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Enriching the Quality of Life and Promoting a Sense of Community

HERNDON TOWN COUNCIL

Tuesday

January 18, 2011

The Town Council met in public session on Tuesday, January 18, 2011 at 7:00 p.m. in the Ingram Council Chambers, 765 Lynn Street. In attendance were:

Mayor:

Stephen J. DeBenedittis

Councilmembers:

Connie Hutchinson
Sheila A. Olem
Jasbinder Singh
Grace Han Wolf

Absent:

Lisa C. Merkel
William B. Tirrell

Planning Commissioners:

Robert P. Burk, Chair
Paul C. LeReche, Vice Chair
Bernadette Bettard
George Burke
Kevin J. East
C. Melissa Jonas
Kevin G. Moses

Town Manager:

Arthur A. Anselene

Town Attorney:

Richard B. Kaufman

Chief of Police:

Toussaint E. Summers, Jr.

Director of Community Development:

Elizabeth M. Gilleran

Director of Finance:

Mary K. Tuohy

Director of Golf:

Gene A. Fleming

Director of Human Resources:

Linda A. Simmons

Director of Information Technology:

William H. Ashton, II

Director of Parks and Recreation:

Cindy S. Roeder

Director of Public Works:

Robert B. Boxer

Deputy Director of Public Works:

Dana Singer

Senior Planner:

Dana E. Heiberg

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Community Inspector:
 Fermina Rochac
 Legislative Assistant:
 Amanda E. Morrow

Mayor DeBenedittis called the meeting to order at 7:00 p.m.

ANNOUNCEMENTS

Absence – Mayor DeBenedittis announced that Vice Mayor Merkel and Councilmember Tirrell would not be attending tonight’s meeting.

JOINT WORK SESSION BETWEEN THE TOWN COUNCIL AND THE PLANNING COMMISSION

1. **Six-Month Review of the FY 2011-FY 2016 Capital Improvement Program (CIP) Project Status.**

The Director of Public Works presented a PowerPoint dated January 18, which is on file in the Town Clerk’s office. He briefly reviewed the project management process that staff uses to formulate the CIP, along with the list of CIP and non-CIP projects that the Town has completed or has accomplished significant work on in the past year. The projected status of active projects using Reserve Funds for the FY 2011 – FY 2016 CIP was presented.

In response to queries from the Commission and the Council, the Director of Public Works stated that the column for “funded” in the CIP spreadsheet refers to the total amount of funds from all sources and the column for “estimated encumbrance” refers to money expected to be spent this fiscal year. He stated that construction on the Station Street Project would not start this year and the money reserved for that project would be spent on undergrounding utilities. The right-of-way construction for this project would likely start in FY 2012. He stated that the funds listed in the water main replacement category for Spring Street would be used for paving, which could be coordinated with the Town’s repaving program or with the Wood, Oak, Nash and Pearl project. He stated that all of the W&OD trail crossings in Town were included in the CIP and that the funds listed for the intersection of the W&OD Trail with Ferndale Avenue are currently going toward studying this intersection.

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RECESS/PUBLIC SESSION

At 7:53 p.m., the Town Council recessed briefly and reconvened at 8:01 p.m. for the regularly scheduled work session in the Ingram Council Chambers, all members being present with the exception of Vice Mayor Merkel and Councilmember Tirrell, and with Mayor DeBenedittis presiding.

PUBLIC HEARINGS

1. Comprehensive Plan Amendment, CPA #10-01, Downtown Master Plan.

(Note – This item was continued from January 11, 2011.)

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.

The Senior Planner presented the staff report and reviewed the proposed revisions to the resolution, dated January 11, which are on file in the Town Clerk's office. He stated that staff is working to provide the information that the Council requested at last week's meeting, including the analysis of potential financial mechanisms to pay for the infrastructure gap. He stated that staff would research basic property data and would provide an update at next week's meeting.

In response to queries from Council, the Senior Project Planner stated that staff could determine the density at which public investment would be diminished and where it would be zero. This density would likely be higher than what is proposed. He stated that staff would research the questions the Council had concerning Block F. He stated there would be no gap if the Town did not charge for the land it owns.

In response to Council's discussion, the Director of Community Development reviewed the proposed locations for the underground utility lines in Blocks C, D, E and F, which were the areas the consultants included in their study. The Town could expect the undergrounding to cost approximately \$3.5 million, which would be less than the estimate that JPI used several years ago. She stated that age-restricted housing would be a preferred use on Block F and although the private industry would rather see townhomes in this area; that was not the public's preference. Carriage homes also were not recommended here because they would be located too close together. She stated that the required number of parking spots for the age-restricted housing use was based on the number required by the zoning ordinance. Regarding proffers, while other jurisdictions provide a list of standard proffers, the Town usually works with developers when they

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inquire about proffers. Providing a list of proffers to developers without their request might be a legal issue. She stated that staff could request information from other localities regarding how they approach the topic of proffers.

The Director of Community Development explained that the result of the Downtown Master Plan would be a by-right development situation, meaning that developers would be able to proceed to the site plan stage rather than go through the rezoning process. The downtown area would be rezoned and a new zoning district would be created based on the Plan. There would be a margin for flexibility or changing uses and a form-based zoning code would be incorporated in the rezoning. She stated that the market would ultimately drive what type of development would occur, within the parameters of the Downtown Master Plan.

The Council expressed concern that the plan would be too rigid, that the proffers would be limited and the anticipated financial gap would be too large. It was suggested that the plan should include categories of allowable uses, instead of specifically listing the use per block. A member of Council expressed concern over the amount of parking in the plan.

There was further brief discussion on this item.

2. **Ordinance, Authorizing the Mayor to Sign a Lease between the Town of Herndon and the Herndon Historical Society.**

Disclosure – Councilmember Hutchinson stated for the record, that she is an unpaid volunteer for the Herndon Dulles Visitors Center and would be able to participate in the discussion and action of this transaction fairly, objectively and in the public interest.

The Town Attorney provided an overview of his memorandum to the Mayor and Town Council dated January 6 and proposed lease document, which are on file in the Town Clerk's office. He stated that the proposed ordinance would authorize the Mayor to sign a lease agreement with the Herndon Historical Society for the rental of the Herndon Depot Building, located at 717 Lynn Street, Herndon. The lease would include all furnished space (except for the "Waiting Room" during use of the room for the Visitors Center) in the Depot. The proposed purpose for the Historical Society's lease of the Depot would be for a museum and a place for historical activities. The lease also would provide for shared access to the Depot by the Herndon Dulles Visitors Center. The proposed lease would be the standard public service-type lease with provisions for insurance to protect the Town. The Herndon Historical Society would pay nominal rent for the space in the Depot for a five-year term beginning March 1, 2011 and ending February 28, 2016. Staff recommends approval of the proposed ordinance, as presented.

In response to queries from Council, the Town Attorney stated that re-drafting the proposed ordinance to include the Visitors Center, as a separate party would require both this lease and the next item on the agenda to be renegotiated, meaning that the Council would have to defer these two items. He stated that one reason the lease was written this

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way was if the Waiting Room ceased to be used by the Visitors Center, the responsibility to maintain it would still fall on the Herndon Historical Society. The Town Attorney stated that originally, the Visitors Center's lease of the Waiting Room was set-up as its own sublease, but he believes that was more confusing than the current situation. He stated that the Council has approved the language in the proposed ordinance several times before and staff would recommend going forward with these terms. If the leases were deferred, the Historical Society and the Herndon Dulles Visitors Center could continue to lease the Depot based on de facto leases, or the leases and terms currently in place.

Support was expressed for re-drafting the lease to create a separate lease between the Herndon Dulles Visitors Center and the Town, while others expressed support for the lease as presented. A member of Council stated that this lease should be considered a donation, because the monthly rent the Historical Society is required to pay would be lower than the market value. It was stated that the Herndon Historical Society and the Herndon Dulles Visitors Center should go through the grant application process to be considered for the leases. Another member of Council stated that this case would not be a donation, because its purpose is to be a museum, which benefits the Town. It was stated by a member of Council that the Visitors Center could have a separate entrance to the Waiting Room and could function separately from the Historical Society's portion.

There was further brief discussion on this item.

3. Ordinance, Authorizing the Mayor to Sign a Lease between the Town of Herndon, Herndon Dulles Visitors Center, Inc. and the Herndon Historical Society.

Disclosure – Councilmember Hutchinson stated for the record, that she is an unpaid volunteer for the Herndon Dulles Visitors Center and would be able to participate in the discussion and action of this transaction fairly, objectively and in the public interest.

The Town Attorney provided an overview of his memorandum to the Mayor and Town Council dated January 6 and proposed lease document, which are on file in the Town Clerk's office. He stated that the proposed ordinance would authorize the Mayor to sign and deliver a proposed lease between the Town, the Herndon Dulles Visitors Center, Inc. and the Herndon Historical Society. This agreement would pertain to the Herndon Dulles Visitors Center's lease of an office at the Herndon Depot Building at 717 Lynn Street. The lease would include the Waiting Room space for the Visitors Center in the Depot and would provide for shared access to the Depot by the Herndon Historical Society and the Herndon Dulles Visitor Center. The Herndon Dulles Visitors Center would pay nominal rent for the Waiting Room space in the Depot for a five-year term, beginning March 1, 2011 and ending February 28, 2016. Staff recommends approval of the proposed ordinance, as presented.

In response to queries from Council, the Town Attorney stated that the term "staff" in the proposed ordinance refers to both paid and unpaid staff. He stated that any plans to change or alter the Waiting Room or access to it would require permission from the

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Town's Building Official. He stated that the terms in the lease were negotiated five years ago through the previous lease and he tried to remain consistent with those terms. He stated that the Council could defer the two leases for a maximum of two months.

Several members of Council suggested deferring the two Depot leases until the future of the Herndon Dulles Visitors Center and the Town's role in the facility was determined. It was suggested that the Visitors Center should be put on a month-to-month lease until this was finalized. It was stated that in the past, the Visitors Center has had difficulty in conducting its activities and receiving permission from all parties involved in the lease.

There was further brief discussion on this item.

4. **Ordinance, Authorizing the Amendment and Restatement of the Supplemental Retirement Plan and Trust for Police Employees of the Town of Herndon, Virginia to Update this Plan to Comply with Federal Law.**

The Director of Human Resources presented the staff report dated January 18, which is on file in the Town Clerk's office. She stated that the Town retained the law firm Odin, Feldman & Pittleman, P.C. to provide legal services to update the Police Supplemental Retirement Plan and obtain an IRS compliance determination letter before the IRS imposed compliance deadline. The proposed ordinance would amend the plan, as required by IRS Revenue Procedure 2007-44, for compliance with The Economic Growth and Tax Relief Reconciliation Act of 2001. The amended plan also would include provisions for compliance with the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), Treasury Regulations and Interim IRS Amendments. She stated that the proposed ordinance also would amend wording throughout the document, referring to eligible employees and entry date into the plan to be consistent with Town policy and practice. Employees hired as police officers are eligible to participate in the plan on the date coincident with or next following the date the employee completes one hour of service. She stated that many of the changes are technical and would have minimal impact on day-to-day operations. The Director of Human Resources provided a brief summary of the possible affects the proposed ordinance would have on the operation and administration of the plan:

- The computation of contributions for participants, who terminate employment during a Plan Year and receive compensation for accrued sick/vacation leave *after* the last day of the Plan Year, must have such amounts included in computing the terminated Participant's allocation for the Plan Year in which the termination of employment occurred. The definition of "compensation" has been amended to reflect this required provision of the Final Section 415 Regulations.
- If any "differential wage payments" are made to participants, they must be treated as wages for withholding and qualified plan purposes.
- Provisions pertaining to the payment of benefits have been amended as follows:

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- PPA requires that if benefit payments are offered in the form of an annuity, then the Plan must provide a "default" annuity equal to 50 percent of the annuity amount and participants must also be offered the choice of electing an "optional" annuity equal to 75 percent of the amount of the annuity;
- The maximum time limit for complying with any notice requirements and/or benefit payments would be expanded from 90 days to 180 days;
- Distributions may be "rolled over" from the Town's Plan to a Roth IRA, in addition to a non-Roth IRA;
- An eligible rollover distribution may be made to a non-spouse beneficiary; and
- If there are Participants who are in qualified active military service at the time of death, then they must be treated as actively employed, for purposes of computing death benefits payable under the Plan.

Staff recommends approval of the proposed ordinance, as presented.

There was no discussion on this item.

GENERAL

5. Resolution, Establishing a Policy for the Disbursement of Town Funds for Non-Profit Organizations.

(Note – This item was continued from January 11, 2011.)

Disclosures –

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 she does not receive any material benefit as an unpaid volunteer, although she 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 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.

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Councilmember Hutchinson stated for the record, that she is an unpaid volunteer for the Herndon Dulles Visitors Center and would be able to participate in the discussion and action of this transaction fairly, objectively and in the public interest.

The Director of Human Resources presented the staff report dated January 11, which is on file in the Town Clerk's office. She stated that this item was continued from last week's Council meeting so it could be discussed and considered further. Staff recommends approval of the proposed resolution, as presented.

In response to queries from Council, the Town Attorney stated that he would have to research whether or not the term "non-profit" could be substituted for "charitable organizations" in the proposed resolution. He clarified that localities have the authority to make contributions both to charitable organizations or non-profits, as long as the organization provides benefit to the locality where it is operating. He would recommend using the term "non-profit" over using "charitable organization, non-profit and not-for-profit" in the proposed resolution. He stated that the Town does not have the authority to state how federal tax exemptions apply in the Town.

A member of Council requested the Town to send a letter to the Attorney General, requesting further clarification on the meaning of the "charitable organizations" phrase in the State code. It was stated that certain criteria should apply in determining whether an organization should receive funding or not, including whether the organization benefits the Town. It was stated that the board of a non-profit organization should show that it fairly represents the Town when applying for a grant.

There was further brief discussion on this item.

6. **Resolution, Award of Contract #D-11-04, Geotechnical Services and Construction Materials Testing and Inspection Services.**

The Director of Public Works presented the staff report dated January 18, which is on file in the Town Clerk's office. He stated that on October 13, 2010, the Town issued a Request for Proposals (RFP) for Geotechnical Engineering and Construction Materials Testing and Inspection Services to support design and engineering efforts required for CIP projects and other efforts. The intent of the award would be to provide the ability to secure geotechnical engineering and construction materials, testing and inspection services through an "as-needed" contract, to be performed on a task order basis. The proposed contract would be a one-year contract that may be extended for four one-year periods. No minimum volume of work would be guaranteed. The Director of Public Works stated that initial proposals were received from 13 firms and following interviews of four selected firms, the staff evaluation committee selected GeoConcepts Engineering, Inc., as the top rated firm. Negotiations with GeoConcepts Engineering, Inc. have resulted in favorable hourly rates and the tasks and amounts for the contract are listed in the staff report. Staff recommends approval of the proposed resolution, as presented.

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With the concurrence of Council, staff was requested to place this item on the consent agenda for next week's meeting.

7. **Resolution, Amending the Town of Herndon's 2011 Legislative Program to add a Request that the Town be added to HB 1587 (Iaquinto) that Allows Two Named Cities to Create a Business License Incentive Program by way of an Up to Two Year BPOL Tax Exemption for New Businesses.**

The Town Attorney provided an overview of his memorandum to the Mayor and Town Council dated January 13, which is on file in the Town Clerk's office. He stated that the proposed resolution would amend the Town's 2011 legislative program. The proposed amendment would request the Town be added to HB 1587 (Iaquinto) as an additional named recipient of this bill's economic development authority. This bill would create an incentive program by way of an up to two-year Business and Professional License (BPOL) tax exemption for new businesses. The Town Attorney stated that on Saturday, January 15 he attended the Town Hall meeting hosted by Delegate Rust and Senator Howell, where he expressed the Town's support for this item. The Town Attorney stated that he spoke with Delegate Iaquinto's office, who told him that they would need confirmation of a Council vote to indicate the Town's formal support and to be added to this bill. He stated he would send a copy of a letter from the Mayor along with the adopted resolution to Delegate Iaquinto's office, once approved. If the bill were to fail this year in the State legislature, the Town would express its support next year. Staff recommends approval of the proposed resolution, as presented and recommends considering this item for passage tonight, because of the time constraint.

In response to queries from the Council, the Town Attorney stated that in the proposed resolution, an exemption would apply to any new business, regardless of size. Because it would be enabling legislation, the Council could change the resolution to apply in Herndon, following its passage in the General Assembly. Staff recommends not altering the legislation, but asking to be added to the bill.

Councilmember Hutchinson moved approval of Resolution 11-G-05, Amending the Town of Herndon's 2011 Legislative Program to add a Request that the Town be added to HB 1587 (Iaquinto) that Allows Two Named Cities to Create a Business License Incentive Program by Way of an Up to Two Year BPOL Tax Exemption for New Businesses. This motion was seconded by Councilmember Wolf and carried by a vote of 5-0. The vote was:

Councilmembers:

Hutchinson	yes
Merkel	absent
Olem	yes
Singh	yes
Tirrell	absent

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beginning of the fiscal year. Concern was expressed over the management of this grant money and it was suggested that the Town should take a close look at how the Visitors Center is run and consider whether it should be run by an outside organization or by the Town. A member of Council stated that organizations requesting grants should explain how their activities specifically benefit the Town and that in tight budget times, this money should go toward essential Town services.

Following brief discussion and with the concurrence of the majority of Council, staff was directed to add the request from the Herndon Sports Boosters Association at the Town Manager's suggested amount of \$25,000. The funding request from the Visitors Center was not added to the agenda.

2. **Dulles Corner/Route 28 Planning.**

The Director of Community Development stated that the Senior Project Planner was unable to attend the meeting tonight. With Council's concurrence, she requested that the update on the Ramp Improvements at the Dulles Toll Road and Route 28 be added to the next work session agenda, so the Senior Project Planner could make the presentation.

The Director of Community Development provided an overview of her memorandum to the Town Manager dated January 12, which is on file in the Town Clerk's office. She stated that at the Council's work session on November 16, 2010, staff provided an update on Loudoun County's proposal to amend their comprehensive plan designation of the area just west of Herndon, along Route 606. The Town Council agreed to revisit the proposal after the Loudoun County Planning Commission forwarded it to the Board of Supervisors, which occurred on January 7. She stated that the Comprehensive Plan Amendment is tentatively scheduled to be heard by the Loudoun County Board of Supervisors at their meeting on February 7. The Director of Community Development stated that while some of the Town's requests were incorporated, the principal amendment suggested by the Town was not fully included and staff recommends that the Mayor send a letter to Loudoun County regarding this matter. The purpose of the proposed letter would be to encourage Loudoun County to strengthen their plan and to hold development to a high standard. Staff noted that among the additional items recommended by the Loudoun County Planning Commission was the creation of a Route 28 Design Review Board.

The Director of Community Development reviewed the draft letter that would be sent to Loudoun County Board of Supervisors Chairman York and Dulles District Supervisor Miller requesting that the Town's concerns be addressed. This would include advocating for more detailed land use, transportation and site planning considerations. She requested the Council's input on this letter and questioned if they would like to send it at this time.

Following brief discussion and with the concurrence of Council, staff was directed to prepare a letter to be sent to Loudoun County, prior to their public hearing scheduled for Monday, February 7.

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3. Metrorail Area Planning Update.

The Director of Community Development presented a PowerPoint dated January 18, along with her memorandum to the Town Manager dated January 11, which are on file in the Town Clerk's office. She stated that the Town's contract with VHB for the Herndon Metrorail Station Area Plan includes a task to examine future pedestrian access to the Metrorail entrance, including both an interim and permanent solution. The memo discussed the initial concepts for a permanent Kiss and Ride at the Herndon-Monroe Metrorail Station. She stated that according to VHB's studies, the temporary drop-off would cost approximately \$1.5 million, which would include the costs of engineering, land and construction. The permanent facility could reach and exceed this amount.

The Director of Community Development reviewed several possible designs for a permanent Kiss and Ride facility, as outlined in the PowerPoint. She stated that the pedestrian access planned by the Metropolitan Washington Airports Authority (MWAA), which is the touchdown and walkway to the Herndon Parkway from the Metro, is the current plan. Unless the Town moves forward with another long-range proposal, this plan would become permanent. She stated that the first scenario VHB created would be a street/bus facility in a shared parking garage. Its location could be negotiated with the landowners during redevelopment. However, she stated that this situation would depend on a single property owner being willing to provide the space to house this facility. Staff had some concerns with this design, to include pedestrians not feeling comfortable entering a parking garage at night, the facility not being visible from the Metro Station and being expensive to build.

Scenario 2 was designed by VHB and would be a Kiss and Ride with on-street parking, an on-street bus pull-off and a taxi stand. This scenario most closely resembles Area Plans 1 and 2. The Director of Community Development stated that in this plan, buses would turn in at the loop, which would be easily seen by pedestrians and would be accessible to both pedestrians and vehicles. Passenger cars would be able to park temporarily in angled parking spots in the loop, which would include a 64-foot wide green space. Traffic could only flow one way in and out of the Kiss and Ride, which could help with safety concerns. She stated that the Town would have to work with several property owners in this situation, who would share the land and expenses.

Scenario 3 was designed by VHB and would be a temporary Kiss and Ride facility made into a long-term design. It would include a bus pull-off and standing spaces on Herndon Parkway, an area for taxis, with an optional canopy over the sidewalk. This design would have the least impact on private property, as it would not require additional roadway or pedestrian improvements and would take up the least amount of space. The Town would have to consider whether it would want the parking lot included in this design or not. The Director of Community Development stated that there are several negatives associated with this particular plan, including that it would not be very visible from the Metro Station.

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MWAA created the final proposed Kiss and Ride design, which would closely resemble most MWAA-planned access points. The Director of Community Development stated that staff was glad to see that MWAA submitted this design, which demonstrates that they are aware a long-term facility is needed in this area. This scenario would have the same location as the pedestrian/plaza mode that VHB designed, but would pull the bus off the street into a bus loop. There would be a Park and Ride lot and a small civic space could be included. This design would take up a significant amount of land and staff does not see much benefit to this scheme over the similar one drawn by VHB, which is more pedestrian friendly. The Director of Community Development requested the Council's input and asked the Council to select a design to recommend to the Planning Commission to use going forward with the study.

In response to queries from Council, the Director of Community Development stated that the designs were not finalized and the width of the Kiss and Ride area in Scenario 2 would depend on the height of the surrounding buildings. The design also would depend on the number of expected trips per day, which has to be calculated. VHB would consider the comments made this evening in their continuing study of the Metro Area.

Following brief discussion and with the concurrence of Council, staff was directed to advise the Planning Commission that Scenario 2 for the Kiss and Ride design would be preferred. Staff was directed to verify that the consultants accounted for all pedestrian concerns in this plan. Staff was requested to make the Kiss and Ride as narrow as possible to limit the amount of land developers would have to provide for the facility.

ROUNDTABLE

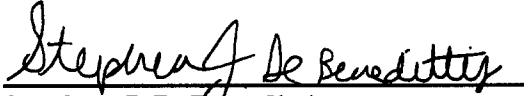
1. Mayor DeBenedittis –

Joint Work Session – Mayor DeBenedittis stated that there would be a joint work session with the Council and Planning Commission on the future Herndon-Monroe Metrorail Station scheduled for Friday, January 21, beginning at 1:00 p.m. on the ground floor of the Herndon-Fortnightly Library.

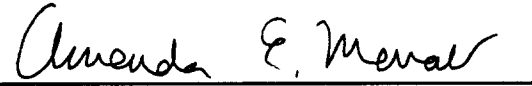
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ADJOURNMENT

There being no further business, the meeting adjourned 11:38 p.m.



Stephen J. DeBenedittis
Mayor



Amanda E. Morrow
Legislative Assistant

Minutes approved by Town Council: March 22, 2011.