

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
DECEMBER 21, 2009**

AGENDA

ACTION ITEMS

11:00	Readopted Resolution: appointments made to Phase 2 District Commission	Readoption of Resolution to Create the Phase II Dulles Rail Transportation Improvement District (Dranesville and Hunter Mill Districts)
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PUBLIC HEARINGS

11:00	Approved	Public Hearing on RZ 2009-SU-020 (Trustees of the Light Global Mission Church) (Sully District)
11:00	Approved	Public Hearing on PCA 83-C-021-02 (Trustees of the Light Global Mission Church) (Sully District)

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ACTION - 1

Readoption of Resolution to Create the Phase II Dulles Rail Transportation Improvement District (Dranesville and Hunter Mill Districts)

ISSUE:

Whether to readopt the resolution previously adopted by the Board on December 7, 2009, as required by law to create the Phase II Dulles Rail Transportation Improvement District (the "Phase II District").

RECOMMENDATION:

Subject to confirmation by County staff at the Board meeting on December 21, 2009, that the petition filed with the Clerk to the Board on October 9, 2009, asking the Board to create the Phase II District (the "Petition") still bears the signatures of at least the statutory minimum required number of landowners, the County Executive recommends that the Board (1) readopt the resolution previously adopted by the Board on December 7, 2009, in order to create the Phase II District (the "District Resolution"), and (2) appoint four members of the Board to the Commission of the Phase II District, its governing body.

TIMING:

On December 7, 2009, following a public hearing, the Board adopted three resolutions: (1) the District Resolution, (2) the "Material and Essential Understandings Resolution" that was Exhibit D to the Petition to create the Phase II District, and (3) a resolution regarding the requirements of Va. Code Ann. § 33.1-437. By law, the Phase II District will be created upon the readoption of the District Resolution at least seven business days after the first adoption. Accordingly, in order to create the Phase II District before the end of 2009, the Board must readopt the District Resolution at its meeting on December 21, 2009.

BACKGROUND:

As required by Va. Code Ann. § 33.1-431, the Petition was signed by owners of more than 51% of the commercial and industrial property within the proposed Phase II District, measured by assessed value, that would be subject to a special tax pursuant to Va. Code Ann. § 33.1-435 (a "District Tax"). Pursuant to that statute, following a public hearing on December 7, 2009, the Board adopted, among other things, the District Resolution.

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Pursuant to Va. Code Ann. § 33.1-431(D), the Phase II District is not created until the Board readopts the District Resolution at least seven business days after first adopting it. The delay is to give petitioning landowners an opportunity to withdraw their signatures from the Petition, if any so choose, and also to give additional owners of property within the proposed Phase II District an opportunity to add their signatures to the Petition. At the end of the seven business-day period, if the Petition still bears the signatures of owners of more than 51% of the commercial and industrial property within the proposed Phase II District, measured by assessed value or land area, that would be subject to the District Tax, then the Board thereafter may proceed to readopt the District Resolution.

Attachment I is the District Resolution that the Board should readopt if it wishes to create the Phase II District.

If the Phase II District is created, then per Va. Code Ann. § 33.1-433, its governing body (the "District Commission") will be composed of four members of the Board appointed by the Board, one member of the Town Council of Herndon appointed by the Council, and the Chairman of the Commonwealth Transportation Board or his or her designee, *ex officio*. Accordingly, immediately after creating the Phase II District by readopting the District resolution, the Board may appoint four of its members to the District Commission.

FISCAL IMPACT:

The fiscal impact of creating the Phase II District would consist of administrative costs associated with forming and conducting the business of the District Commission and the District Advisory Board (the property owners' advisory body, six members of which should be appointed by the Board at its meeting on January 12, 2010, if possible). Applicable law provides that the District Advisory Board members shall serve without pay, but that the District Commission may appropriate funds from district tax revenues as needed to defray the reasonable expenses and fees of the District Advisory Board, not to exceed \$20,000 annually. We also anticipate future expenses for staff and outside professionals to negotiate agreements and obligations of the Phase II District.

ENCLOSED DOCUMENTS:

Attachment I: Copy District Resolution to create the Phase II District

STAFF:

Richard Stevens, Dulles Rail Project Manager, Department of Transportation
Leonard Wales, County Debt Manager, Department of Management and Budget
James V. McGettrick, Assistant County Attorney

RESOLUTION TO CREATE THE PHASE II DULLES RAIL TRANSPORTATION IMPROVEMENT DISTRICT

At a regular meeting of the Fairfax County Board of Supervisors, held in the Board Auditorium of the Fairfax County Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on December 21, 2009, at which meeting a quorum was present and voting, the following resolution, which previously had been adopted by the Board on December 7, 2009, after giving notice by publication and after conducting a public hearing in accordance with Va. Code Ann. § 33.1-431, was readopted in public session.

WHEREAS, pursuant to Chapter 15 of Title 33.1 of the Code of Virginia, as amended (the "Act"), a petition entitled "Petition Pursuant to Virginia Code Section 33.1-431 for the Creation of the Phase II Dulles Rail Transportation Improvement District," filed on October 9, 2009 (the "Petition"), was presented to the Board of Supervisors of Fairfax County, Virginia, in public session on October 19, 2009; and

WHEREAS, the Petition requests that the Board create a transportation improvement district in the area of the Dulles Airport Access and Toll Road ("DAATR") generally from its intersection with Wiehle Avenue west to its intersection with the boundary of Loudoun County, and encompassing properties near the DAATR both north and south of its right-of-way, all as shown by Exhibit A to the Petition, which includes some properties located within the Town of Herndon; and

WHEREAS, the petitioners include the owners of at least fifty-one percent of the assessed value of taxable real property that is within the boundaries of the proposed district and has been zoned for commercial or industrial use or is used for such purposes as provided in the Act; and

WHEREAS, the Petition contains all of the elements required by Va. Code Ann. § 33.1-431(B), to-wit, it sets forth the name and describes the boundaries of the proposed district, describes the transportation improvements proposed within the district, proposes a plan for providing such transportation improvements within the district and describes specific terms and conditions with respect to all commercial and industrial zoning classifications and uses, densities, and criteria related thereto that the petitioners request for the proposed district, describes the benefits that can be expected from the provision of

such transportation improvements within the district, and requests the Board of Supervisors to establish the proposed district for the purposes set forth in the Petition; and

WHEREAS, pursuant to Va. Code Ann. § 33.1-431(C), at its regular meeting on October 19, 2009, the Board of Supervisors authorized public notice to be given (the "Public Notice") of a public hearing to be held on December 7, 2009, on the question of whether to create the district as proposed by the Petition (the "Public Hearing"); and

WHEREAS, pursuant to Va. Code Ann. § 33.1-431(C), a copy of the Petition and Public Notice was sent to the Town Council of Herndon, which thereafter adopted a resolution authorizing permitting property within the Town to be included in the district as proposed by the Petition and caused a copy of that resolution to be delivered to the Board of Supervisors; and

WHEREAS, pursuant to Va. Code Ann. § 33.1-431(C), the Public Hearing has been held by the Board of Supervisors, following Public Notice as required by that statute, on the question of whether the proposed district shall be created, said notice specifying that the hearing shall consider whether the residents and owners of real property within the proposed district would benefit from the establishment of the proposed district, and all interested persons who either reside in or own taxable real property within the proposed district were given the right to appear at the public hearing and show cause why any property or properties should not be included in the proposed district; and

WHEREAS, the Board of Supervisors finds that the creation of the proposed district as proposed by the Petition would be in furtherance of the County's comprehensive plan for the development of the area, would be in the best interests of the residents and owners of real property within the proposed district, and would be in furtherance of the public health, safety, and welfare;

NOW, THEREFORE, BE IT RESOLVED:

1. The Board hereby creates the Phase II Dulles Rail Transportation Improvement District (the "Phase II District") as shown on the documents contained in the Petition for the purposes set forth in the Petition.

2. An advisory board shall be appointed in accordance with the Act within 30 days of the date of final adoption of this Resolution creating the District.

3. The commercial and industrial zoning classifications in the Zoning Ordinance of Fairfax County that are in force in the Phase II District (but not including that portion of the Phase II District that is located in the Town of Herndon, which has adopted its own zoning ordinance) at the time of its creation include (i) the C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, I-1, I-2, I-3, I-4, I-5, and I-6 zoning districts, and (ii) commercial and industrial uses located in any other zoning district that are either (a) lawfully in existence or permitted as a matter of right in such other zoning district as of the date that the Phase II District is created or (b) approved as of the date that the Phase II District is created and for which such approval is not allowed to lapse. The specific terms and conditions of these zoning classifications are contained in the Zoning Ordinance of Fairfax County in effect on the date the Phase II District is created, which terms and conditions, and all proffers and conditions that are applicable to individual parcels of land controlled by a commercial or industrial zoning classification within the Phase II District, as defined above, at the time the Phase II District is created, are incorporated herein by this reference. These specific terms and conditions, together with any related criteria set forth in the County's Zoning Ordinance, Subdivision Ordinance, Public Facilities Manual, or any other applicable development-related provision in the Fairfax County Code in effect at the time the Phase II District is created, shall remain in force within the Phase II District for a period of either 20 years from the date the Phase II District is created or until the Phase II District is abolished in accordance with the Act, whichever occurs earlier, without elimination, reduction, or restriction except (i) upon the written request or approval of the owner of any property affected by the change, (ii) as required to comply with the provisions of the Chesapeake Bay Preservation Act (Va. Code Ann. § 10.1-2100 et seq.) or the regulations adopted pursuant thereto, (iii) as required to comply with the provisions of the federal Clean Water Act (33 U.S.C. § 1342(P)) and regulations promulgated thereunder by the federal Environmental Protection Agency, or (iv) as specifically required to comply with any other state or federal law.

4. The Phase II District shall expire either (i) fifty years from the date of final adoption of this Resolution or (ii) when the Phase II District is abolished in accordance with the Act.

GIVEN under my hand this ____ day of December, 2009.

Nancy Vehrs
Clerk to the Board of Supervisors

Board Agenda Item
December 21, 2009

11:00 a.m.

Public Hearing on RZ 2009-SU-020 (Trustees of the Light Global Mission Church) to Rezone from PDC, HC and WS to PDC, HC and WS to Amend Mixed Use Development to Include an Independent Living Facility with an Overall Floor Area Ratio of 0.26, Located on Approximately 28.02 Acres, Sully District

and

Public Hearing on PCA 83-C-021-02 (Trustees of the Light Global Mission Church) to Amend the Proffers for RZ 83-C-021 Previously Approved for Mixed Use Development to Delete Land Area, Located on Approximately 28.02 Acres Zoned PDC, HC and WS, Sully District

The application property is located in the northwest quadrant of the intersection of Fair Ridge Drive and Lee Jackson Memorial Highway, Tax Map 46-3 ((1)) 15A1, 15A2 and 15A3.

PLANNING COMMISSION RECOMMENDATION:

On Thursday, November 19, 2009, the Planning Commission voted unanimously (Commissioner Alcorn not present for the votes; Commissioners Hall, Lusk, and Sargeant absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 83-C-021-2;
- Approval of RZ 2009-SU-020, subject to the execution of proffers consistent with those dated November 17, 2009;
- Modification of the transitional screening requirements to the north and west to allow the use of existing vegetation and to that shown on the CDP/FDP;
- Modification of Par. 5 of Sect. 6-206 to permit secondary uses in a PDC District to exceed 50 percent;
- Reaffirmation of a modification of transitional screening and waiver of barrier requirements to the south, in favor of that shown on the CDP/FDP; and
- Reaffirmation of a waiver of the service drive along Route 50.

The Planning Commission voted 8-0-1 (Commissioner Harsel abstaining; Commission Alcorn not present for the vote; Commissioners Hall, Lusk, and Sargeant absent from the meeting) to recommend that the Board modify Additional Standard 1 (Par. 1 of Sect. 9-306) to permit a reduction in the minimum age requirement from 62 to 55 years of age.

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The Commission voted unanimously (Commissioner Alcorn not present for the vote; Commissioners Hall, Lusk, and Sargeant absent from the meeting) to approve FDP 2009-SU-020, subject to the Board's approval of RZ 2009-SU-020, and subject also to the Development Conditions dated November 18, 2009, with Condition #1 modified to delete the words "as raised crosswalks".

ENCLOSED DOCUMENTS:

None. Staff Report previously furnished.

STAFF:

Regina Coyle, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Tracy Strunk, Senior Staff Coordinator, Zoning Evaluation Division, DPZ