Responses to Questions regarding Reston Master Plan Special Study Task Force and the Virginia Freedom of Information Act (FOIA)

February 23, 2010

*** This question comes directly from a Task Force member - "The Task Force has primary members and alternates. Each pair represents one seat (one vote) on the Task Force. If a primary and his alternate speak with another primary and/or her alternate, only two seats/votes would be a party to the discussion. It seems to me that should not constitute a violation of the open meetings law, which is designed to prevent business from being done by 3 or more voting members outside the context of a public meeting. (There may be an analogy between an alternate and a staff member; when the primary is present, the alternate has no more power than a staff member and his/her joining a discussion between two primaries should not pose a problem.) Would you please ask for guidance on this."**

A primary member and his or her alternate should be considered two separate members of the Task Force, and therefore each should be individually counted as members of the public body when determining whether a gathering of the primary members and alternate members constitutes a "meeting" of the Task Force subject to the requirements of FOIA. Any gathering of more than two members of a public body is a meeting if the members are discussing the public body's business, regardless of whether a vote is taken or whether a decision is made. Va. Code Ann. § 2.2-3701.

*** The Reston Planning and Zoning Committee (P&Z) has 5 members who are primary members on the Task Force. So, it appears that any P&Z meeting where the special study is on the agenda and the Task Force members are in attendance would also be considered a Task Force meeting. The P&Z members have asked if, since their meetings are open to the public and they have set meeting dates and times which are posted on the Reston Association website, they want to discuss the study, are they able to do so as long as the discussion is listed on their agenda?**

This notice does not satisfy the requirements of FOIA with respect to the Task Force. The Task Force must give notice of the P&Z meeting at which Task Force business will be discussed as if it were a Task Force meeting. Therefore, if three or more members of the Task Force attend a P&Z meeting, and if the business of the Task Force will be discussed by the Task Force members at the P&Z meeting, then the following requirements of FOIA must be met: (1) notice of the meeting must be given, and (2) the meeting must be open to the public. Va. Code Ann. §§ 2.2-3707(A) and -3707(C). (Minutes of the meeting may be kept, but are not required, for meetings of committees appointed by a local governing body. Va. Code Ann. § 2.2-3707(I)(iv).) Simply listing on the P&Z's meeting agenda that Task Force business will be discussed does not meet the legal requirements of FOIA. Rather, the specific topics of Task Force business (i.e. the special study) must be identified in the notice.

In addition, while no agenda is required as long as the meeting is noticed for discussion of Task Force business and open to the public, any agenda packet and materials that will furnished to members of the Task Force at the P&Z meeting must be made available to the public at the same time it is made available to the Task Force. Va. Code Ann. § 2.2-3707(F).

*** In second example, the Board of the Reston Town Center Association (RTCA) is comprised of representatives for the businesses and residences in the Town Center. There are 3 members of that Board on the Task Force. The RTCA Board meetings are not open to the public. How can the TF members brief other members of the Board and engage in discussion about TF matters?**

Similar to the example above, if three or more members of the Task Force attend a RTCA meeting, and if the business of the Task Force will be discussed by the Task Force members at the RTCA meeting, then a meeting of the Task Force is taking place and the following requirements of FOIA must be met: (1) notice of the meeting must be given, and (2) the meeting must be open to the public. If the RTCA meetings are not open to the public, and if three or more Task Force members are in attendance, they **cannot** engage in discussion about Task Force matters unless they comply with FOIA. They can, however, provide a summary or report of prior Task Force meetings to the RTCA, and ideally this summary or report should be read from a prepared document. In the alternative, **two** Task Force members could attend a closed RTCA meeting and discuss the business of the Task Force without it constituting a "meeting" under FOIA.

*** As a final example, there are several community groups that have representatives on the Task Force. These community groups have been holding and plan to continue to hold community meetings that are open to the public to discuss the work of the Task Force. The Task Force members representing these groups have been attending to hear community input and engage in dialogue about what the Task Force is working on. This frequently means that more than 3 Task Force members are in attendance at these meetings (although as per the first question, in some instances, it is two primary members and one or more alternates who are attending).**

Similar to the example above, if three or more members of the Task Force attend a community group meeting and if the business of the Task Force will be discussed by the Task Force members at the meeting, then notice of the meeting must be given, and the meeting must be open to the public.

However, FOIA requirements are not triggered where two or more Task Force members attend a community group meeting strictly to gather information and listen to concerns and where they do not to engage in discussion about Task Force business. A "meeting" of a public body does not occur when two or more members of a public body gather at a public forum, such as these community group meetings, the purpose of which is for the

Task Force members to inform and not to transact Task Force business or to hold discussions relating to the Task Force business, even though the Task Force's business may be a topic of discussion at the community group meeting. See Va. Code Ann. § 2.2-3707(G). The Virginia Supreme Court has held that a "meeting" does not include a gathering of a public body for the purpose of gathering information, where the public body did not conduct public business and did not exclude the public. Nageotte v. Board of Supervisors of King George County, 223 Va. 259, 288 S.E.2d 423 (1982); see also Beck v. Shelton, 267 Va. 482, 493, 593 S.E.2d 195, 201 (2004). Nevertheless, it is advised that three or more Task Force members gathered together should take great care in avoiding not only discussing Task Force business at an unnoticed and/or closed meeting, but the *appearance* of discussing Task Force business. However, a maximum of two Task Force members could attend such a community group meeting and discuss the business of the Task Force without it constituting a "meeting" under FOIA.