole Town. She stated that it is her hope that the Town can move forward following the February 8 public hearing.

Councilmember Singh echoed the comments of Vice Mayor Merkel and stated that he has absolutely no relationship with the Virginia New Majority. He stated that they have spoken, but differ strongly on many items. He stated that it is his intention for the Town to have fair and constitutional laws.

Street Solicitation Ordinance – George Taplin, 1402 Rainbow Court, Herndon, stated that everyone knows that the ongoing debate is not about public safety, but about letting day laborers do what they want to do. He stated this debate was started by John Liss who stated that the ordinance was unconstitutional. He stated that he would assume that neither John Liss nor any Councilmembers are constitutional scholars and for any of them to state that the ordinance is unconstitutional is a farce. He stated it also is a farce to suggest that certain Councilmembers are not tied in with the Virginia New Majority. He stated that future elections have consequences.

8. PUBLIC HEARINGS

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

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the December 22 and 29, 2010 issues.

(On June 15, 2010, the Town Council remanded the Comprehensive Plan Amendment CPA #10-01, Downtown Master Plan, to the Planning Commission. On December 6, 2010, the Planning Commission recommended approval of CPA #10-01.)

Mayor DeBenedittis stated that prior to tonight's meeting the following individuals submitted written comments, which would be entered into the record:

- Carol Bruce;
- John Davis;
- Richard Downer;

January 11, 2011
(public session)

- Barbara Glakas; and
- Les Zidel.

Disclosure – Councilmember Hutchinson stated, for the record, that her family owns real estate included in the downtown master plan comprehensive plan amendment, which may be affected by the plan and possible subsequent zoning text or zoning map amendments. However, she stated that she is able to participate in the transaction fairly, objectively and in the public interest.

Councilmember Tirrell questioned if the staff report this evening would differ from the staff report given at the work session?

Dana E. Heiberg, Senior Planner, briefly presented the staff report dated January 4 and a PowerPoint, which are on file in the Town Clerk's office. He stated that the PowerPoint is the same one presented at the work session and he would have a few additional points to make in response to the work session discussion. He stated that the Planning Commission resolution carries out the 2030 Comprehensive Plan and views the plan as a vision with flexibility. The Planning Commission recommends a less dense development that is consistent with the form and architecture of Option A of the proposed Downtown Master Plan, with modifications. He stated that Block E of the plan should be developed as an arts center and associated uses center by 2015. The south side of Center Street should be developed with single-family detached homes and a hotel use would be encouraged in the downtown. He stated that the Planning Commission recommended that following the adoption of the plan, a new zoning district called Planned Development – Traditional Downtown (PD-TD) and that a comprehensive rezoning of the downtown area to PD-TD should be adopted as a major step to facilitate the implementation of the plan. Separate public hearings would be required for these future actions. He stated that it also was recommended that a statement be added to the Herndon downtown vision seeking excellent pedestrian and bicycle facilities in accordance with the principles of complete streets. He stated that some structures in Town were rated non-contributing despite their age, due to the alterations that have occurred over time. Town Council discussion as well as staff input indicates that some of these structures should be re-designated as preservation priorities rather than non-contributing structures. Mr. Heiberg presented further recommendations by the Planning Commission, which are available in the staff report. He stated that the Urban Design Associates (UDA) concept is an intelligent approach from a cost perspective. They have kept the Option A plan based on a lower cost-building configuration. He stated that the infrastructure gap would not be reduced unless significant amounts of height (at least three or four stories) were added to buildings. He stated that the Town Council would not be committing to specific funding mechanisms if the proposed plan were adopted. He stated that the State Code requires the Town Council to act on this within 90 days of the Planning Commission's recommendation or remand it back to the Planning Commission.

January 11, 2011
(public session)

Councilmember Hutchinson expressed concern that staff is recommending a plan be adopted before the financing of it is determined. She questioned what the new tax rate would be for the service district for the proposed undergrounding? She questioned if the Town had a commitment from Fairfax County stating that they would participate in a Tax Increment Financing (TIF) with the Town?

Councilmember Singh offered to help staff with calculations associated with the plan.

Councilmember Wolf stated that the public is being asked either to pay for a lack of density or to accept five or six story buildings.

Mr. Heiberg stated that the consultants have indicated that there would need to be a significant increase in density to avoid the larger infrastructure gap.

Councilmember Wolf stated that she wants the public to be aware of the trade-off the Council must decide on, but approving this plan would not commit the Council to anything.

Councilmember Singh stated that he would like to review the density, proffers and financing that were discussed in previous plans. He would like to make a concerted effort to get the input of developers to see if the proposed numbers make sense.

Vice Mayor Merkel stated that at the last meeting between her, the Mayor and Dranesville District Supervisor John Foust, TIF's were discussed. She stated that Supervisor Foust indicated that he was surprised at how positively Fairfax County staff felt about TIF's, but there was no commitment made. She stated that she would like to learn more about them and the risks involved.

Mayor DeBenedittis concurred with Vice Mayor Merkel's comments and stated the public should be made aware of how TIF's work as well. He stated that it may be possible to have someone from Fairfax County give a presentation on them.

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

- Richard Downer, 718 Pine Street, Herndon, stated he is speaking on behalf of Don Owens, Vice President of the Dulles Regional Chamber of Commerce and Chairman of the Herndon Chamber of Commerce Committee, who is out-of-town. He presented written testimony, which is on file in the Town Clerk's office, suggesting an alternate proposal for Block D. He stated that the proposed Option A hopes that a big developer is going to assemble Block D and "save" the downtown in one packaged deal. The Chamber's proposed plan would allow the Town to move forward and not wait for a developer to consolidate the Ashwell property and other parcels.

January 11, 2011
(public session)

Responding to Mayor DeBenedittis' query, Mr. Downer stated that by saving some of the one-story buildings, the cost to develop the properties would be very expensive and some could be torn down rather than being saved. He stated that the older buildings should be assigned priorities to determine if they are worth saving.

- Les Zidel, 1458 Kingsvale Circle, Herndon, provided written testimony on behalf of the Herndon Foundation for the Cultural Arts, which is on file in the Town Clerk's office. He stated that the Foundation is urging the Council to consider the recommendations of the Planning Commission for a proposed art/associated use center for Block E. He stated that the Foundation is seeking a combination of investments, grants and sponsorships to bring additional resources to the project so that public funds could be used for infrastructure needs that would benefit the entire downtown. He provided the Council with a Web site on Form-Based Codes.

Mayor DeBenedittis stated that he would like more information on Form-Based Codes and he would like to know how this would impact the Town.

- Joel Mills, 902 First Place, Herndon, stated that UDA is an excellent firm and their urban design suggestions were great. He distributed a booklet titled "*Higher-Density Development Myth and Fact*" to the Council for their reference, which is on file in the Town Clerk's office. He also provided electronic information titled "*Louisiana Speaks: Pattern Book*." He stated that building specifics around the proposed arts center is a great idea and it does not need to be completely figured out at this point.
- Barbara Glakas, 935 Barton Oaks Place, Herndon, stated that several years ago a gentleman expressed disappointment that an antique shop in Herndon had closed and moved out of Town. The individual stated that people do not come to Herndon to visit one antique shop and that it was better for his business if more antique shops were located in Town. She stated that was when she understood "branding." She stated that Herndon should be "branded" as an arts town. She stated that the failure of the downtown to redevelop is not due to a lack of will from the people of Herndon, but from Town leaders who have always found a reason to say no.
- Arthur Nachman, 866 Vine Street, Herndon, stated that he was encouraged by the Council's comments this evening regarding the financing. He stated that until the financing of the downtown is secured, the development would be just a pretty picture. He stated that if a developer cannot figure out how to make the downtown work, then it would not be built. By lowering the density, the Town Council would be lowering the value of the land.

January 11, 2011
(public session)

Main Motion

Following the public hearing, Councilmember Hutchinson moved to continue the public hearing on Resolution 10-G-68 until February 8. This motion was seconded by Councilmember Tirrell.

Councilmember Hutchinson stated that it is important to iron out the financial aspects of the proposed development and there is a lot more to discuss before the plan is voted on.

Mayor DeBenedittis stated that deferring the vote would allow for more citizen input and more work on the plan.

Substitute Motion

Vice Mayor Merkel moved to continue the public hearing on Resolution 10-G-68 until January 25 to give the public more opportunity to provide input. This motion was seconded by Councilmember Olem.

Vice Mayor Merkel stated that it is better to provide more opportunities for the Council to hear from the public.

Councilmember Olem stated that she does not want citizens to forget about this plan by waiting a month and she would prefer to continue working on it.

Councilmember Wolf expressed support for continuing the public hearing until the January 25 meeting to allow for additional comments.

Councilmember Tirrell stated that the financial aspect of the plan is a moving target and would continue to change as the economy does. He stated that the draft resolution would create a by-right situation. If passed, and a developer meets the requirements of the zoning ordinance, by-right development could occur, whether the Town Council likes it or not. He requested the Town Council to carefully consider whether to rezone now as part of the resolution or allow rezoning to occur later. He stated that under the proposed plan, Block E would be tied up for five years and in the end, the Town could lose a lot of money. He would be very interested in having the Director of Finance review the plan and the numbers with respect to bonding and financing. The taxpayers in the Town are going to be the ones paying for the development of the downtown. He would like to see Fairfax County partner with the Town by doing TIF, but he would want a signed letter from them agreeing to it. He stated that there have been speakers both for and against Town funds being spent on an arts center, but it would be fine if the Foundation could raise the funds for it. He stated that the phrase "many people" means nothing to him and he would like a number. He stated that the development community would ultimately decide what would happen in the downtown and the plan should encourage developers to come. He stated that he

January 11, 2011
(public session)

would support putting this item on the January 25 public hearing agenda, if it allowed enough time for staff to prepare answers to the Town Council's questions.

Mayor DeBenedittis stated that by continuing the public hearing, the Town Council would be requesting additional information from staff. He stated that the idea of rezoning in advance is something that would need to be carefully considered and laid out for citizens to understand. How the market responds would be the ultimate response to the plan.

Councilmember Singh stated that many issues have been raised and he would like staff to provide answers in a clear, understandable manner.

The question was called on the motion, which carried by a vote of 7-0. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

9. RECESS

At 9:47 p.m., Mayor DeBenedittis called a brief recess and at 9:59 p.m., the meeting reconvened in the Ingram Council Chambers for the regularly scheduled public session, with all members present, and with Mayor DeBenedittis presiding.

10. PUBLIC HEARINGS (Continued)

Ordinance 10-O-40, Chapter 78 (Zoning), Sections 78-401.13 (Commercial Utilities Use Category), 78-400(b) (Table of Principal Permitted & Allowed Uses), 78-402.3 (Permitted & Allowed Accessory Uses) & 78-701 (Definitions).

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the November 24 and December 1, 2010 issues.

(This public hearing was continued from December 14, 2010.)

January 11, 2011
(public session)

Mayor DeBenedittis stated that prior to tonight's meeting the following individual submitted written comments, which would be entered into the record:

- Barbara Glakas.

Mark R. Holland, Zoning Administrator, provided a brief overview of his memorandum dated December 28, 2010, and a PowerPoint, which are on file in the Town Clerk's office. He stated that this was continued from the December public hearing to allow staff additional time to answer some of the Town Council's questions regarding the placement of land-based telecommunications facilities within residential zoning districts. In addressing these concerns, staff added standards for a minimum parcel size and setback from adjacent lot lines. The proposed text reads as follows:

“Within all residential zoning districts, towers, monopoles, and other supporting structures with attached antennae or dishes shall be located on parcels of no less than 50,000 square feet in total area. Such structures shall be placed at a distance of no less than one foot for every foot of height from abutting lot lines in residential zoning districts.”

He stated that the structures would be required to go through either the ARB or the HPRB for review and approval prior to being installed. Staff recommends approval of Ordinance 10-O-40, as revised and presented this evening.

Councilmember Singh questioned when the review would take place?

Mr. Holland stated the review would take place once the Town receives a site plan and the first set of comments has been returned to the applicant.

Responding to Mayor DeBenedittis' queries, Mr. Holland stated that in the Office and Light Industrial (O&LI) zoning districts, these structures would be allowed on public or private property. The expansion would only apply to publically owned land. He stated this would only apply to properties that are 50,000 square feet or more and would exclude some of the smaller properties in residential districts.

Elizabeth M. Gilleran, Director of Community Development, stated that staff did not look into allowing these structures on private property, because the application only referenced public properties. Most of the privately held commercial properties are along Elden Street or in the Worldgate area, which may not be appropriate for the structures.

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

- Frank Stearns, attorney representing the applicant, urged the Town Council to consider the Planning Commission's and staff's recommendation to approve Ordinance 10-O-40. He stated the demand for these structures is growing and would provide quality service to the residents and businesses of Herndon.

January 11, 2011
(public session)

Councilmember Tirrell questioned where else in Town the structures could be placed?

Mr. Stearns stated they could be placed in the northern or eastern part of Town, in public spaces. At the current time, he does not have a particular spot in mind.

Councilmember Olem questioned what the timeframe is for installing the poles?

Mr. Stearns stated it would take approximately two years to install the poles.

Councilmember Singh expressed his appreciation to Mr. Stearns and staff for taking the time to include an ARB/HPRB review in the process.

Mr. Stearns expressed his appreciation to staff for their courtesy and responsiveness in seeing this matter through.

Following the public hearing, Councilmember Wolf moved approval of Ordinance 10-O-40, Chapter 78 (Zoning), Sections 78-401.13 (Commercial Utilities Use Category), 78-400(b) (Table of Principal Permitted & Allowed Uses), 78-402.3 (Permitted & Allowed Accessory Uses) & 78-701 (Definitions). This motion was seconded by Councilmember Olem.

Councilmember Wolf stated that as the Town grows and Metro and the downtown develop, this would be an amenity that would significantly help residents and businesses.

Councilmember Olem stated that since it would take two years to get a pole installed, the Town should get moving so everyone could stay connected.

Councilmember Hutchinson expressed her appreciation to staff for considering the Town Council's concerns.

Councilmember Tirrell stated that the panel style antennas should not exceed nine feet tall and he questioned if that was a common height?

Mr. Stearns stated that it is common, but some are higher.

Mayor DeBenedittis expressed concern that the proposed ordinance would only apply to public land, but he stated privately held land could be considered in the future.

The question was called on the motion, which carried by a vote of 7-0. The vote was:

January 11, 2011
(public session)

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

10-O-40 Ordinance, Amending the Zoning Ordinance to Permit Land-Based Telecommunications Facilities by Special Exception on Properties within all Zoning Districts and Owned and Operated by a Public Entity or Governmental Authority; ZOTA #10-04.

RECITAL

In adopting this ordinance the Town Council has considered the factors set out in §15.2-2284, Code of Virginia (1950), as amended.

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 78-401.13. **Commercial utilities use category**, Zoning Ordinance (2007), Herndon Town Code (2000), as amended, is amended and reordained as follows:

Sec. 78-401.13. Commercial utilities use category.

- (a) *Characteristics.* The commercial utilities use category includes major utilities, which are infrastructure services providing regional or community-wide service. Communication towers also are a type of utility. Utility uses generally do not regularly have employees at the site. Services may be publicly or privately provided. Accessory uses may include parking and control, monitoring, or transmission equipment.

- (c) *Similar use types not in this category.* All uses shall comply with all applicable standards in this chapter, including section 78-515, performance standards. In addition, the following standards shall apply:

- (4) Minor utilities such as water and sewage pump stations; stormwater retention and detention facilities; roof-mounted communications towers, poles, or antennae not exceeding

January 11, 2011
(public session)

fifteen feet above the rooftop and related ground facilities erected on water tanks or water tank sites; and telephone exchanges are considered accessory uses. See section 78-402 for standards for accessory uses.

- (d) *Standards.* All uses shall comply with all applicable standards in this chapter, including section 78-515, performance standards. In addition, the following standards shall apply:

- (2) Communication towers, monopoles, and other mobile or land-based telecommunication facilities including non-staffed equipment cabinets or structures.

- e. Antennas may be located on existing buildings or structures, to include existing towers and poles, as an accessory use. See Section 78-402.7(c).

- g. Freestanding communication towers, monopoles, and other structures designed to hold telecommunication antennae or microwave dishes (or both) shall be permitted in conjunction with non-staffed equipment cabinets or structures by special exception within all zoning districts and within planned developments when approved initially or by amendment when the land on which such facility is located is owned or operated by a public entity or governmental authority. Such land includes, but would not be limited to, public parks, public schools, fire stations, police stations, government office and service buildings, public recreational facilities, and cemeteries. Any such use shall comply with the following standards:

1. Towers, monopoles, and other supporting structures with attached antennae or dishes may exceed the maximum permitted building height, but shall not exceed a maximum overall height of 125 feet over grade;
2. Panel style antennas attached to towers, monopoles, or other supporting structures shall not exceed 108 inches in height and 24 inches in width.

January 11, 2011
(public session)

3. Dish style antennas attached to towers, monopoles, and other supporting structures shall not exceed 3 feet in diameter.
4. Related non-staffed equipment cabinets or structures for each telecommunications provider shall not exceed 12 feet in height or a total of 500 square feet in gross floor area per telecommunications provider. Such structures shall be in accordance with the dimensional standards of the zoning district in which they are located.
5. All equipment shall be screened with an opaque constructed solid fence or wall. Such fence or wall shall be in accordance with the standards of this chapter and shall be further screened by an evergreen hedge with a minimum height of no less than 48 inches over grade.
6. Where reasonably practicable and appropriate, as determined by the zoning administrator using recognized standards, antennas attached to towers, monopoles, and other supporting structures shall be constructed in a manner as to reduce their visual impact. This goal shall be achieved through screening or applied stealthing or camouflaging methods.
7. Existing light poles and stanchions may be replaced to allow for collocation of antennas and such replacement structures may be increased in height up to an overall height not to exceed 125 feet over grade.
8. Within all residential zoning districts, towers, monopoles, and other supporting structures with attached antennae or dishes shall be located on parcels of no less than 50,000 square feet in total area. Such structures shall be placed at a distance of no less than one foot for every foot of height from abutting lot lines in residential zoning districts.

2. Section 78-400(b), **Table of principal permitted and allowed uses**, Zoning Ordinance (2007), Herndon Town Code (2000), as amended, is amended and reordained as follows:

Sec. 78-400(b). Table of principal permitted and allowed uses

*January 11, 2011
(public session)*

(b) *Table of principal permitted and allowed uses.*

TABLE INSET:

Table of Principal Permitted and Allowed Uses												
(See Also Table of Permitted and Allowed Accessory Uses and Table of Allowed Temporary Uses and Structures)												
Notes:												
1. P – use permitted in the zoning district		4. Any principal use allowed or permitted by right in this table is permitted by special exception in the floodplain overlay district, in accordance with section 78-304.2(d)(1)										
2. SE – use permitted only by special exception (see also section 78-202.3)												
3. A – uses permitted in planned development district when approved as part of a zoning map amendment												
		Residential				Business				Planned Development		
Use Category	Use Type	R-15	R10	RTC	RM	CCD	CS	CO	O&LI	PD-R	PD-B	PD-D

Commercial Utilities	Commercial communication tower, freestanding	SE	SE	SE	SE	SE	SE	SE	SE	A	A	A

3. Section 78-402.3. **Permitted and allowed accessory uses and structures**, Zoning Ordinance (2007), Herndon Town Code (2000), as amended, is amended and reordained as follows:

Sec. 78-402.3. Permitted and allowed accessory uses and structures.

January 11, 2011
(public session)

TABLE 402.3: TABLE OF PERMITTED AND ALLOWED ACCESSORY USES
AND STRUCTURES

Accessory Use	Residential				Business				Planned Development		
	R15	R10	RTC	RM	CCD	CS	CO	O&LI	PD-R	PD-B	PD-D

Antennae of all kinds (except commercial communication towers, freestanding)	P	P	P	P	P	P	P	P	A	A	A

Commercial communication towers, freestanding	SE	SE	SE	SE	SE	SE	SE	SE	A	A	A

4. Section 78-402.7. **Standards for specific accessory uses and structures**, Zoning Ordinance (2007), Herndon Town Code (2000), as amended, is amended and reordained as follows:

Sec. 78-402.7. Standards for specific accessory uses and structures.

(c) Antennae of all kinds, except commercial communication towers, freestanding.

5. This ordinance shall be effective on and after the date of its adoption.

Ordinance 11-O-01, Chapter 78 (Zoning), Section 78-203.4 (Enforcement Generally), Applicable Appeal Fee.

Certificates of Publication were filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the December 22 and 29, 2010 issues.

Mark R. Holland, Zoning Administrator, briefly presented the staff report, which is on file in the Town Clerk's office. This proposed text amendment to the Town of Herndon Zoning Ordinance (2007), Herndon Town Code (2000) would require

January 11, 2011
(public session)

that the written notice of zoning violation include the applicable appeal fee and a reference to where other appeal process information may be obtained, be included in the written notice of zoning violation. This amendment also states that the fee for filing an appeal shall not exceed the costs of advertising for the public hearing and other related costs, within reason. It would also formalize the abstention of civil penalties during the appeal period. At its public hearing, the Planning Commission recommended approval, as submitted. Staff recommends approval, as presented.

Following the public hearing (there were no comments from the audience), Councilmember Hutchinson moved approval of Ordinance 11-O-01, Chapter 78 (Zoning), Section 78-203.4 (Enforcement Generally), Applicable Appeal Fee. This motion was seconded by Vice Mayor Merkel and carried by a vote of 7-0. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

11-O-01 Ordinance, An Ordinance Amending the Zoning Ordinance to Provide that Written Notice of a Zoning Violation shall Include the Applicable Appeal Fee and a Reference to where other Appeal Process Information may be Obtained; ZOTA # 10-06.

RECITAL

In adopting this Zoning Ordinance amendment the Town Council has considered the factors set out in § 15.2-2284, Virginia Code.

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

1. Section 78-203.4, Enforcement generally, Zoning Ordinance (2007), Herndon Town Code (2000), as amended is amended and re-ordained as follows:

Sec. 78-203.4. Enforcement generally.

- (b) *Notice of violations.* When the zoning administrator finds that any activity, building, structure, or land is in violation of this chapter, the zoning administrator shall notify, in

January 11, 2011
(public session)

writing, the person violating this chapter. Such notification shall indicate the nature of the violation, order the necessary action to abate the violation, give a deadline for correcting the violation, and include an indication of the applicable appeal fee and a reference to where other information regarding the appeal process may be obtained regarding the filing of the appeal to the board of zoning appeals. The fee for filing an appeal shall not exceed the costs of advertising the appeal for public hearing and reasonable costs. Any civil penalty for appealed violations of the zoning ordinance shall not accrue or be assessed during the pendency of the period in which to file an appeal to the board of zoning appeals. If a violation is not corrected within a reasonable period as provided in the notification the zoning administrator shall take appropriate action to correct and abate the violation and to ensure compliance with this chapter. He or she shall take any other action authorized by law to ensure compliance with or to prevent violation of its provisions.

2. This ordinance shall be effective on and after the date of its adoption.

Ordinance 11-O-02, Approving a Lease of a Portion Space at 750 Center Street to The Elden Street Players.

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the December 29, 2010 issue.

Richard B. Kaufman, Town Attorney, briefly reviewed his staff report dated November 29, 2010, which is on file in the Town Clerk's office. The proposed ordinance and draft lease would allow the Town to continue to lease part of the building at 750 Center Street to The Elden Street Players. The purpose of the lease would be for the construction and storage of sets and other theatrical props and equipment. The consideration for this lease would be a nominal rent plus allowance by The Elden Street Players of the Town's use of the Industrial Strength Theatre for certain Parks and Recreation programs periodically throughout the years while the lease is in effect. The lease constitutes the Town's standard non-profit corporation lease and contains the following terms: a month-to-month term with the lease to terminate in any event on December 31, 2015. Either party could terminate the lease on notice to the other. The tenant would have to give 30 days' notice and the Town would have to give 90 days' notice to

January 11, 2011
(public session)

terminate the lease. The tenant shall hold the Town harmless from any liability incurred from the tenant's use of the space. The tenant would keep the premises leased in good order, condition, and repair.

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

- Todd Huse, President of the Elden Street Players, stated that the Elden Street Players began the transition six years ago from performing in a Town owned facility and paying for space to store equipment to buying a theater and using Town space to store equipment.

Following the public hearing, Vice Mayor Merkel moved approval of Ordinance 11-O-02, Approving a Lease of a Portion Space at 750 Center Street to The Elden Street Players. This motion was seconded by Councilmember Wolf.

Vice Mayor Merkel questioned why the lease expired on December 31 and was just now being approved?

Mr. Kaufman stated that he had other priorities, which is the reason the lease is being approved now. He stated there is a defacto lease currently in place.

Mayor DeBenedittis stated that this action was formalized approximately three years ago and that only the back portion of the building is leased to The Elden Street Players. He stated that it was an opportunity forgone for the right reasons.

Councilmember Olem stated that the theater contributes a lot to the Town and helping The Elden Street Players to continue as a volunteer organization is a way to keep the arts in Herndon.

The question was called on the motion, which carried by a vote of 7-0. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

11-O-02 Ordinance, Approving a Lease of Storage Space in the Town's Building at 750 Center Street to The Elden Street Players.

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

January 11, 2011
(public session)

1. The Town Council approves a lease dated November 29, 2010 on file in the office of the Town Attorney by which the Town would lease to The Elden Street Players certain storage space in part of the Town's building at 750 Center Street, Herndon, Virginia. The rent shall be \$1.00 and the use of the Industrial Strength Theatre for Parks and Recreation Programs; the term shall be from January 1, 2011 through December 31, 2015; and use of the leased premises shall be for storage, construction, or dismantling, of theater props, sets and other supplies of a theatrical company. The lease may contain other terms agreed to by the Mayor and Town Manager.
2. The Mayor is authorized to execute and deliver this Lease Agreement and any other instruments to evidence or effectuate this lease. The lease or other instruments shall be on such form as approved by the Town Attorney.
3. This ordinance shall be effective on and after the date of its adoption.

LEASE AGREEMENT

THIS LEASE made on the 29th day of November 2010, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and THE ELDEN STREET PLAYERS, a Virginia corporation (Tenant).

Recitals

Landlord is the owner of a building and premises located at 750 Center Street, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, the premises commonly known as part of the building at 750 Center Street consisting of approximately 2,790 square feet as shown on Exhibit A, attached and incorporated by reference, which shall be called "leased premises."

THEREFORE, the parties agree as follows:

January 11, 2011
(public session)

1. Commencement and Ending Date of Term. Beginning January 1, 2011, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. In any event, the term of this lease shall expire December 31, 2015. In the event of Town's redevelopment of the land at 750 Center Street, the parties understand that Landlord will terminate this lease.

2. Rent. Tenant shall pay Landlord on demand \$1.00 rent; and shall allow Town access to and from and use of the Industrial Strength Theatre at 269 Sunset Park Drive, for Landlord's Parks and Recreation Programs (IST Space). Landlord and Tenant shall confer and use their best efforts to agree as to the dates of Landlord's such use. Tenant shall provide custodial services for these events. Tenant assures, represents, and warrants to Landlord that Tenant enjoys and will enjoy right of possession of the IST space and rights to license or sublease the IST space to Landlord. Landlord shall provide a physical separation structure or device between the leased premises and Landlord's remaining space in the building. Tenant allows and assures to Landlord Landlord's right of access from the double doors on the Vine Street side of the building to and from the Landlord's remaining space on the west side of the building. Tenant shall keep this access area (which Tenant may use with Landlord for Tenant's uses) free of Tenant's property or sustained uses.

3. Use of Premises. Tenant shall use the leased premises solely for storage, construction, or dismantling of theater props, sets, and other supplies of a theatrical company.

4. Utility Charges. Landlord shall maintain and pay the cost of all utilities (except telecommunications) on the leased premises.

5. Liability Insurance. Tenant shall keep in effect a policy of bodily injury and property damage liability insurance with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. The policy shall name the Landlord as insured.

January 11, 2011
(public session)

6. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant of the leased premises or any part thereof.

7. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

8. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

9. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

10. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

January 11, 2011
(public session)

11. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

12. Alterations and Improvements. Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent.

13. Removal of Improvements and Restoration by Tenant. All alterations made by Tenant shall remain the property of Tenant for the term of the lease. Landlord and Tenant shall agree in writing prior to the installation of any fixture in which Tenant will retain title to the fixture at the expiration of the lease. If Tenant retains title, Tenant will remove the property at the expiration of the term of the lease and leave the leased premises in the same condition as at the commencement of the lease. If Landlord acquires title, the property will remain part of the leased premises and Tenant shall not have any obligation to remove it. Absent such written agreement, Landlord shall have the option upon expiration or termination of the term of this lease to retain the alterations as a part of the leased premises, or to require Tenant to remove all the alterations and restore the leased premises to the same condition as at the commencement of the lease. If Tenant fails to remove such alterations and restore the leased premises as requested by Landlord, then Landlord may remove them and restore the leased premises and Tenant shall pay Landlord's costs as additional rent.

14. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant kept or stored on the leased premises shall be so kept or stored at the risk of Tenant and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

January 11, 2011
(public session)

15. Right of Entry. Landlord shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written.

16. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease; reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

19. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.

THE ELDEN STREET PLAYERS

By: _____
 James J. Boatright, President

TOWN OF HERNDON, VIRGINIA

By: _____
 Stephen J. DeBenedittis, Mayor

ATTEST:

 Town Clerk

APPROVED AS TO FORM:

 Richard B. Kaufman, Town Attorney

(NOTE: A copy of Exhibit A is attached hereto and numbered as page 215-A.)

January 11, 2011
(public session)

Ordinance 11-O-03, Approving a Lease of a Portion of Space at 750 Center Street to Herndon Foundation for the Cultural Arts.

A Certificate of Publication was filed from the Editor of the *Fairfax County Times Newspapers* showing that notice of said public hearing had been duly advertised in the December 29, 2010 issue.

Richard B. Kaufman, Town Attorney, briefly reviewed his staff report dated December 13, 2010, which is on file in the Town Clerk's office. This is a proposed ordinance and draft lease that would allow the Town to continue to lease part of the building at 750 Center Street to the Herndon Foundation for the Cultural Arts. The purpose of the lease would be for a cultural arts center including an art gallery; meetings and small group sessions with artists and the public; art classes; and artistic events. The lease constitutes the Town's standard non-profit corporation lease and contains the following terms: \$200 monthly rent and a month-to-month term with the lease to terminate in any event on December 31, 2015. Either party could terminate the lease on notice to the other. The tenant would have to give 30 days' notice and the Town would have to give 90 days' notice to terminate the lease. The tenant shall hold the Town harmless from any liability incurred from the tenant's use of the space. The tenant would keep the premises leased in good order, condition and repair. The tenant would allow the Town to use the interior of the leased premises, if available, for up to four days of community events a year, which is a \$1,400 value.

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

- Robin Carroll, 691 Old Hunt Way, Herndon, stated that she is the President of the Board of Directors of the Herndon Foundation for the Cultural Arts and requested the Town Council to approve the lease renewal for the front half of the building at 750 Center Street. She stated the lease was negotiated in 2007, at which time the Foundation had done improvements of over \$100,000 to open ArtSpace. She stated that ArtSpace offers art exhibits in the newly named Nelson J. and Kathryn Friant Post Gallery each month, which are free and open to the public. Other classes and events also are held throughout the year. She expressed her appreciation to the many volunteers at ArtSpace, who because of the countless hours they contribute, have made it possible for ArtSpace to "hold its own" during the economic downturn. She stated that for the fiscal year that ended June 30, 2009, grants and donations represented 56 percent of revenues and program related fees represented 32 percent of their revenues. Rental income only represented 11 percent of the income. Their expenses during the same period were \$50,400.

Councilmember Singh stated that the volunteers at ArtSpace do a fine job every day. He stated that he would like to see the immigrant communities given encouragement to participate in similar events. He stated that anybody in the community should be able to rent the space for the same amount that the Foundation does.

EXHIBIT A

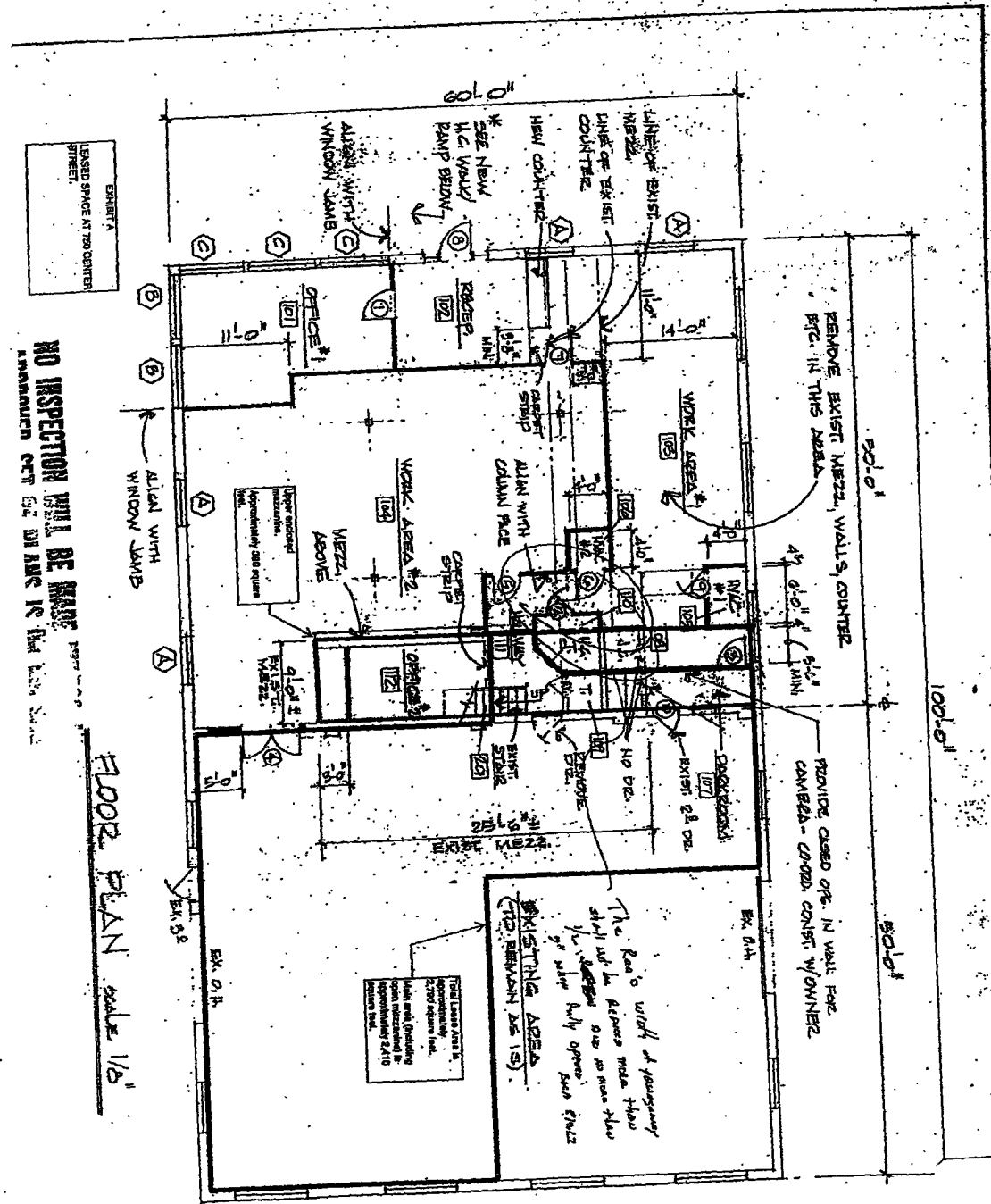


EXHIBIT A
LEASED SPACE AT 700 CENTER STREET.

NO INSPECTOR WILL BE MADE
ANNOUNCED CFT OF WORK IS THE LAW

FLOOR PLAN SCALE 1/8"

EXISTING AREA (TOP REMAIN AS IS)
No. Ren. o' work of program... shall not be... Areas more than 1/2' x 1/2' shall be fully opened. Area floor

N.H.
Mason
3/20/01

72

EXIST. WALL
EXIST. WINDOW



January 11, 2011
(public session)

Ms. Carroll stated that they try to reach out to all elements in the community. She stated that she has found with classes and musical events, that if the instructor or the performer does not have a following, it is difficult to fill the seats.

Councilmember Singh stated that he encouraged some very fine musicians to try to perform at ArtSpace. He stated that they have a following and are very professional, but they were told they would have to do their own work of setting up and inviting the public, among other things. He stated that Herndon should be exposed to the diversity that other cultures could bring.

Ms. Carroll stated that for that for some types of performance, the Foundation would look into pursuing grants from other organizations or sponsors, if they could not make enough on ticket sales. She stated that they provide a wide variety of art to the community, but they must be prudent financially to assure the viability of the organization.

Mayor DeBenedittis stated that in the past, there was an informal agreement allowing the Town to use space at ArtSpace on a limited basis and now that arrangement would be formalized.

Ms. Carroll stated that it would not be a problem if the Town needed to use the facility more than four days.

Mayor DeBenedittis questioned if Ms. Carroll had any requests from non-arts groups to use the facility?

Ms. Carroll stated that there was an Eagle Scout ceremony that took place at ArtSpace a year ago. She stated they would work with all community organizations.

Following the public hearing, Vice Mayor Merkel moved approval of Ordinance 11-O-03, Approving a Lease of a Portion of Space at 750 Center Street to Herndon Foundation for the Cultural Arts. This motion was seconded by Councilmember Olem.

Councilmember Olem stated that ArtSpace has been a great addition to the community and she has been amazed by some of the art that has been displayed there.

Mayor DeBenedittis stated that at one time a commercial printing company rented the building from the Town. He stated that the reason for providing this facility to ArtSpace is for the arts to have a "toe-hold" in the downtown.

The question was called on the motion, which carried by a vote of 7-0. The vote was:

January 11, 2011
(public session)

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

11-O-03 Ordinance, Approving a Lease of a Portion of Space in the Town's Building at 750 Center Street to Herndon Foundation for the Cultural Arts.

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

1. The Town Council approves a lease dated November 10, 2010 on file in the office of the Town Attorney by which the Town would lease to the Herndon Foundation for the Cultural Arts a portion of the Town's building, and exterior space at 750 Center Street, Herndon, Virginia. The rent shall be \$200.00 per month beginning January 1, 2011; the term shall be from January 1, 2011 through December 31, 2015; and use of the leased premises shall be for a cultural arts center including an art gallery; meetings and small group sessions with artists and the public; art classes; and artistic events. The Herndon Foundation for the Cultural Arts may also make all or part of the leased premises available for public or private meetings or events for a fee; and shall make interior space if not otherwise used available to the Town for up to four days of community events per year, a \$1,400 per year value. The lease may contain other terms agreed to by the Mayor and Town Manager.
2. The Mayor is authorized to execute and deliver this Lease Agreement and any other instruments to evidence or effectuate this lease. The lease or other instruments shall be on such form as approved by the Town Attorney.
3. This ordinance shall be effective on and after the date of its adoption.

January 11, 2011
(public session)

LEASE AGREEMENT

THIS LEASE made on the 10th day of November 10, 2010, by and between THE TOWN OF HERNDON, a municipal corporation (Landlord) and HERNDON FOUNDATION FOR THE CULTURAL ARTS, a Virginia non-profit, charitable corporation (Tenant).

Recitals

Landlord is the owner of a building and premises located at 750 Center Street, Herndon, Virginia (the building).

Landlord and Tenant have agreed that Tenant will lease from Landlord, in consideration of the rent and other benefits, and under the terms and conditions specified here, the premises commonly known as part of the building at 750 Center Street, (as shown on Exhibit A, attached and incorporated by reference) and outside lawn area, and gravel parking spaces, which shall be to the east and south side of the building, which shall be called "leased premises." Use of parking spaces is non-exclusive and must conform to the Zoning Ordinance (2007), Herndon Town Code. Parking and outside lawn areas that are elements of the leased premises are also shown on Exhibit A.

THEREFORE, the parties agree as follows:

1. Commencement and Ending Date of Term. Beginning January 1, 2011, Landlord leases the leased premises to Tenant according to the terms of this lease. The Tenant may remain in the leased premises on a month-to-month basis with the Tenant having the right to terminate the Lease upon 30 days prior written notice to the Landlord, and the Landlord having the right to terminate the Lease upon 90 days prior written notice to the Tenant. In any event, the term of this lease shall expire December 31, 2015. In the event of Town's redevelopment of the land at 750 Center Street, the parties understand that Landlord will terminate this lease.

January 11, 2011
(public session)

This last sentence clarifies, not limits, the parties' agreement as set out in this paragraph.

2. Rent. Tenant shall pay Landlord on demand \$200 per month on the first day of each calendar month rent beginning January 1, 2011.

3. Use of Premises. Tenant shall use the leased premises solely for a cultural arts center including an art gallery, meetings with artists, small group sessions with artists and the public, art classes, and artistic events. Tenant may also make all or part of the leased premises available for public or private meetings or public or private events for a fee (except as provided below), when Tenant is not using all or part of the leased premises. Subject to availability (as determined by Tenant), Tenant shall permit Landlord to use rent free the interior of the leased premises for Landlord sponsored community meetings for up to four days or part thereof per calendar year, a value of \$1,400 per calendar year. Tenant certifies to Landlord that such internal and external uses are consistent with the Town of Herndon Zoning Ordinance and architectural guidelines or ordinances of the Herndon Town Code. Tenant on at least 60 days notice from Landlord shall accommodate its exterior use of the leased premises to Landlord's predominant use of this exterior space for the yearly Herndon Festival or other periodic or unique festivals, events, or activities. Tenant shall provide janitorial service to the leased premises. Landlord shall mow the yard space surrounding the leased premises and the building. Tenant shall maintain other landscaping (approved by Landlord) on the Center Street exterior facade of the building. Landlord shall provide a physical separation structure or device between the leased premises and Landlord's remaining space in the building.

4. Utility Charges. Tenant shall maintain and pay the cost of all utilities (including telecommunications) on the leased premises. Landlord shall equitably prorate these costs based on building square footage (except telecommunications), advise Tenant quarterly of Tenant's prorata share of these costs (except telecommunications), and then settle up fairly with Tenant on the costs of these utilities, which Tenant shall pay on demand to Landlord.

January 11, 2011
(public session)

5. Liability Insurance. Tenant shall keep in effect a policy of bodily injury and property damage liability insurance with respect to the leased premises in commercially reasonable amounts, as determined by Landlord. The policy shall name the Landlord as an additional insured.

6. Hold Harmless of Landlord. Tenant shall hold harmless Landlord, its officers, agents, and employees from any and all claims, actions, damages, liability and expense, including reasonable attorney's fees, in connection with loss of life, personal injury or damage to property arising from any occurrence in, upon, or at the leased premises, or the occupancy or use by Tenant or its subtenants of the leased premises or any part thereof.

7. Default. Tenant shall be in default upon failure to perform any term of this lease for more than five days after written notice of such failure shall have been given to Tenant or after Tenant's abandonment of the leased premises.

8. Rights and Remedies on Default. Landlord shall have the following rights on default of Tenant, which shall be cumulative, none excluding any other right allowed by this lease or by law.

a. Landlord may enter the leased premises and repossess the leased premises and remove Tenant and any others who may be occupying the leased premises and remove any property.

b. Landlord may seize, remove and sell all of the personal property and fixtures of Tenant on the leased premises or remove and store such property at the cost of and for the account of Tenant.

9. Waste or Nuisance. Tenant shall not commit any waste or nuisance upon the leased premises.

10. Maintenance by Tenant. Tenant accepts the leased premises including the improvements and any equipment in the leased premises in their existing condition. Tenant shall at all times keep the leased premises in good order, condition, and repair. Tenant shall maintain the leased premises in a clean and sanitary condition. If Landlord is required to make any repairs by reason of Tenant's negligent or intentional act or omission, Tenant shall pay to Landlord the cost of the repairs as additional rent within ten days after written notice. Landlord

January 11, 2011
(public session)

shall be responsible for roof, structural integrity of the building, and replacement and repair of utility systems related to the leased premises. Except as provided in paragraph 13, Tenant shall return the leased premises to its original condition prior to Tenant's vacation of the premises, normal wear and tear excepted.

11. Notification of Hazard. Tenant and Landlord shall give immediate notice to the other in case of fire, accident, or defect in the leased premises or in any fixtures or personal property comprising the leased premises.

12. Alterations and Improvements. Except as provided in this paragraph, Tenant shall not make or cause to be made any alterations to the leased premises without first obtaining Landlord's written consent. With Town eventual approval of plans (both as a government and as Landlord), Tenant at its expense may make other changes to the leased premises consistent with the purposes of this lease.

13. Removal of Improvements and Restoration by Tenant. All alterations except lighting not necessary for normal use of the building or conformance with the Virginia Uniform Statewide Building Code made by Tenant shall remain the property of Landlord at the expiration or termination of the lease. This property will remain part of the leased premises and Tenant shall not have any obligation to remove it.

14. Loss and Damage. Landlord shall not be liable for any loss or damage to property of Tenant located on the leased premises. Landlord shall not be liable for any injury, death, or damage to persons or property associated with Tenant resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the leased premises. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant or its subtenants kept or stored on the leased premises shall be so kept or stored at the risk of Tenant or subtenants and Tenant shall hold Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

January 11, 2011
(public session)

15. Right of Entry. Landlord, its contractors, agents, or prospective purchasers or lessees, shall have the right to enter the leased premises during normal business hours to examine the same upon reasonable notice, either oral or written.

16. Quiet Enjoyment. Upon the observance of all Tenant's obligations of this lease, Tenant shall peaceably and quietly hold and enjoy the leased premises.

17. Surrender of Premises. At the expiration or termination of the term of this lease, Tenant shall surrender the leased premises in the same condition that the leased premises were in at the commencement of this lease, except as provided in paragraph 13, reasonable wear and tear excepted, and shall surrender all keys for the leased premises to Landlord.

18. Assignment and Subletting. Except as provided in paragraph 3, Tenant may not assign this lease without prior written consent of Landlord. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law.

19. Binding on Successors/Assigns. All of the terms of this lease shall bind the successors and assigns of Landlord and Tenant, except where the assignment is ineffective due to lack of Landlord's consent.

HERNDON FOUNDATION FOR THE CULTURAL ARTS

By: _____
Robin Carroll, President

TOWN OF HERNDON, VIRGINIA

By: _____
Stephen J. DeBenedittis, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Richard B. Kaufman, Town Attorney

*January 11, 2011
(public session)*

(NOTE: A copy of Exhibit A is attached hereto and numbered as pages 224-A through 224-B.)

11. GENERAL

Resolution 11-G-01, Establishing a Policy for the Disbursement of Town funds for Non-Profit Organizations.

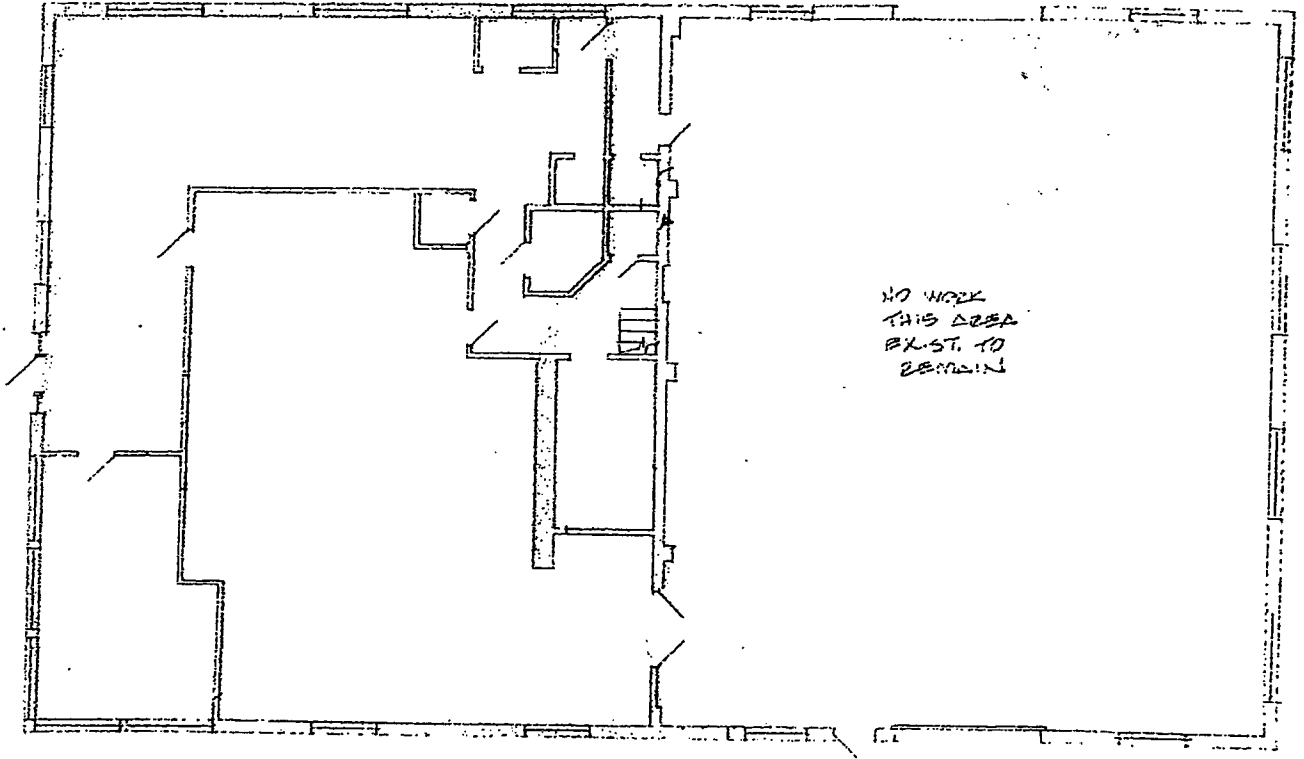
Mayor DeBenedittis stated that prior to tonight's meeting the following individual submitted written comments, which would be entered into the record:

- Richard Downer.

Disclosures:

- Councilmember Tirrell stated, for the record, that his wife serves as a paid employee for Herndon Community Television (HCTV) Corporation. He stated that Cox Communications and Verizon pay the Town 'Peg' fees ~ public education and government public television access fees ~ as part of their franchise agreements. The Town remits part of those fees to HCTV in the form a grant. Therefore, he stated that he would recuse himself from voting or participating in the discussion or action of this transaction as long as HCTV remains covered by this policy.
- Councilmember Wolf stated, for the record, that she is an unpaid volunteer and current President of the Board of Directors for the Council for the Arts of Herndon. She stated that does not receive any material benefit as an unpaid volunteer, however, does volunteer for a group that may benefit from the Town's support or funding. She stated that she is able to participate in the discussion and action of this transaction fairly, objectively and in the public interest.
- Councilmember Hutchinson stated, for the record, that she is an unpaid volunteer for the Herndon Dulles Visitors Center. She stated that she is able to participate in the discussion and action of this transaction fairly, objectively and in the public interest.
- Councilmember Olem stated, for the record, that she is an unpaid volunteer for numerous groups in the community, some that receive grants and in kind benefits from the Town. She stated that she is able to participate in the discussion and action of this transaction fairly, objectively and in the public interest.

Cultural Arts Center
Approximate Square Footage 3,000



NO WORK
THIS AREA
EXIST. TO
REMAIN

SCALE 1/8"

January 11, 2011
(public session)

Linda A. Simmons, Director of Human Resources, briefly presented the staff report dated January 4, which is on file in the Town Clerk's office. The Town recognizes the important contributions non-profit organizations make to the overall quality of life in Herndon. The Code of Virginia, Section 15.2-953 authorizes local governments to donate to charitable institutions and associations, volunteer and nonprofit organizations, chambers of commerce and other similar organizations. Localities may appropriate public funds to any charitable organization if the organization provides services to residents of the locality, if such organizations are not controlled in whole or in part by any church or sectarian society. This section of the State Code further states that donations shall include the lawful provision of in-kind resources. To make informed decisions regarding disbursement of Town funds, the Town Council must know why the funds are needed, what the funds would be used for, how the funds would be managed and if there are any Town staff or material support requirements for grants. In the past, the Town has been flexible with the application process and reporting requirements. For fiscal prudence, eligibility criteria and reporting requirements for non-profit organizations seeking grant funding from the Town should be formalized. Based on feedback received from Council, staff recommends that organizations be required to submit additional paperwork including an IRS tax form 990, a copy of the current income tax return and a copy of the annual report. It also is recommended that all organizations be required to provide their own funds to match 50 percent of the funding requested from the Town, with the exception of Herndon Community Television (HCTV). HCTV should be excluded from this requirement as they provide a direct service to the government of the Town by acting as the Town's public television access station, and enhancing transparency of government through televising public meetings. In addition to public funds, the Town provides in-kind contributions to support various community events that are not sponsored by the Town, such as Friday Night Live!, Homecoming Parade, Council for the Arts' Festival and Taste of the Town, among others. Staff recommends that fundraising events be responsible for 100 percent of the labor and material costs provided by the Town. Staff further recommends that events pay for 50 percent of the in-kind services provided by the Town if the Town is a sponsor and the event promotes economic development in the Town, such as Friday Night Live!. The Town would provide basic police and public works staff support to non-fund raising events, such as the Homecoming Parade, at no charge. It is recommended that the way funds are dispersed to organizations be changed. In the past, disbursements of authorized funds have been made in one payment at the beginning of the fiscal year. It is recommended the Town disburse funds twice a year, the first at the beginning of the fiscal year and the second on January 31 of the fiscal year.

Responding to Councilmember Wolf's queries, Ms. Simmons stated that staff is recommending that HCTV only be exempt from the 50 percent match requirement. She stated staff also is recommending that funds to HCTV be disbursed twice a year and they would be required to submit mid-year balance sheets and profits and losses.

January 11, 2011
(public session)

Councilmember Wolf stated that she would be comfortable leaving HCTV's requirements the way they currently are. She definitely wants to make sure that HCTV is exempt from any fundraising responsibilities.

Councilmember Hutchinson stated that HCTV has years where they would need to spend more money on equipment, so she thinks it would be important for the Council to receive the same reports from HCTV as other organizations that the Town helps to fund. That would show just cause for continuing to allocate the franchise funds for HCTV to use.

Councilmember Olem agreed that HCTV should be exempt from the 50 percent match and she does not have a problem with requiring them to do the same reporting requirements as other organizations.

Vice Mayor Merkel questioned if the Town has heard from any of the organizations that typically apply for the grants? She would like to know if the requirements are reasonable.

Ms. Simmons stated that the documents being requested are required for other purposes anyway, so it would not require extra work from the organizations.

Vice Mayor Merkel stated that she had heard from Doug Downer, who requested to meet with the Mayor and Council regarding this matter. Mr. Downer is out-of-town and not available to comment this evening.

Mayor DeBenedittis stated that the programs and activities that armies of volunteers put on really make a community and he would not want to make it more difficult for them to obtain funding.

Vice Mayor Merkel stated that, if possible, she would like to see this deferred until the next public hearing to allow Mr. Downer to provide comments.

Responding to Mayor DeBenedittis' queries, Ms. Simmons stated that Town would not receive applications until the end of February, which is late in the budget cycle.

Arthur A. Anselene, Town Manager, stated that if this were adopted tonight, the intent would be to make it effective this budget cycle. He stated that most of the reporting requirements are already being requested, but some additional information would be requested when the applications are submitted. If adopted, there would not be much of an impact to organizations and would provide for across-the-board equality.

January 11, 2011
(public session)

Councilmember Wolf stated that the organizations that would be affected by the changes already have the information readily available. She does not think any of the organizations would have difficulty meeting the requirements. She stated that this would be good policy, because the Town's expectations would be clearly stated.

Councilmember Olem questioned if "not-for-profit" should be included?

Ms. Simmons indicated that she was informed by the Deputy Director of Finance that "non-profit" and "not-for-profit" are interchangeable. She stated that the Town was following the State Code.

Councilmember Singh questioned how the 50 percent contribution was determined?

Ms. Simmons stated that it was a recommendation that staff found to be the norm for what is requested when grants are submitted.

Councilmember Singh stated that he thought the contribution should be 20 percent. He questioned if staff had reviewed his suggestions, which are on file in the Town Clerk's office?

Ms. Simmons said that staff looked at Councilmember Singh's suggestions and determined that they would be more suited for a policy discussion at the Council level.

Councilmember Singh stated that he has benefitted from his discussions with Councilmembers throughout the week, but he would like to reconsider his suggestions and continue the discussion at a later date.

Councilmember Singh moved to defer Resolution 11-G-01 until the January 25 public hearing. This motion was seconded by Vice Mayor Merkel.

Councilmember Singh stated that over time, these grants have been distributed as a matter of practice and the Town now needs to think it through so there is no question of eligibility.

Vice Mayor Merkel stated that she would support deferring this one time to allow Council to get the details right.

Councilmember Singh stated that he does not necessarily want to change what has been going on, but this is the first time it has come up for consideration and it should be reviewed further. He would like to make sure that people from different communities participate and benefit from grants and would like the Town to set a tone that it is all-inclusive.

Mayor DeBenedittis stated that he was ready to vote this evening, but if his colleagues would like to defer, that would be fine with him.

January 11, 2011
(public session)

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

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	absent from dais
Wolf	yes
Mayor DeBenedittis	yes

Resolution 11-G-02, Re-establishing a Policy for Developing Fees & Charges for Revenue Support for Parks & Recreation Programs.

Cindy S. Roeder, Director of Parks and Recreation, briefly presented the staff report dated January 4, which is on file in the Town Clerk's office. The Parks and Recreation Department staff evaluated their ability to achieve an increased revenue recovery percentage over the next five to 10 budget years. The Town Council's current policy requires the department to offset at least 65 percent of its operating personnel, operations and maintenance and minor capital expenses with revenues obtained from recreation programs, admission fees, park operations, the Herndon Festival, concessions and the Bready Park Tennis Center. In 2002, the department was granted a reprieve to allow certain credits related to limited or non-revenue generating programs to help achieve the 65 percent. In order to achieve the 75 percent recovery desired in the coming years, staff recommends stabilizing at 70 percent recovery for fiscal years 2012 and 2013, and then increasing by one percent per fiscal year in the five years following to reach 75 percent by FY 2018. That would fall within the five to 10 years suggested to achieve this goal.

Councilmember Olem stated that Ms. Roeder mentioned at the work session that none of the other municipalities are coming close to 75 percent. She stated that if equipment were not maintained, then individuals would go elsewhere to exercise. She stated that in her mind, 75 percent is unrealistic.

Ms. Roeder stated that reaching the 75 percent goal would not be unrealistic, but it would be challenging to achieve. She stated there has been a downturn in daily users of the Community Center between September and December and fee increases have been projected for the coming year. She stated that there would be expenditures in the coming year that were not included last year.

Mayor DeBenedittis questioned if this action were approved, would it make the Department of Parks and Recreation more likely to compete with private businesses?

January 11, 2011
(public session)

Ms. Roeder stated that staff has discussed what the department would have to do if the rates were raised to continue to be marketable. She stated that approximately two-thirds of the users are non-Town residents.

Mayor DeBenedittis questioned if Ms. Roeder was aware of any for-profit fitness facility that offers daily passes?

Ms. Roeder stated that some of the YMCA's offer a \$15 daily fee, but most for-profit fitness centers do not offer daily passes.

Mayor DeBenedittis stated that he did not think the YMCA was a for-profit fitness center.

Ms. Roeder stated that it would not be prudent to do a long-term fitness program paying daily rates instead of buying a pass.

Arthur A. Anselene, Town Manager, stated that there is a difference between a policy and a goal. He stated that there is flexibility and these goals would not necessarily be mandated.

Councilmember Olem stated that when a resolution is passed, it does put out an expectation. If the goal were not met, she would think people would feel insecure about their jobs. She stated that she would have a hard time approving this resolution.

Vice Mayor Merkel stated that she shares of the same concern as Councilmember Olem and she questioned if the 75 percent recovery is necessary.

Mr. Anselene stated that it was the direction of the previous Council who requested the Town look at how business is done and if Parks and Recreation could be more self-sustaining. He stated it is a Council prerogative to set the direction.

Councilmember Hutchinson stated that two-thirds of the users are non-Town residents and this seems like a good opportunity to try to recoup more of the costs for the Town. The Town cannot afford to give benefits away to people who are not helping to pay the costs.

Councilmember Singh stated that if the non-Town residents stop using the Community Center, there would be a big deficit.

Councilmember Tirrell stated that this is a discussion of economic elasticity. He recalled that over the past few years, Parks and Recreation exceeded a 65 percent recovery. He stated that in terms of usage, the Department relied heavily on the community at large and he questioned if the Town has lost users because the fees have increased? He stated that he is not opposed to trying to increase the recovery fees over the next eight years and it would give a goal to the department.

January 11, 2011
(public session)

Ms. Roeder stated that from September to December of 2010, there was a decline in all admissions as compared to the same four months of 2009. She stated that staff is concerned with raising rates much higher, because there could come a point when people would not use the services.

Councilmember Singh stated that price is only one side of the equation and the quality of the facility also accounts for a lot.

Mayor DeBenedittis stated that he would think that Council reached this point by trying to be good stewards of public resources and hearing that this would not be a mandate makes him more comfortable. He stated that no one's job would depend on this and he would be happy to add that to the resolution. He stated he is not just talking about economic elasticity and it is his hope that Parks and Recreation becomes innovative and looks for programming and other products and services to help achieve the goal. He would like to see ways to collaborate with private organizations to provide additional services.

**(SUBSEQUENTLY SUBSTITUTED &
AMENDED)**

Main Motion

Councilmember Olem moved approval of Resolution 11-G-02, as presented, for discussion purposes. This motion was seconded by Councilmember Hutchinson.

Councilmember Olem stated that it is unrealistic to think approval of this would not be a mandate. She stated that the department would need to have a 70 percent recovery rate within two years and that unless many important services are cut at the Community Center, this action would be putting the bar too high.

Councilmember Hutchinson stated that she does not think approval of this resolution would be unrealistic. If this would encourage staff to seek more sponsorships for the Herndon Festival or find more cost efficient ways to run a program, there is nothing wrong with that. She views this as something to challenge the staff with and not as a mandate.

Vice Mayor Merkel questioned if "goal" or "to strive for" could be used in the resolution.

Mayor DeBenedittis stated there could be many perfectly acceptable reasons for not reaching the goal the department would be striving for.

Amendment

(NOT ACCEPTED)

Councilmember Tirrell offered the following friendly amendment, which was not accepted by the Motion Maker, however, was later restated as a substitute motion, with further amendments and was subsequently approved.

*January 11, 2011
(public session)*

- REVISE the 5th ‘WHEREAS’ to read ‘...that the Parks and Recreation Department Revenue Recovery Policy be modified to provide a **goal of** 75 percent return of revenues and expenditures...’
- REVISE the 6th ‘WHEREAS’ to read ‘...the staff recommends that a **goal of** 70 percent return be implemented over the two-year period FY 2012 and FY 2013 and a one percent increase in each subsequent year, until a **goal of** 75 percent return is achieved in FY 2018...’
- REVISE the ‘NOW, THEREFORE, BE IT RESOLVED’ to read ‘...directs the Town Manager to establish fees and charges within the Parks and Recreation Department to provide for a **goal of** 70 percent return in fiscal years 2012 and 2013, and increasing by one percent each of the subsequent five years until a **goal of** 75 percent return in achieved in fiscal year 2018 and thereafter...’

Councilmember Olem stated she would not accept the friendly amendment, because two years was not enough time to go from a 65 to 75 percent recovery.

Mayor DeBenedittis questioned if she would accept the friendly amendment if an additional year was added to the time frame?

Councilmember Olem stated that she would not accept the friendly amendment.

Ms. Roeder stated that the FY 2011 projection is at 70 percent, because of the budget cuts and the vacancy savings.

Councilmember Singh stated that the Council should revisit this matter again next year to see if the goals would be achievable.

Mayor DeBenedittis stated that he did not think it would be necessary to “kick the can down the road” and that a decision could be made before next year.

Substitute Motion (SUBSEQUENTLY AMENDED & APPROVED)

Councilmember Hutchinson moved approval Resolution 11-G-02, with the following revisions:

- REVISE the 5th ‘WHEREAS’ to read ‘...that the Parks and Recreation Department Revenue Recovery Policy be modified to provide a **goal of** 75 percent return of revenues and expenditures...’
- REVISE the 6th ‘WHEREAS’ to read ‘...the staff recommends that a **goal of** 70 percent return be implemented over the two-year period FY 2012 and FY 2013 and a one percent increase in each subsequent year, until a **goal of** 75 percent return is achieved in FY 2018...’

January 11, 2011
(public session)

- REVISE the 'NOW, THEREFORE, BE IT RESOLVED' to read '...directs the Town Manager to establish fees and charges within the Parks and Recreation Department to provide for a **goal of** 70 percent return in fiscal years 2012 and 2013, and increasing by one percent each of the subsequent five years until a **goal of** 75 percent return in achieved in fiscal year 2018 and thereafter...'

This motion was seconded by Councilmember Wolf.

Councilmember Hutchinson stated that the proposed language would make it clear to staff that this would be a goal, which staff should strive for, but they would not be punished if it was not met.

Councilmember Wolf concurred with Councilmember Hutchinson and stated that this could create opportunities for creative partnerships.

Amendment **(ACCEPTED BY THE MAKER AND SECONDER)**

Councilmember Tirrell offered the following friendly amendment, which was accepted by the Motion Maker and Seconder:

- FURTHER REVISE the 'NOW, THEREFORE, BE IT RESOLVED' to read '...directs the Town Manager to establish fees and charges within the Parks and Recreation Department to provide for a goal of 70 percent return in fiscal years ~~2012 and~~ 2013, and increasing by one percent each of the subsequent five years until a goal of 75 percent return in achieved in fiscal year 2018 and thereafter...'

Amendment **(ACCEPTED BY THE MAKER AND SECONDER)**

Mayor DeBenedittis offered the following friendly amendment, which was accepted by the Motion Maker and Seconder:

- REVISE the 2nd 'WHEREAS' to read '...in the operation of the Parks and Recreation Department it is the Town's desire that revenues through fees and charges **and other programs and partnerships** be assessed to offset a percentage of the expenditures relating to the personnel and operating and maintenance costs...'
- FURTHER REVISE the 'NOW, THEREFORE, BE IT RESOLVED' to read '...directs the Town Manager to establish fees and charges **and other programs and partnerships** within the Parks and Recreation Department to provide for a goal of 70 percent return in fiscal year 2013, and increasing by one percent each of the subsequent five years until a goal of 75 percent return in achieved in fiscal year 2018 and thereafter...'

January 11, 2011
(public session)

The question was called on the motion, which carried by a vote of 6-1. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	no
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

11-G-02 Resolution, Re-establishing the Policy for Developing Fees and Charges for Revenue Support of Parks and Recreation Programs.

WHEREAS, the Town of Herndon provides a comprehensive park and recreation program which includes the operation of public recreation facilities and the operation of recreation programs; and

WHEREAS, in the operation of the Parks and Recreation Department it is the Town's desire that revenues through fees and charges and other programs and partnerships be assessed to offset a percentage of the expenditures relating to the personnel and operating and maintenance costs; and

WHEREAS, the policy was established in 1991 to achieve a 65 percent recovery; and

WHEREAS, in 2002, the department was granted credits related to limited or non-revenue generating programs and services in order to help achieve the required recovery percentage; and

WHEREAS, to meet the Town's continued interest to further offset parks and recreation costs, the staff recommends that the Parks and Recreation Department Revenue Recovery Policy be modified to provide a goal of 75 percent return of revenues and expenditures; and

WHEREAS, to minimize the impact of the policy adjustment on users of the facilities and programs, the staff recommends that a goal of 70 percent return be implemented over the two-year period FY 2012 and FY 2013 and a one percent increase in each subsequent year, until a goal of 75 percent return is achieved in FY 2018.

January 11, 2011
(public session)

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that it hereby directs the Town Manager to establish fees and charges and other programs and partnerships within the Parks and Recreation Department to provide for a goal of 70 percent return in fiscal year 2013, and increasing by one percent each of the subsequent five years until a goal of 75 percent return is achieved in fiscal year 2018 and thereafter.

12. CONSENT AGENDA

Resolution 11-G-03, Award of Contract – Snow Removal Equipment;

Resolution 11-G-04, Amending the Town of Herndon’s 2011 Legislative Program to Add Support for Legislation to Authorize a Resident Curator Program; and

Proclamation – ‘Town Incorporation Day,’ January 14, 2011.

Vice Mayor Merkel moved approval of the referenced item listed on the “Consent Agenda,” without comment. This motion was seconded by Councilmember Hutchinson and carried by a vote of 7-0. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	yes
Olem	yes
Singh	yes
Tirrell	yes
Wolf	yes
Mayor DeBenedittis	yes

11-G-03 Resolution, Award of Contract, IFB #11-08 Snow Blower (re-bid IFB #11-05).

WHEREAS, Specifications were developed to secure a Snow Blower for the Streets Maintenance section of the Department of Public Works; and

WHEREAS, an invitation for bid (IFB #11-05) was advertised on November 2, 2010; and

WHEREAS, the bid results are as follows:

January 11, 2011
(public session)

<u>Bidder</u>	<u>Amount</u>
Kodiak America	\$ 73,000.00; and

WHEREAS, Kodiak America submitted alternative specifications that were beyond the requirements of the IFB and over budget, and was subsequently rejected; and

WHEREAS, an invitation for bid (IFB #11-08) was re-advertised on November 24, 2010; and

WHEREAS, the bid results are as follows:

<u>Bidder</u>	<u>Amount</u>
James River Equipment Co.	\$ 60,906.00; and

WHEREAS, James River Equipment Company was the only responsive and responsible bidder; and

WHEREAS, staff recommends that IFB #11-08 be awarded to James River Equipment Company for the amount of \$ 60,906; and

WHEREAS, funds are available in account #001/0886/441/80-03 (Streets Capital Equipment).

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Herndon, Virginia, that a Contract is awarded to James River Equipment Company in the amount of \$60,906 for the purchase of the Snow Blower (170 hp) as specified in invitation for bid IFB #11-08.

11-G-04 **Resolution, Amending the Town of Herndon's 2011 Legislative Program to Add Support for Legislation to Authorize Resident Curator Programs.**

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

1. Resolution 10-G-125, adopted October 12, 2010 is amended and re-ordained to add new paragraph 2(e) as follows:

2(e) Resident Curator Programs. The Town supports the General Assembly's adoption of legislation creating local Resident Curator Programs for the preservation and maintenance of historic areas, landmarks, building, or structures and lands pertaining thereto.

*January 11, 2011
(public session)*

2. The Town Attorney shall mail or deliver a copy of this resolution to the Town's representatives in the General Assembly, other selected members of the General Assembly, area local governments, and to other interested persons, as appropriate.

Proclamation – ‘Town Incorporation Day,’ January 14, 2011.

**TOWN OF HERNDON, VIRGINIA
PROCLAMATION**

HERNDON TOWN INCORPORATION DAY

JANUARY 14, 2011

The Mayor and Town Council of the Town of Herndon, Virginia, hereby officially recognize January 14, 2011 as ‘**Town Incorporation Day**’ in the Town of Herndon; recognize the 132nd anniversary of the Town’s incorporation; and in recognition of January 14, 1879 as the Town’s official birthday, will recognize and proclaim each January 14 as ‘Town Incorporation Day’ and include the designation of the date in the annual ‘At Home in Herndon’ Town calendar.

Further, the Mayor and Town Council of the Town of Herndon, Virginia, express appreciation and recognize mayors, councils, members of the Herndon Historical Society and Town staff who ~ in the past and in the present ~ continually strive to preserve and document the Town’s history and encourage the public’s interest in that history.

/s/
Steve DeBenedittis, Mayor
January 11, 2011

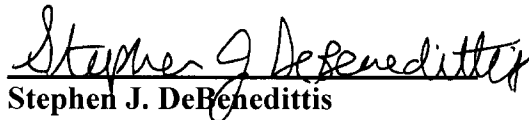
Visit the Herndon Historical Society Web site at

www.herndonhistoricalsociety.com

January 11, 2011
(public session)

13. ADJOURNMENT

There being no further business, the meeting adjourned at 11:30 p.m.


Stephen J. DeBenedittis
Mayor


Michelle J. Flores
Administrative Assistant

Minutes approved by Town Council: March 22, 2011.