FAIRFAX COUNTY
BOARD OF SUPERVISORS
February 20, 2018

AGENDA

8:30		Reception for Developmental Disabilities Inclusion Month, J. Lambert Conference Center, Reception Area
9:30		Presentations
10:00		Report on General Assembly Activities
10:10		Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups
10:20		County Executive's Presentation of the Proposed FY 2019 and FY 2020 Multi-Year Budget Plan
10:50		Items Presented by the County Executive
	ADMINISTRATIVE ITEMS	
1		Authorization to Advertise a Public Hearing to Consider Amendment to The Code of the County of Fairfax, Virginia – Chapter 4 (Taxation and Finance) to Add a New Article 28 to Provide a Real Estate Tax Exemption for Surviving Spouses of Certain Persons Killed in the Line of Duty
2		Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program (Mason District)
3		Authorization to Advertise a Public Hearing to Lease County-Owned Property at 6140 Rolling Road to New Cingular Wireless PCS, LLC (Springfield District)
	ACTION ITEMS	
1		Approval of License Agreement with the Gum Springs Historical Society for the Use of Space within Gum Springs Community Center (Mount Vernon District)
2		Approval of License Agreement with the Southeast Fairfax Development Corporation for the Use of Space within the South County Building at 8350 Richmond Highway (Lee District)
3		Authorization to Waive the Option to Purchase One Workforce Dwelling Unit at Sunrise Square (Hunter Mill District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
February 20, 2018

ACTION ITEMS
(Continued)

4 Authorization for the Fairfax County Redevelopment and Housing Authority (FCRHA) to Make Loans to Wesley Housing Development Corporation from Housing Blueprint Funds for the Construction of The Arden, Located at 2317 Huntington Avenue, Alexandria, VA (Mount Vernon District)

5 Approval of Adjustment of the Land Development Services Unit Price Schedule (UPS) that is Used to Determine Development Agreement Bond Amounts

6 Approval of Adjustment to Fairfax Center, Centreville, Tysons, Tysons-Wide, Tysons Grid of Streets, and Reston Road Funds and Approval of Route 7 Alternatives Analysis (Dranesville, Springfield, Hunter Mill, Braddock, Sully, and Providence Districts)

7 Approval of a Project Agreement Between the Department of Rail and Public Transportation and the County of Fairfax for the Provision of Funding Transit Oriented Development Planning for the Richmond Highway Corridor (Lee and Mount Vernon Districts)

8 Refinancing Virginia Railway Express' 2007 Railroad Rehabilitation and Improvement Financing (RRIF) Loan for the Purchase of Sixty Gallery Railcars

9 Approval of a Resolution Endorsing Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2018 to FY 2023 Regional Funding (Providence and Dranesville Districts)

10 Approval of Project Agreements Between the Department of Rail and Public Transportation (DRPT) and Fairfax County to Provide Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality Improvement (CMAQ) Program Funds for Operation of Five Connector Stores

CONSIDERATION ITEMS

1 Proffer Interpretation Appeal Associated with The Reserve at Tysons Corner Related to Proffers Accepted for RZ/FDP 2003-PR-008

INFORMATION ITEMS

1 Economic Success Strategic Plan Performance Measures & Indicators, Actions Tracker, and Fall 2017 Update

FAIRFAX COUNTY
BOARD OF SUPERVISORS
February 20, 2018

	INFORMATION ITEMS (Continued)	
2		Recognition of Comprehensive Annual Financial Reports and the Annual Budget by the Government Finance Officers Association; Performance Measurement Program by the International City/County Managers Association
11:00		Matters Presented by Board Members
11:30		Closed Session
	PUBLIC HEARINGS	
3:30		Decision Only on PRC-C-378 (Kensington Senior Development, LLC) (Hunter Mill District)
3:30		Decision Only on SE 2016-HM-024 (Kensington Senior Development, LLC) (Hunter Mill District)
3:30	**To be deferred to March 20, 2018 at 3:30 p.m.**	Public Hearing on SE 2015-DR-027 (Mahlon A. Burnette, III and Mary H. Burnette) (Dranesville District)
3:30		Public Hearing on AR 2010-SP-001 (Charles R. and Katherine Armstrong) (Springfield District)
3:30		Public Hearing on RZ 2010-PR-023 (The Mitre Corporation) (Providence District)
3:30		Public Hearing on PCA 2011-PR-011 (The Mitre Corporation) (Providence District)
3:30		Public Hearing on SE 2010-PR-034 (The Mitre Corporation) (Providence District)
3:30		Public Hearing on PCA 2012-MV-008 (FPRP Development Inc.) (Mount Vernon District)
3:30		Public Hearing on PRC 76-C-111-02 (Fairfax County School Board) (Hunter Mill District)
3:30		Public Hearing on RZ 2016-MV-028 (L & F Workhouse, LLC) (Mount Vernon District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
February 20, 2018

PUBLIC HEARINGS (Continued)

4:00	Public Hearing on Proposed Plan Amendment 2017-II-M1, Located North of Lowell Avenue, East of Emerson Avenue, and Southwest of Old Dominion Drive (Dranesville District)
4:00	Public Hearing to Consider Parking Restrictions on Howard Avenue (Providence District)
4:00	Public Hearing to Consider Adopting an Ordinance Expanding the Greenway Downs Residential Permit Parking District, District 13 (Providence District)
4:00	Public Hearing to Consider Parking Restrictions on Javier Road (Providence District)
4:00	Public Hearing to Consider Adopting an Ordinance Expanding the Culmore Residential Permit Parking District, District 9 (Mason District)
4:00	Public Hearing on Proposed Amendments to Chapter 112 (Zoning Ordinance) and Appendix Q (Land Development Services Fee Schedule) of the Code of the County of Fairfax, Virginia (County Code) Re: Parking Requirements and Reductions
4:30	Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Project 5G25-06-000, Pedestrian Improvements - 2014, Fund 30050, Transportation Improvements at the Columbia Pike/Gallows Rd. Intersection (Mason District)
4:30	Public Hearing on SEA 96-L-034-05 (Greenspring Village, Inc.) (Lee District)
4:30	Public Comment

Fairfax County, Virginia

BOARD OF SUPERVISORS AGENDA

Tuesday
February 20, 2018

9:30 a.m.

PRESENTATIONS

SPORTS AND SCHOOLS

- CERTIFICATE – To recognize the Westfield High School Field Hockey Team for winning the state championship. Requested by Supervisor Smith.

- CERTIFICATE – To recognize the Westfield High School Football Team for winning the state championship. Requested by Supervisor Smith.

DESIGNATIONS

- PROCLAMATION – To designate March 2018 as Developmental Disabilities Awareness Month in Fairfax County. Requested by Chairman Bulova.

- PROCLAMATION – To designate February 2018 as Teen Dating Violence Awareness Month in Fairfax County. Requested by Chairman Bulova.

- PROCLAMATION – To designate March 2018 as TB Awareness Month in Fairfax County. Requested by Chairman Bulova.

— more —

Board Agenda Item
February 20, 2018

RECOGNITIONS

- RESOLUTION – To congratulate the Saunders B. Moon Citizens Club for its 52nd anniversary. Requested by Supervisor Storck.

STAFF:
Tony Castrilli, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs
Lisa Connors, Office of Public Affairs

Board Agenda Item
February 20, 2018

10:00 a.m.

Report on General Assembly Activities

ENCLOSED DOCUMENTS:
None. Materials to be distributed to the Board of Supervisors on February 20, 2018 and printed copy available for review in the Office of the Clerk to the Board.

PRESENTED BY:
Supervisor Jeff McKay, Chairman, Board of Supervisors' Legislative Committee
Bryan J. Hill, County Executive

Board Agenda Item
February 20, 2018

10:10 a.m.

Board Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups

ENCLOSED DOCUMENTS:
Attachment 1: Appointments to be heard February 20, 2018
(An updated list will be distributed at the Board meeting.)

STAFF:
Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

February 20, 2018

NOTE: A revised list will be distributed immediately prior to the Board meeting.

APPOINTMENTS TO BE HEARD FEBRUARY 20, 2018

(ENCOMPASSING VACANCIES PROJECTED THROUGH FEBRUARY 28, 2018)

(Unless otherwise noted, members are eligible for reappointment)

A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE (1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
Clifford L. Fields (Appointed 1/96-1/03 by Hanley; 1/04-1/08 by Connolly, 2/09-3/17 by Bulova) Term exp. 1/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Ronald Copeland (Appointed 1/05-1/17 by Hudgins) Term exp. 1/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Eileen J. Garnett (Appointed 1/03-2/17 by Gross) Term exp. 1/18	Mason District Representative		Gross	Mason
Ernestine Heastie (Appointed 2/04-1/17 by L. Smyth) Term exp. 1/18	Providence District Representative	**Ernestine Heastie**	L. Smyth	Providence
Philip E. Rosenthal (Appointed 1/92-2/08 by McConnell, 1/09-2/17 by Herrity) Term exp. 1/18	Springfield District Representative		Herrity	Springfield

ADVISORY SOCIAL SERVICES BOARD
(4 years – limited to 2 full consecutive terms)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Francine Ronis; appointed 2/16 by L. Smyth) Term exp. 9/17 *Resigned*	Providence District Representative		L. Smyth	Providence

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Mark Drake (Appointed 2/09-5/12 by McKay) Term exp. 5/16	Engineer/Architect/ Planner #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 *Resigned*	Lending Institution Representative		By Any Supervisor	At-Large

AIRPORTS ADVISORY COMMITTEE (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by George Page; appointed 1/05-1/16 by Hudgins) Term exp. 1/19 *Resigned*	Hunter Mill Business Representative		Hudgins	Hunter Mill
Sherri D. Jordan (Appointed 10/08-1/15 by Hyland) Term exp. 1/18	Mount Vernon District Representative		Storck	Mount Vernon

ANIMAL SERVICES ADVISORY COMMISSION (2 years)
[Note: In addition to attendance at Commission meetings, members shall volunteer at least 24 hours per year in some capacity for the Animal Services Division.]

Incumbent History	Requirement	Nominee	Supervisor	District
Philip S. Church (Appointed 6/01-2/02 by Hanley; 2/04-2/08 by Connolly; 2/10-2/16 by Bulova) Term exp. 2/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Linda L. Bartlett (Appointed 3/10-2/16 by Cook) Term exp. 2/18	Braddock District Representative	**Linda L. Bartlett**	Cook	Braddock
Diane D'Arcy (Appointed 3/08-2/16 by Foust) Term exp. 2/18	Dranesville District Representative		Foust	Dranesville
Lucinda Stewart (Appointed 9/06-2/16 by Hudgins) Term exp. 2/18	Hunter Mill District Representative		Hudgins	Hunter Mill
Larry A. Jackson (Appointed 2/10-2/16 by McKay) Term exp. 2/18	Lee District Representative		McKay	Lee
Gina Marie Lynch (Appointed 11/97-3/14 by Hyland; 1/17 by Storck) Term exp. 2/18	Mount Vernon District Representative	**Gina Marie Lynch**	Storck	Mount Vernon
Allison Volpert (Appointed 1/05-4/16 by L. Smyth) Term exp. 2/18	Providence District Representative		L. Smyth	Providence

Continued on next page

ANIMAL SERVICES ADVISORY COMMISSION (2 years)
continued

Incumbent History	Requirement	Nominee	Supervisor	District
Harley Methfessel (Appointed 2/12-2/16 by Herrity) Term exp. 2/18	Springfield District Representative		Herrity	Springfield
Bernadette Carter (Appointed 4/16 by K. Smith) Term exp. 2/18	Sully District Representative		K. Smith	Sully

ARCHITECTURAL REVIEW BOARD (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (John Boland; appointed 2/91-9/95 by Dix; 7/01 by Mendelsohn; 9/04-9/07 by DuBois; 9/10-9/13 by Foust) Term exp. 9/16 *Resigned*	Attorney Representative		By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Terry Adams; appointed 11/11-7/13 by Gross) Term exp. 6/15	Mason District Alternate Representative		Gross	Mason
Mr. Chip Chidester (Appointed 3/10-10/15 by Bulova) Term exp. 10/17	Member-At-Large Alternate Representative		Bulova	At-Large Chairman

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE
(1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Judith Fogel; appointed 6/12-5/15 by Gross) Term exp. 6/16 Resigned	Mason District Representative		Gross	Mason
VACANT (Formerly held by Joshua D. Foley; appointed 9/13-6/16 by Herrity) Term exp. 6/17 *Resigned*	Springfield District Representative		Herrity	Springfield

BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS (4 years)
(No official, technical assistant, inspector or other employee of the DPWES, DPZ, or FR shall serve as a member of the board.)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Susan Kim Harris; appointed 5/09-2/11 by Hudgins) Term exp. 2/15 *Resigned*	Alternate #4 Representative		By Any Supervisor	At-Large
Gita Amiri (Appointed 2/12-2/14 by Frey) Term exp. 2/18	Design Professional #6 Representative		By Any Supervisor	At-Large

BOARD OF EQUALIZATION OF REAL ESTATE ASSESSMENTS (BOE) (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Thomas Parr; appointed 12/04-12/08 by Connolly; 12/10-12/16 by Bulova) Term exp. 12/18 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large

CHESAPEAKE BAY PRESERVATION ORDINANCE EXCEPTION REVIEW COMMITTEE (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Grant Sitta; appointed 9/10-9/15 by Gross) Term exp. 9/19 *Resigned*	Mason District Representative		Gross	Mason

CHILD CARE ADVISORY COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Janet M. Reimer (Appointed 3/10-3/16 by Bulova) Term exp. 2/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Mercedes O. Dash (Appointed 3/15 by L. Smyth) Term exp. 9/17	Providence District Representative		L. Smyth	Providence
VACANT (Formerly held by Hugh Mac Cannon; appointed 12/09-9/14 by Herrity) Term exp. 9/16 *Resigned*	Springfield District Representative		Herrity	Springfield

CIVIL SERVICE COMMISSION (2 years)

[NOTE: The Commission shall include at least 3 members who are male, 3 members who are female, and 3 members who are from a member of a minority group.]

Current Membership: Males - 9 Females – 3 Minorities: 5

Incumbent History	Requirement	Nominee	Supervisor	District
Rosemarie Annunziata (Appointed 10/05-1/08 by Connolly; 12/09-1/16 by Bulova) Term exp. 12/17	At-Large #3 Representative		By Any Supervisor	At-Large
Patrick Morrison (Appointed 10/05-3/16 by Bulova) Term exp. 12/17	At-Large #7 Representative		By Any Supervisor	At-Large

COMMISSION FOR WOMEN (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Reena Desai; appointed 7/16 by Hudgins) Term exp. 10/18 *Resigned*	Hunter Mill District Representative		Hudgins	Hunter Mill

COMMISSION ON AGING (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Robert Kuhns; appointed 2/15 by Hyland; 9/16 by Storck) Term exp. 9/18 *Resigned*	Mount Vernon District Representative		Storck	Mount Vernon

COMMUNITY ACTION ADVISORY BOARD (CAAB)
(3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Douglas Dane (Appointed 2/09-3-15 by Bulova) Term exp. 2/18	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Michelle C. Jefferson (Appointed 4/14-3/15 by Cook) Term exp. 2/18	Braddock District Representative	**Michelle C. Jefferson**	Cook	Braddock
Benjamin Zuhl (Appointed 6/13-3/15 by Foust) Term exp. 2/18	Dranesville District Representative		Foust	Dranesville
Florine S. Murphy (Appointed 9/17 by McKay) Term exp. 2/18	Lee District Representative		McKay	Lee
Philip Rosenthal (Appointed 1/01-2/06 by McConnell; 2/09-6/15 by Herrity) Term exp. 2/18	Springfield District Representative		Herrity	Springfield

CONSUMER PROTECTION COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Hung Nguyen; appointed 3/04-7/06 by Connolly; 7/09-6/15 by Bulova) Term exp. 7/18 *Resigned*	Fairfax County Resident #9 Representative	**Abrar Omeish** (Bulova)	By Any Supervisor	At-Large

CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Ricardo Coleman (Appointed 9/16 by Gross) Term exp. 2/18	Mason District Representative		Gross	Mason

ECONOMIC ADVISORY COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Frank McDermott (Appointed 6/09-12/14 by Bulova) Term exp. 12/17	At-Large #4 Chairman's Land Use Representative	**Frank McDermott**	Bulova	At-Large Chairman's
Peter G. Hartmann (Appointed 2/09-11/14 by Bulova) Term exp. 12/17	At-Large Chairman's #1 Representative		Bulova	At-Large Chairman's
VACANT (Formerly held by Mark Silverwood; appointed 1/09-11/14 by Hudgins) Term exp. 12/17 *Resigned*	Hunter Mill District Representative		Hudgins	Hunter Mill
John Harrison (Appointed 2/09-11/14 by L. Smyth) Term exp. 12/17	Providence District Representative		L. Smyth	Providence

FAIRFAX AREA DISABILITY SERVICES BOARD
(3 years- limited to 2 full consecutive terms per MOU, after initial term)

[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.

Incumbent History	Requirement	Nominee	Supervisor	District
Timothy W. Lavelle (Appointed 4/09-12/14 by Bulova) Term exp. 11/17 ***Not eligible for reappointment***	At-Large #2 Business Community Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Harriet Epstein; appointed 5/10-12/16 by L. Smyth) Term exp. 11/19 *Resigned*	Providence District Representative		L. Smyth	Providence

FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL
(2 years)

CONFIRMATIONS NEEDED:

- Ms. Christy Zeitz as a Long Term Care Provider Representative

FAIRFAX COUNTY CONVENTION AND VISITORS CORPORATION BOARD OF DIRECTORS (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Theresa L. Fox; appointed 1/06-5/14 by Gross) Term exp. 6/17 *Resigned*	Mason District Representative		Gross	Mason

HEALTH CARE ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Chafiq Moummi; appointed 1/17 by McKay) Term exp. 6/20 *Resigned*	Lee District Representative		McKay	Lee

HEALTH SYSTEMS AGENCY BOARD (3 years - limited to 2 full terms, may be reappointed after 1 year lapse)

Incumbent History	Requirement	Nominee	Supervisor	District
Richard T. Hartman (Appointed 2/14 by Bulova) Term exp. 6/17	Consumer #1 Representative		By Any Supervisor	At-Large

HISTORY COMMISSION (3 years)

[NOTE: The Commission shall include at least one member who is a resident from each supervisor district.] Current Membership:

Braddock - 3	Lee - 2	Providence - 1
Dranesville - 2	Mason - 1	Springfield - 2
Hunter Mill - 3	Mt. Vernon - 2	Sully - 2

Incumbent History	Requirement	Nominee	Supervisor	District
Esther W. McCullough (Appointed 3/00-11/02 by Hanley; 12/05-12/08 by Connolly; 3/12-9/15 by Bulova) Term exp. 12/17 *Sully District resident*	Citizen #10 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Naomi D. Zeavin; appointed 1/95 by Trapnell; 1/96-11/13 by Gross) Term exp. 12/16 *Mason District Resident Resigned*	Historian #1 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Daoud Khairallah (Appointed 11/05-9/14 by Gross) Term exp. 9/17	At-Large #8 Representative		By Any Supervisor	At-Large
Mona Malik (Appointed 4/14-9/14 by Bulova) Term exp. 9/17	At-Large #9 Representative	**Mona Malik** (Bulova)	By Any Supervisor	At-Large

HUMAN SERVICES COUNCIL (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Adrienne M. Walters; appointed 3/14 by L. Smyth) Term exp. 7/17 *Resigned*	Providence District #2 Representative		L. Smyth	Providence

MOSAIC DISTRICT COMMUNITY DEVELOPMENT AUTHORITY (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Gary Hurst; appointed 1/10-2/16 by L. Smyth) Term exp. 1/20 *Resigned*	Developer Representative		By Any Supervisor	At-Large

OVERSIGHT COMMITTEE ON DISTRACTED AND IMPAIRED DRIVING (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by William Uehling; appointed 3/10-7/12 by Bulova) Term exp. 6/15 *Resigned*	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 Resigned	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 Resigned	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Jeffrey Levy; Appointed 7/02-6/13 by Hyland) Term exp. 6/16 Resigned	Mount Vernon District Representative		Storck	Mount Vernon
VACANT (Formerly held by Tina Montgomery; appointed 9/10-6/11 by L. Smyth) Term exp. 6/14 Resigned	Providence District Representative		L. Smyth	Providence

PARK AUTHORITY (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Mary Cortina; appointed 2/13-1/16 by Bulova) Term exp. 12/19 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Walter L. Alcorn; appointed 7/15 by Bulova) Term exp. 12/17 *Resigned*	At-Large #2 Representative		By Any Supervisor	At-Large

POLICE CIVILIAN REVIEW PANEL - (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Hansel Aguilar (Appointed 2/17) Term exp. 2/18	Seat #1 Representative		By Any Supervisor	At-Large
Holly Doane (Appointed 2/17) Term exp. 2/18	Seat #4 Representative		By Any Supervisor	At-Large
Rhonda VanLowe (Appointed 2/17) Term exp. 2/18	Seat #9 Representative		By Any Supervisor	At-Large

RESTON TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD
The Board of Supervisors established the advisory board on April 4, 2017
There will be a total of 14 members on this advisory board. The appointees would serve for 4 year terms from April 4, 2017

Incumbent History	Requirement	Nominee	Supervisor	District
NEW POSITION	Residential Owners and HOA/Civic Association #1 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #2 Representative		Foust or Hudgins	At-Large
NEW POSITION	Residential Owners and HOA/Civic Association #3 Representative		Foust or Hudgins	At-Large
VACANT (Formerly held by Tyler Aaron Hall; appointed 9/17 by Hudgins) Term exp. 9/21 *Resigned*	Apartment or Rental Owner Associations Representative		Hudgins	At-Large

ROAD VIEWERS BOARD (1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/14 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by L. Smyth) Term exp. 12/12 *Resigned*	At-Large #4 Representative		By Any Supervisor	At-Large

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Patrick Fogarty; appointed 12/16 by Storck) Term exp. 12/17 *Resigned*	Mount Vernon District Representative		Storck	Mount Vernon

SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Linda Diamond; appointed 3/07-4/13 by Hudgins) Term exp. 3/15 *Resigned*	Fairfax County #8 Representative		By Any Supervisor	At-Large

TENANT LANDLORD COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Michael Congleton; appointed 7/13-2/17 by Herrity) Term exp. 1/20 *Resigned*	Citizen Member #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by L. Smyth) Term exp. 1/14 *Deceased*	Condo Owner Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Angelina Panettieri; appointed 6/11-1/15 by L. Smyth) Term exp. 1/18	Tenant Member #1 Representative		By Any Supervisor	At-Large

TRAILS AND SIDEWALKS COMMITTEE (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Steve Descano (Appointed 7/15 by Gross) Term exp. 1/18 Resigned	Mason District Representative		Gross	Mason
Peter Christensen (Appointed 2/06-3/14 by Hyland; 1/16 by Storck) Term exp. 1/18	Mount Vernon District Representative		Storck	Mount Vernon
Nora Perry (Appointed 5/16 by K. Smith) Term exp. 1/18	Sully District Representative		K. Smith	Sully

TREE COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Thomas D. Fleury (Appointed 1/17 by L. Smyth) Term exp. 10/17	Providence District Representative		L. Smyth	Providence

TRESPASS TOWING ADVISORY BOARD (3 years)

CONFIRMATION NEEDED:

- MPO Sean Regan as the Law Enforcement #1 Representative

TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Molly Peacock; appointed 2/13-1/15 by L. Smyth) Term exp. 2/17 *Resigned*	Providence District Representative #2		L. Smyth	Providence

WETLANDS BOARD (5 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Deana M. Crumbling (Appointed 1/14 by Bulova) Term exp. 7/16	Alternate #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Glenda Booth; appointed 4/88-1/13 by Hyland) Term exp. 12/17 *Resigned*	Mount Vernon District #1 Representative		Storck	Mount Vernon

Board Agenda Item
February 20, 2018

10:20 a.m.

County Executive's Presentation of the Proposed FY 2019 and FY 2020 Multi-Year Budget Plan

ENCLOSED DOCUMENTS:
None. Materials to be distributed on February 20, 2018.

PRESENTED BY:
Bryan J. Hill, County Executive

Board Agenda Item
February 20, 2018

10:50 a.m.

Items Presented by the County Executive

ADMINISTRATIVE – 1

Authorization to Advertise a Public Hearing to Consider Amendment to The Code of the County of Fairfax, Virginia – Chapter 4 (Taxation and Finance) to Add a New Article 28 to Provide a Real Estate Tax Exemption for Surviving Spouses of Certain Persons Killed in the Line of Duty

ISSUE:
Board authorization to advertise a public hearing to consider an amendment to *The Code of the County of Fairfax*, Chapter 4 to add a new Article 28.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors authorize the advertisement of a public hearing on March 20, 2018, at 4:30 p.m., to consider adoption of the ordinance set forth in Attachment 3.

TIMING:
Board action is required on February 20, 2018 in order to provide sufficient time to advertise the public hearing on March 20, 2018.

BACKGROUND:
The Virginia Property Tax Exemption for Surviving Spouses of Police and Emergency Service Providers Amendment was on the November 8, 2016, ballot in Virginia as a legislatively referred constitutional amendment (2016 Amendment). It was approved by a wide margin.

The measure gave the Virginia General Assembly authority to enact a law that would permit localities to provide a real property tax exemption for the spouse of "any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty." A surviving spouse would only be eligible for a property tax exemption if he or she occupies a property as his or her primary place of residence and if the spouse has not remarried.

This amendment follows other Constitutional amendments. In 2010, Virginians approved an amendment that required the General Assembly to enact a law that would provide property tax exemptions to military veterans if the veteran had a 100 percent permanent and total disability related to military service. Surviving spouses were also allowed to continue to claim the exemption if they continued to keep the same property as their primary residence and did not remarry. In 2014, voters approved a Constitutional amendment that allowed the General Assembly to expand

the property tax exemption to include surviving spouses of military members killed in action.

The 2016 Amendment permitted the General Assembly to provide for a local option to exempt from taxation real property owned by the surviving spouses of law-enforcement officers, firefighters, search and rescue personnel, or emergency services personnel who were killed in the line of duty. The General Assembly provides for this local option in Article 2.5 of Chapter 32 of Title 58.1 of the Virginia Code. Article 2.5 sets forth the scope and extent of the exemption; however, unlike the other real property exemptions referenced above, the 2016 Amendment and Article 2.5 allow each individual locality to determine whether it will allow the exemption.

As part of the budget guidance for the development of the FY 2019 budget, the Board of Supervisors directed staff to pursue implementation of the option to grant real estate tax relief for surviving spouses of first responders killed in the line of duty. The attached ordinance would allow those certain persons referenced in Article 2.5 to claim the real estate tax exemption for qualifying property owned in Fairfax County. If approved, the ordinance would allow those certain persons to apply for the tax exemption in accordance with law back to January 1, 2017.

FISCAL IMPACT:
The precise fiscal impact will be dependent on the number of taxpayers who apply (and are approved) for an exemption. Assuming that 5 surviving spouses of first responders are approved for tax relief on homes using current mean values and tax rates in Fairfax County, the General Fund impact would be approximately $31,000 annually. This estimated fiscal impact has already been reflected in the FY 2019 Advertised Budget Plan. Given that the tax exemption would be applied retroactively back to January 1, 2017, a potential fiscal impact of up to $31,000 is also expected for FY 2018 and could be absorbed within the FY 2018 Adopted Budget Plan.

ENCLOSED DOCUMENTS:
Attachment 1 – Virginia Constitution Article X, Section 6B
Attachment 2 – Virginia Code § 58.1-3219.13-3219.16
Attachment 3 – Proposed Ordinance to amend Chapter 4 of the Fairfax County Code

STAFF:
Joseph M. Mondoro, Chief Financial Officer
Jaydeep “Jay” Doshi, Director, Department of Tax Administration (DTA)
Howard Goodie, Director, Real Estate Division, DTA
Laura Mills, Management Analyst, Real Estate Division, DTA

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney, Office of the County Attorney

Constitution of Virginia
Article X. Taxation and Finance

Section 6-B. Property tax exemptions for spouses of certain emergency services providers.

Notwithstanding the provisions of Section 6, the General Assembly by general law, and within the restrictions and conditions prescribed therein, may provide for a local option to exempt from taxation the real property of the surviving spouse of any law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel who was killed in the line of duty, who occupies the real property as his or her principal place of residence. The exemption under this section shall cease if the surviving spouse remarries and shall not be claimed thereafter. This exemption applies regardless of whether the spouse was killed in the line of duty prior to the effective date of this section, but the exemption shall not be applicable for any period of time prior to the effective date. This exemption applies to the surviving spouse's principal place of residence without any restriction on the spouse's moving to a different principal place of residence and without any requirement that the spouse reside in the Commonwealth at the time of death of the law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel.

The amendment ratified November 8, 2016, and effective January 1, 2017—Added a new section (6-B).

Code of Virginia
Title 58.1. Taxation
Chapter 32. Real Property Tax

§ 58.1-3219.13. Definitions.

As used in this article, unless the context requires otherwise:

"Covered person" means any person set forth in the definition of "deceased person" in § 9.1-400 whose beneficiary, as defined in § 9.1-400, is entitled to receive benefits under § 9.1-402, as determined by the Comptroller prior to July 1, 2017, or as determined by the Virginia Retirement System on and after July 1, 2017.

2017, c. 248.

Code of Virginia
Title 58.1. Taxation
Chapter 32. Real Property Tax

§ 58.1-3219.14. Exemption from taxes on property of surviving spouses of certain persons killed in the line of duty.

A. Pursuant to Article X, Section 6-B of the Constitution of Virginia, for tax years beginning on or after January 1, 2017, any county, city, or town may exempt from taxation the real property described in subsection B of the surviving spouse of any covered person who occupies the real property as his principal place of residence. If the covered person's death occurred on or prior to January 1, 2017, and the surviving spouse has a principal residence on January 1, 2017, eligible for the exemption under this section, then the exemption for the surviving spouse shall begin on January 1, 2017. If the covered person's death occurs after January 1, 2017, and the surviving spouse has a principal residence eligible for the exemption under this section on the date that such covered person dies, then the exemption for the surviving spouse shall begin on the date that such covered person dies. If the surviving spouse acquires the property after January 1, 2017, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360. No county, city, or town shall be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the surviving spouse's filing of the affidavit or written statement required by § 58.1-3219.15.

B. Those dwellings, in any locality that provides the exemption pursuant to this article, with assessed values in the most recently ended tax year that are not in excess of the average assessed value for such year of a dwelling situated on property that is zoned as single-family residential shall qualify for a total exemption from real property taxes under this article. If the value of a dwelling is in excess of the average assessed value as described in this subsection, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes. Single-family homes, condominiums, town homes, manufactured homes as defined in § 46.2-100 whether or not the wheels and other equipment previously used for mobility have been removed, and other types of dwellings of surviving spouses, whether or not the land on which the single-family home, condominium, town home, manufactured home, or other type of dwelling of a surviving spouse is located is owned by someone other than the surviving spouse, that (i) meet this requirement and (ii) are occupied by such persons as their principal place of residence shall qualify for the real property tax exemption. If the land on which the single-family home, condominium, town home, manufactured home, or other type of dwelling is located is not owned by the surviving spouse, then the land is not exempt.

For purposes of determining whether a dwelling, or a portion of its value, is exempt from county and town real property taxes, the average assessed value shall be such average for all dwellings located within the county that are situated on property zoned as single-family residential.

C. The surviving spouse shall qualify for the exemption so long as the surviving spouse does not remarry and continues to occupy the real property as his principal place of residence. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

D. A county, city, or town shall provide for the exemption from real property taxes of (i) the qualifying dwelling, or that portion of the value of such dwelling and land that qualifies for the exemption pursuant to subsection B, and (ii) with the exception of land not owned by the surviving spouse, the land, not exceeding one acre, upon which it is situated. However, if a county, city, or town provides for an exemption from or deferral of real property taxes of more than one acre of land pursuant to Article 2 (§ 58.1-3210 et seq.), then the county, city, or town shall also provide an exemption for the same number of acres pursuant to this section. A real property improvement other than a dwelling, including the land upon which such improvement is situated, made to such one acre or greater number of acres exempt from taxation pursuant to this subsection shall also be exempt from taxation so long as the principal use of the improvement is (a) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of § 58.1-3503 and as listed in § 58.1-3504 and (b) for other than a business purpose.

E. For purposes of this exemption, real property of any surviving spouse of a covered person includes real property (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. Such real property does not include any interest held under a leasehold or term of years.

F. 1. In the event that (i) a surviving spouse is entitled to an exemption under this section by virtue of holding the property in any of the three ways set forth in subsection E and (ii) one or more other persons have an ownership interest in the property that permits them to occupy the property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction the numerator of which is 1 and the denominator of which equals the total number of people having an ownership interest that permits them to occupy the property.

2. In the event that the principal residence is jointly owned by two or more individuals including the surviving spouse, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection E, then the exemption shall be prorated by multiplying the amount of the exemption by a fraction the numerator of which is the percentage of ownership interest in the dwelling held by the surviving spouse and the denominator of which is 100.

2017, c. 248.

Code of Virginia
Title 58.1. Taxation
Chapter 32. Real Property Tax

§ 58.1-3219.15. Application for exemption.

A. The surviving spouse claiming the exemption under this article shall file with the commissioner of the revenue of the county, city, or town or such other officer as may be designated by the governing body in which the real property is located, on forms to be supplied by the county, city, or town, an affidavit or written statement (i) setting forth the surviving spouse's name, (ii) indicating any other joint owners of the real property, (iii) certifying that the real property is occupied as the surviving spouse's principal place of residence, and (iv) including evidence of the determination of the Comptroller or the Virginia Retirement System pursuant to subsection A. The surviving spouse shall also provide documentation that he is the surviving spouse of a covered person and of the date that the covered person died.

The surviving spouse shall be required to refile the information required by this section only if the surviving spouse's principal place of residence changes.

B. The surviving spouse shall promptly notify the commissioner of the revenue of any remarriage.

2017, c. 248.

Code of Virginia
Title 58.1. Taxation
Chapter 32. Real Property Tax

§ 58.1-3219.16. Absence from residence.

The fact that surviving spouses who are otherwise qualified for tax exemption pursuant to this article are residing in hospitals, nursing homes, convalescent homes, or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence, so long as such real estate is not used by or leased to others for consideration.

2017, c. 248.

AN ORDINANCE AMENDING CHAPTER 4 OF THE FAIRFAX COUNTY CODE, RELATING TO REAL ESTATE TAX EXEMPTION FOR SURVIVING SPOUSES OF CERTAIN PERSONS KILLED IN THE LINE OF DUTY

Draft of January 2, 2018

AN ORDINANCE to amend the Fairfax County Code by amending Chapter 4 by adding a new Article 28 granting an exemption to the real estate tax on real property owned by surviving spouses of certain persons killed in the line of duty.

Be it ordained by the Board of Supervisors of Fairfax County:

1. That Article 28 of Chapter 4 of the Fairfax County code is adopted as follows:

CHAPTER 4 – Taxation and Finance.

Article 28. – Real Estate Tax Exemption for Property Owned by Surviving Spouses of Certain Persons Killed in the Line of Duty.

Section 4-28-1. – Definitions.

(a) For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this Section.

(1) *Average assessed value* means the average assessed value for all dwellings located within the county that are situated on property zoned as single-family residential.

(2) *Covered person* means any person set forth in the definition of "deceased person" in Va. Code § 9.1-400 whose beneficiary, as defined in Va. Code § 9.1-400, is entitled to receive benefits under Va. Code § 9.1-402, as determined by the Comptroller prior to July 1, 2017, or as determined by the Virginia Retirement System on and after July 1, 2017.

(3) *Director* means the Director of the Fairfax County Department of Tax Administration or the designated agent of the Director.

Section 4-28-2. – Exemption authorized; timing; refunds.

For tax years beginning on or after January 1, 2017, a surviving spouse of any covered person may apply for an exemption from the taxation of real estate eligible for such an exemption under this Article. In order to qualify for such an exemption, the surviving spouse of

any covered person must occupy the real property described in Section 4-28-3 as his principal place of residence. If the covered person's death occurred on or prior to January 1, 2017, and the surviving spouse has a principal residence on January 1, 2017, eligible for the exemption under this Article, then the exemption for the surviving spouse shall begin on January 1, 2017. If the covered person's death occurs after January 1, 2017, and the surviving spouse has a principal residence eligible for the exemption under this Article on the date that such covered person dies, then the exemption for the surviving spouse shall begin on the date that such covered person dies. If the surviving spouse acquires the property after January 1, 2017, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to Va. Code § 58.1-3360. Fairfax County shall not be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the surviving spouse's filing of the affidavit required by Section 4-28-7.

Section 4-28-3. – Property entitled to exemption

Those dwellings with assessed values in the most recently ended tax year that are not in excess of the average assessed value for such year shall qualify for a total exemption from real property taxes under this Article. If the value of a dwelling is in excess of the average assessed value for such year, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes. Single-family homes, condominiums, town homes, manufactured homes as defined in § 46.2-100 whether or not the wheels and other equipment previously used for mobility have been removed, and other types of dwellings of surviving spouses, whether or not the land on which the single-family home, condominium, town home, manufactured home, or other type of dwelling of a surviving spouse is located is owned by someone other than the surviving spouse, that (i) meet this requirement and (ii) are occupied by such persons as their principal place of residence shall qualify for the real property tax exemption. If the land on which the single-family home, condominium, town home, manufactured home, or other type of dwelling is located is not owned by the surviving spouse, then the land is not exempt.

Section 4-28-4. – Effect of surviving spouse remarrying or moving to a new residence.

The surviving spouse shall qualify for the exemption so long as the surviving spouse does not remarry and continues to occupy the real property as his principal place of residence. The exemption applies without any restriction on the spouse's moving to a different principal place of residence.

Section 4-28-5. – Scope of Exemption.

The exemption shall apply to real property taxes of (i) the qualifying dwelling, or that portion of the value of such dwelling and land that qualifies for the exemption pursuant to Section 4-28-3, and (ii) with the exception of land not owned by the surviving spouse, the land, not exceeding one acre, upon which it is situated. A real property improvement other than a dwelling, including the land upon which such improvement is situated, made to such one acre pursuant to this Section shall also be exempt from taxation so long as the principal use of the improvement is (a) to house or cover motor vehicles or household goods and personal effects as classified in subdivision A 14 of Va. Code § 58.1-3503 and as listed in Va. Code § 58.1-3504 and (b) for other than a business purpose.

Section 4-28-6. – Effect of Different Forms of Ownership on Exemption.

(a) For purposes of this exemption, real property of any surviving spouse of a covered person includes real property (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support. Such real property does not include any interest held under a leasehold or term of years.

(b) In the event that (i) a surviving spouse is entitled to an exemption under this Article by virtue of holding the property in any of the three ways set forth in Section 4-28-6(a), and (ii) one or more other persons have an ownership interest in the property that permits them to occupy the property, then the tax exemption for the property that otherwise would have been provided shall be prorated by multiplying the amount of the exemption by a fraction the numerator of which is 1 and the denominator of which equals the total number of people having an ownership interest that permits them to occupy the property.

(c) In the event that the surviving spouse's principal residence is jointly owned by two or more individuals including the surviving spouse, and no person is entitled to the exemption under this Article by virtue of holding the property in any of the three ways set forth in Section 4-28-6(a), then the exemption shall be prorated by multiplying the amount of the exemption by a fraction the numerator of which is the percentage of ownership interest in the dwelling held by the surviving spouse and the denominator of which is 100.

Section 4-28-7. Application for Exemption; Notification of Remarriage.

(a) The surviving spouse claiming the exemption under this Article shall file with the Director, on forms to be supplied by the Fairfax County Department of Tax Administration, an affidavit (i) setting forth the surviving spouse's name, (ii) indicating any other joint owners of the real property, (iii) certifying that the real property is occupied as the surviving spouse's principal place of residence, and (iv) including evidence of the determination of the Comptroller or the Virginia Retirement System

pursuant to subsection A. The surviving spouse shall also provide documentation that he is the surviving spouse of a covered person and of the date that the covered person died. The surviving spouse shall be required to refile the information required by this section only if the surviving spouse's principal place of residence changes.

(b) The surviving spouse shall promptly notify the Director of any remarriage.

2. That the provisions of this ordinance are severable, and if any provision of this ordinance or any application thereof is held invalid, that invalidity shall not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

3. That the provisions of this ordinance shall take effect upon adoption.

GIVEN under my hand this _____ day of _____, 2018

_____
Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
February 20, 2018

ADMINISTRATIVE - 2

Approval of Traffic Calming Measures as Part of the Residential Traffic Administration Program (Mason District)

ISSUE:
Board endorsement of Traffic Calming measures as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:
The County Executive recommends that the Board endorse the traffic calming plans for Magnolia Lane and North Rosser Street (Attachment I) consisting of the following:

- Two speed tables on Magnolia Lane and one speed hump North Rosser Street (Mason District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) be requested to schedule the installation of the approved traffic calming measures as soon as possible.

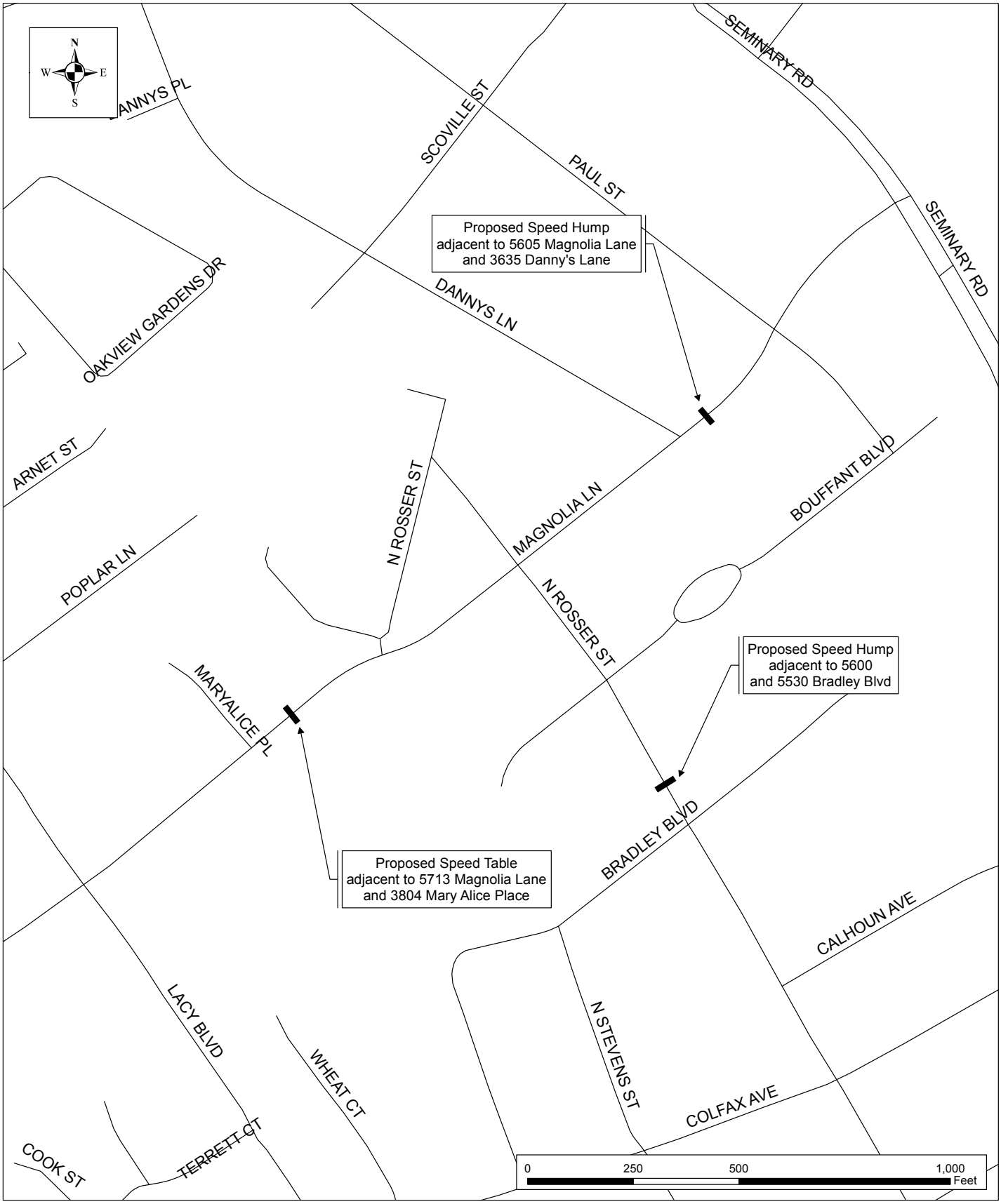
TIMING:
Board action is requested on February 20, 2018.

BACKGROUND:
As part of the RTAP, roads are reviewed for traffic calming when requested by a Board member on behalf of a homeowners' or civic association. Traffic calming employs the use of physical devices such as speed humps, speed tables, raised pedestrian crosswalks, chokers, median islands or traffic circles to reduce the speed of traffic on a residential street. Staff performed engineering studies documenting the attainment of qualifying criteria. Staff worked with the local Supervisor's office and communities to determine the viability of the requested traffic calming measures to reduce the speed of traffic. Once the plan for the road under review is approved and adopted by staff, that plan is then submitted for approval to residents of the ballot area in the adjacent community. On December 21, 2017, FCDOT received verification from the local Supervisor's office confirming community support for the above referenced traffic calming plan.

FISCAL IMPACT:
Funding in the amount of $23,000 for the traffic calming measures associated with the Magnolia Lane and North Rosser Street project is available in Fund 2G25-076-000, General Fund, under Job Number 40TTCP.

ENCLOSED DOCUMENTS:
Attachment I: Traffic Calming Plan for Magnolia Lane and North Rosser Street

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Steven K. Knudsen, Transportation Planner, Traffic Engineering Section, FCDOT



January 2018

Fairfax County Department of Transportation
Residential Traffic Administration Program (RTAP)
TRAFFIC CALMING PLAN
MAGNOLIA LANE & NORTH ROSSER ST
Mason District

A Fairfax Co. Va., publication

Tax Map: 61-4, 62-3

Board Agenda Item
February 20, 2018

ADMINISTRATIVE - 3

Authorization to Advertise a Public Hearing to Lease County-Owned Property at 6140 Rolling Road to New Cingular Wireless PCS, LLC (Springfield District)

ISSUE:
Authorization to advertise a public hearing to lease County-owned property to New Cingular Wireless PCS, LLC (AT&T) for the continuation of telecommunications services for public use at the West Springfield Government Center located at 6140 Rolling Road.

RECOMMENDATION:
The County Executive recommends that the Board authorize staff to publish the advertisement of a public hearing to be held on March 20, 2018 at 4:00 p.m.

TIMING:
Board action is requested on February 20, 2018 to provide sufficient time to advertise the proposed public hearing on March 20, 2018 at 4:00 p.m.

BACKGROUND:
The Board of Supervisors is the owner of the West Springfield Government Center, located at 6140 Rolling Road on a County-owned parcel identified as Tax Map Number 0793 04 0032 ("West Springfield GC"). The parking lot serving the property is currently improved with a telecommunications monopole that was constructed by Media General Cable of Fairfax County ("Cox Cable") pursuant to a cable television franchise agreement negotiated with the County in 1982. The lease agreement that accompanied the franchise granted Cox the right to construct a fenced compound at the West Springfield GC to house the monopole and related ground equipment. In addition to serving cable television subscribers, the monopole also operates as a key relay station in the first responders' emergency network.

Cox Cable entered into an agreement with New Cingular Wireless PCS ("AT&T") in 1998 to permit AT&T to add its telecommunications equipment on the monopole. Because the existing compound was not large enough to contain its ground equipment, AT&T negotiated a ground lease with the County that allowed AT&T to expand the existing Cox Cable compound by an additional 240 square feet and lease the land for fair market value rent for a 20-year term, ending on June 30, 2018. In 2004, the County agreed to amend the lease to increase the leased area to 440 square feet to incorporate a backup generator for AT&T's equipment, in exchange for AT&T's payment of additional consideration.

AT&T has proposed executing a new ground lease with the County for the continued use of the property for its telecommunications equipment. The initial term will be five (5)

years, with four 5-year options to extend the lease, for a total possible term of twenty-five (25) years. The annual rental fee for the first year will be $24,000, and will increase by a fixed 2.5 percent per year rather than by the rate of inflation (determined by the Consumer Price Index), which can vary significantly from year to year and be difficult for staff to administer. The continued operation of the telecommunications monopole and related equipment in the parking lot should not have any impact on West Springfield GC operations.

Virginia Code Ann. § 15.2-1800 requires a locality to hold a public hearing before it may lease its real property. Staff recommends that the Board authorize the staff to advertise a public hearing to lease County property to AT&T, which will permit stability of telecommunications services at the West Springfield GC.

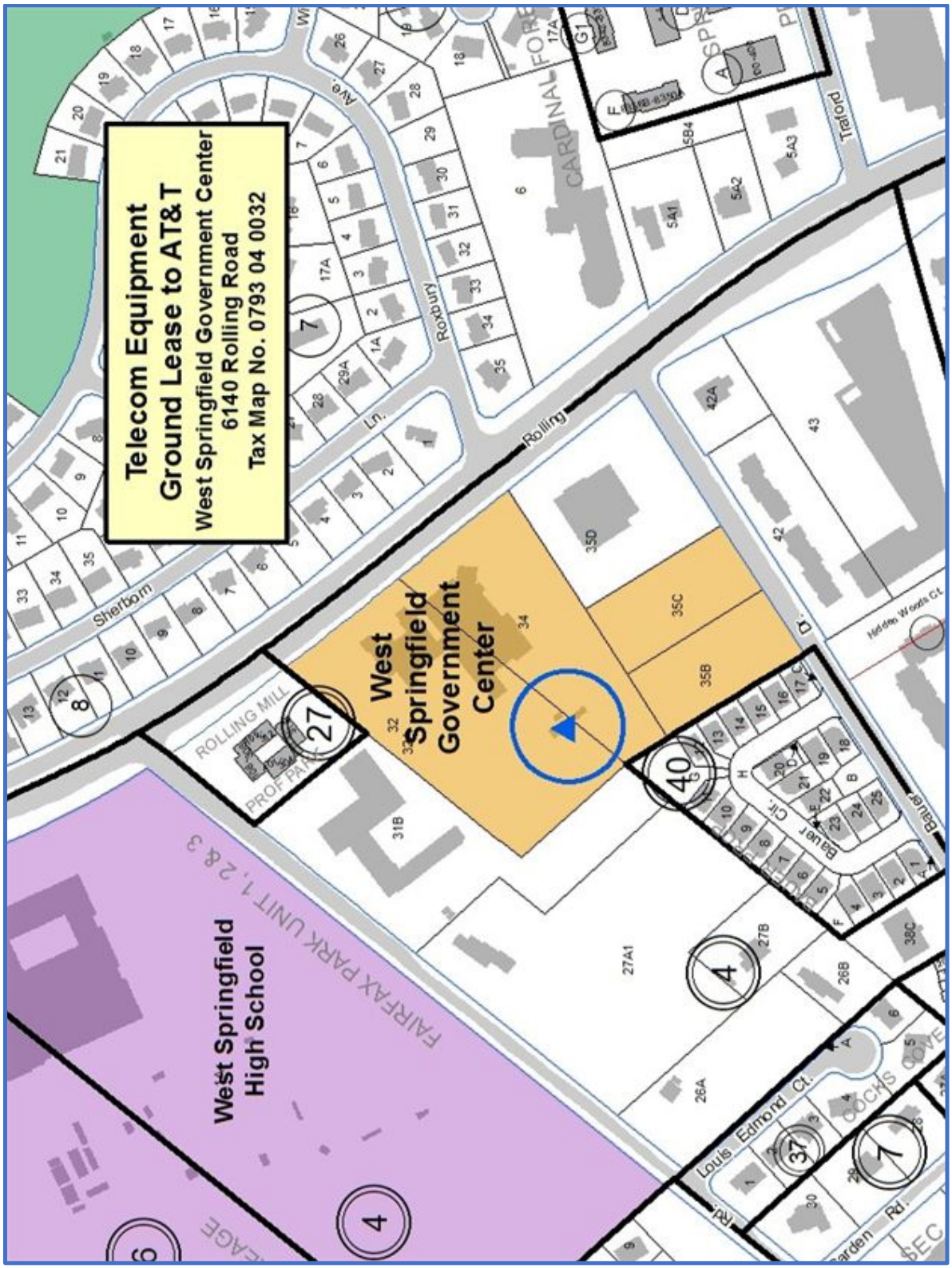
FISCAL IMPACT:
The proposed monopole license will generate approximately $24,000 in revenue the first year with a 2.5 percent increase each subsequent year. An administrative fee of $2,000 will be paid within thirty (30) days of execution of the lease. All revenue will be deposited in the general fund.

ENCLOSED DOCUMENTS:
Attachment 1 – Location Map 0793 04 0032
Attachment 2 – Draft Lease Agreement

STAFF:
David J. Molchany, Deputy County Executive
José A. Comayagua, Jr., Director, Facilities Management Department

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney

ATTACHMENT 1



LEASE AGREEMENT BETWEEN THE FAIRFAX COUNTY BOARD OF SUPERVISORS AND NEW CINGULAR WIRELESS PCS, LLC

TABLE OF CONTENTS

THIS REAL PROPERTY DEED OF LEASE AGREEMENT ("Lease"), is entered into this _____ day of _____, 2018 (the **"Effective Date"**), between the **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY**, with an address of 12000 Government Center Parkway, Fairfax, Virginia 22035 **("Lessor")**, and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, having an address of 575 Morosgo Drive, Atlanta, GA 30324 **("Lessee"),** and the parties mutually agree as follows:

Whereas, Lessee has co-located on the monopole (the "**Tower**") located on the Parcel described below, which Tower was constructed pursuant to a separate Lease Agreement (the "**Cox Tower Lease**") between Lessor and Media General Cable of Fairfax County, Inc., dated as of June 20, 1983 and assumed by CoxCom, LLC d/b/a Cox Communications Northern Virginia ("Cox");

Whereas, Lessee has entered into a separate lease agreement with Cox to install Lessee's antennas and related equipment on the Tower ("**Lessee's Tower Lease**");

Whereas, Lessor and Lessee's predecessor entered into a Real Property Deed of Lease Agreement dated December 2, 1998, as amended by that First Amendment to Real Property Deed of Lease Agreement dated November 18, 2004 to permit Lessee to install its ground-based equipment to service Lessee's antennas and other tower equipment (**"Ground Lease"**);

Whereas the term of the Ground Lease is about to expire and Lessee desires to enter into this Lease with the Lessor for the Premises described below for the purpose of the operations as further described in this Lease;

NOW THEREFORE, in consideration of the mutual agreements set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Leased Premises.

Lessor is the owner of a parcel of land located at 6140 Rolling Road, in Fairfax County, Virginia and referred to among the Tax Map records of Fairfax County as Tax Map No. 79-3 ((4)) 32, and in Deed Book 3394, Page 690, hereinafter referred to as the **"Parcel"**. Pursuant to the Ground Lease, Lessor leased to Lessee a portion of the Parcel, constituting approximately 440 square feet of ground space (a 240 square foot equipment shelter and a 200 square foot emergency generator compound). This portion is delineated "Premises" on the attached **Exhibit B** and is hereinafter referred to as the **"Premises"**. Lessor is willing to permit Lessee to continue to use the Premises for the purposes and in accord with the terms and conditions set forth in this Lease. This purpose shall include the continued operation of its Facilities, as defined below, on the Premises.

"Facilities," as used herein, means Lessee's wireless communications facility, which may include an equipment platform, power and telephone utility pedestals, back-up power generator, and cabinets and related cables and utility lines and a location based system,

including without limitation, coaxial cables, base units and other associated antennas, equipment, cables, accessories and improvements, the major components of which are more specifically described on **Exhibit A** attached hereto.

2. Use of Premises.

(a) Lessor leases to Lessee the Premises for the purpose of operating the Facilities upon the Premises as described in **Exhibit B** in the configuration shown on **Exhibit B**, together with the non-exclusive use of that area between the Premises and the Tower for Lessee's ice bridge, cables, conduits and pipes, in the location as shown on **Exhibit B**. Subject to compliance with all laws, Lessee may at its own cost and expense, use the portion of the Premises shown on **Exhibit B** to install, operate, maintain, repair, replace, protect and secure the Facilities, as set forth herein, or as subject to the written approval of Lessor, which will not be unreasonably withheld conditioned or denied. With Lessor's written consent, which will not be unreasonably withheld, conditioned, or denied, Lessor may grant, to the extent practicable and on a space available basis, the Lessee the right to enlarge the Premises so that Lessee may implement any necessary modifications, supplements, replacements, refurbishments, or expansions to the Facilities or to any equipment related thereto, or for any other reasons permitted by Lessor's written consent, which will not be unreasonably withheld, conditioned, or denied. Should Lessee exercise the right to expand the Premises and Lessor provides written consent, which will not be unreasonably withheld, conditioned, or denied, Lessee will pay and Lessor will accept as additional Rent under the Lease an amount equal to the then current Rent calculated on a per square foot basis as multiplied by each additional square foot added to the Premises. Upon notice to Lessor, and with Lessor written consent, which will not be unreasonably withheld, conditioned, or denied, a written description and/or depiction of the modified Premises ground will become part of the Lease without any additional action on the part of Lessee and Lessor. Without limiting Landlord's right to reasonably withhold, condition or deny such consent on other grounds, it shall be deemed reasonable for Landlord to withhold, condition or deny consent to a proposal to enlarge the Premises that impacts the parking lot or access to the parking lot.

(b) Lessor agrees that the Facilities and any related equipment brought to the Premises by Lessee, its agents, contractors, predecessors-in-interest or sublessees, shall be and remain Lessee's personal property or the personal property of its assignees, as the case may be. Lessor shall comply with the requirements of Section 16 of this Lease before exercising any of its rights that arise if an Event of Default (defined below) by Lessee occurs. Lessee, in its sole discretion, may remove the Facilities or any portion of the Facilities at any time during the Term of the Lease, without notice to Lessor and without Lessor's consent so long as Lessee is not in default. Lessee, may, with Lessor's prior written consent, transfer any improvements or alterations to the Premises to Lessor at any time during the Term of the Lease. Upon the termination of the Lease, the Facilities and any foundation shall be removed entirely from the Premises by the Lessee no later than ninety (90) days after the date of the termination of the Lease. Lessee shall verify and confirm in writing that all public service corporations and communication utility company(s) that were granted easements pursuant to Lessee's use of the Premises to have equipment on the Premises have been removed at the Lessee's expense and Lessee shall restore the Premises to an open area to the reasonable

satisfaction of Lessor and which is free of any equipment, foundations, concrete mounting pads, grounding devices, easements or utilities and which has been graded and seeded. All such easements and Facilities shall be vacated at the Lessee's expense.

(c) Lessor grants Lessee a non-exclusive license for ingress and egress to the Premises; and a non-exclusive license to the extent of the Lessor's interest therein to any existing access roads, easements or rights of way serving the Premises for access to the Facilities for the purposes of installing, maintaining, operating, repairing, and removing the Facilities. Subject to the foregoing, Lessee shall have twenty-four (24) hour a day, seven (7) day a week access to the Premises and the Facilities for maintenance, unscheduled repairs and other emergencies.

(d) Except for the Premises (as described in **Exhibit B**), Lessor reserves the right to continue all existing uses of the Parcel. Lessor further reserves the right to make or permit any such future additional use and to make or permit any use of the Parcel as Lessor deems appropriate, provided that Lessee's use of the Premises and the operation of the Facilities are not unreasonably interfered with by such future additional use.

(e) Lessee shall not (i) violate any environmental laws (now or hereafter enacted), in connection with Lessee's use or occupancy of the Premises; or (ii) use, generate, release, manufacture, refine, produce, process, store, or dispose of any hazardous wastes on, under, or about the Premises, or transport to or from the Premises any Hazardous Material (as defined in Paragraph 10); except as allowed by, and in full compliance with, applicable law, for the use of such materials and substances that are ordinary and customary for wireless communications facilities similar to the one operated at the Premises. Lessee will be responsible for all obligations of compliance with any and all environmental laws, including any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental conditions or concerns as may now or hereafter be in effect with respect to the Facilities being installed on the Premises by the Lessee. Lessee shall cure, remedy and be responsible to cure or remedy any environmental condition created on the Premises by Lessee. Lessor represents that it has no knowledge of any substance, chemical, waste or Hazardous Material in the Premises that is identified as hazardous, toxic or dangerous in any applicable federal, state of local law or regulation. Additionally, Lessor agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any law or regulation. This paragraph shall survive the termination of this Lease.

(f) Any modifications of the Facilities or the addition of new Facilities shall be accomplished without interfering with the use or development of the Parcel, existing as of the date of this Lease, by Lessor or any other party and/or the necessary day to day operations of the Lessor. Promptly upon completion of the forgoing modifications or maintenance, Lessee shall, at its own cost and expense, repair any damage to the Parcel resulting from such construction, installation or maintenance.

3. Term.

(a) This Lease shall be effective as of the Effective Date. Subject to the terms and conditions of this Lease, the initial term of this Lease **("Initial Term")** shall begin on the **Commencement Date** (as defined below) and end at 11:59 P.M. on the day immediately preceding the fifth (5^{th}) anniversary of the Commencement Date. The term "Commencement Date" shall mean July 1, 2018, immediately upon the expiration of the Ground Lease.

(b) Upon thirty (30) days written notice given by Lessee to Lessor, Lessee may terminate this Lease if Lessee determines the Premises has become unsuitable for Lessee because (i) Lessee is unable to obtain or maintain in force all necessary Governmental Approvals (as hereinafter defined); (ii) a material change in government regulations makes it impractical or uneconomic for Lessee to continue to operate the Facilities; (iii) interference by or to Lessee's operation cannot be resolved; (iv) the Cox Tower Lease or Lessee's Tower Lease has expired or been terminated early; or (v) the Premises are destroyed or damaged or taken in whole or in part (by condemnation or otherwise) sufficient in Lessee's reasonable judgment to affect adversely Lessee's use of the Facilities. Notwithstanding the foregoing, Lessee shall give written notice to Lessor to terminate this Lease within thirty (30) days after the occurrence of any of the foregoing described events which is the basis of termination.

Provided that the Lessee does not breach any of the terms, conditions, covenants, representations or warranties set forth in this Lease, this Lease shall automatically renew subject to the provisions of this Paragraph 3(c) for four (4) additional periods of five (5) years each (each a **"Renewal Term"**) upon the same terms and conditions contained herein; provided, however, that the annual lease fee provided for in Paragraph 4 shall be adjusted at the commencement of each Renewal Term as provided in Paragraph 4. The Lease shall automatically renew for each Renewal Term unless, at least sixty (60) days prior to expiration of the then existing period, Lessee provides written notification to Lessor of its intention not to renew this Lease.

(c) Notwithstanding anything herein to the contrary, Lessor shall have the right to terminate this Lease on not less than twelve (12) months written notice if the Cox Tower Lease has expired or terminated early (and has not been replaced with a new lease). If this Lease is not renewed or terminated as set forth herein, the option(s) remaining shall be rendered null and void. Each Renewal Term shall commence upon the expiration of the immediately preceding Term or applicable Renewal Term. All references in this Lease to the "Term" hereof shall include, where appropriate, the Initial Term and all Renewal Terms so effected.

4. Lease Fee.

(a) Commencing upon the Commencement Date, Lessee shall pay to Lessor a <u>non-refundable</u> annual lease fee, as rent, in accordance with the following schedule during the Initial Term:

Year 1	$24,000.00
Year 2	$24,600.00

Year 3	$25,215.00
Year 4	$25,845.38
Year 5	$26,491.52

(b) If the Lease is renewed for any Renewal Term, Lessee shall pay to Lessor a non-refundable annual lease fee in an amount equal to 102.5% of the annual lease fee in effect during the previous lease year, which increase shall be effective on each anniversary of the Commencement Date occurring during the Renewal Term(s). Lessor and Lessee acknowledge and agree that initial lease fee for Year 1 may be sent by Lessee up to ninety (90) days after the Commencement Date or after a written acknowledgement confirming the Commencement Date, if such an acknowledgement is required. By way of illustration of the preceding sentence, if the Commencement Date is March 1 and no written acknowledgement confirming the Commencement Date is required, Lessee shall send to the Lessor the annual lease fee for Year 1 by May 30, and if the Commencement Date is March 1 and a required written acknowledgement confirming the Commencement Date is dated March 14, Lessee shall send to the Lessor the annual lease fee for Year 1 by June 12. Thereafter, annual lease fee shall be due on or before the anniversary of the Commencement Date. All rent hereunder shall be paid without notice, demand, deduction or setoff. All payments of rent and all other charges and payments required to be made by Lessee to Lessor hereunder shall be paid to Lessor at Fairfax County, Facilities Management Department, 12000 Government Center Parkway, Suite 424, Fairfax, Virginia 22035. Attn: Leasing Manager or other such address as Lessor shall notify Lessee in writing.

(c) If Lessee fails to pay any installment of lease fees by the fifth (5^{th}) day after it is due, Lessee shall also pay to Lessor a late fee equal to five percent (5%) of the late payment. If any amount remains unpaid more than thirty (30) days after its due date, Lessee shall pay Lessor interest on such unpaid amount at an annual rate of ten percent (10%) from the date such amount was due until the date such amount is paid to Lessor. If at the time of assessing any late fee, the applicable interest rate exceeds that which Lessor may lawfully assess, the interest rate for that late fee shall be the maximum that the Lessor may lawfully assess.

(d) Lessee paid a security deposit to the Lessor in accordance with the terms of the Ground Lease in the amount of Two Thousand Six Hundred Dollars ($2,600.00). This security deposit shall continue to serve as the security deposit under the terms of this Lease **("Security Deposit")**. The Security Deposit shall be held in a non-interest bearing account by the Lessor and shall be returned to Lessee at the termination of the Lease, provided the Lessee has performed all obligations under this Lease through the date of termination. In the event that Lessee does not remove all of the Facilities from the Premises as set forth in Paragraph 2(c) of this Lease, Lessor may apply all or any portion of the Security Deposit to the costs incurred by Lessor in removing the Facilities.

5. Cost Reimbursement

Lessee shall pay Lessor, as additional rent and as full reimbursement of costs incurred by Lessor for preparing, reviewing and negotiating this Lease, the sum of Two Thousand and 00/100ths Dollars ($2,000.00), which one-time fee shall be due and payable within ninety (90) days after the date of full execution of this Lease.

6. Modification of the Premises.

(a) The Facilities are constructed as of the date of execution of this Lease and Lessor has approved all existing plans, specifications, drawings, renderings, permits, applications and descriptions for Lessee's use of the Premises, which is attached hereto as Exhibit A. Lessee shall have full responsibility and shall pay all costs for plan preparation and procurement of all necessary permits and other approvals from the appropriate governmental agencies.

(b) Lessee has the right to continue to operate the Facilities that exist on the date of execution of this Lease in accordance with Paragraphs 1 and 2 above. Except as otherwise set forth herein, any alterations, modifications or additions (collectively "**Alterations**") to the Facilities at the Premises shall require Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed provided the proposed Alterations are reasonable and customary for the type of communications facility contemplated by this Lease. With Lessor's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed, Lessee, its personnel, invitees, contractors, agents, or assigns may use the Premises, at no additional cost or expense, for the transmission and reception of any and all communications signals and to modify, supplement, replace, upgrade, or refurbish the equipment and/or improvements thereon (collectively, "Facilities"), or relocate the same within the Premises at any time during the term of the Lease for any reason, or in order to be in compliance with any current or future federal, state or local mandated application, including but not limited to emergency 911 communication services, or for any other reason. Lessor, at Lessee's expense, shall reasonably cooperate in obtaining governmental and other use permits or approvals necessary or desirable for the foregoing permitted use. Notwithstanding the foregoing, but provided the same otherwise comply with all of the terms and conditions of this Lease, Lessee shall have the right to make the following Alterations to the Facilities at the Premises without Lessor's consent: (i) any Alteration that is exclusively within the interior of Lessee's equipment shelter or (ii) any Alteration that is in the nature of a repair, maintenance work or replacement/substitution of a piece of equipment (or component thereof) with a substantially similar piece of equipment (or component thereof). Lessee shall have full responsibility and shall pay all costs for plan preparation and procurement of all necessary permits and other approvals from the appropriate governmental agencies for any Alterations, modifications, supplements, replacements, upgrades or refurbishments performed pursuant to this Lease.

(c) All Alterations will comply with the terms set forth in this Lease and with all applicable laws, codes, ordinances (including the Fairfax County Zoning Ordinance as it applies to telecommunication facilities) and regulations.

(d) No damage will be done or interference committed with any equipment or structures located within the Parcel with respect to the Alterations. If damage to the Parcel and/or equipment occurs then, Lessee shall within thirty (30) days repair the damage and return the Parcel to the condition existing before the damage occurred.

(e) If any Alterations should require the relocation of any facilities or equipment presently located at the Premises owned by the Lessor, such facilities or equipment may be relocated by Lessee only with Lessor's prior written consent and at Lessee's sole cost and expense.

7. Interference.

(a) Lessee agrees not to permit any use of the Facilities after the Commencement Date that will interfere with Lessor's operations or use of the Parcel.

(b) Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with Lessor's "Public Safety Grade" (Manufacturers High Tier) radio frequency communications equipment used by Lessor. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon notification to Lessee's Authorized Representative of the interference. Lessee shall be obligated to respond to the problem of interference within four (4) hours of receipt of notification from the Lessor and if the interference is not corrected within one (1) day of receipt of notification, the Lessee shall immediately turn off the Facilities causing such interference until the Facilities can be repaired or replaced (except that Lessee shall be able to intermittently test the Facilities at times reasonably approved by Lessor).

Lessee agrees to install equipment of a type and frequency which will not cause frequency interference with other forms of radio frequency communications equipment existing, or previously approved on the Parcel as of the date Lessee first occupied the Premises so long as the existing radio frequency users operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations. In the event the Facilities cause such interference, Lessee agrees it will take all steps necessary to correct and eliminate the interference consistent with appropriate government rules and regulations upon receipt of written notification of the interference. Lessee shall be obligated to respond to the problem of interference within forty-eight (48) hours of receipt of notice from Lessor, and if the interference is not corrected within ten (10) days of receipt of written notification (or such time as may reasonably be required with exercise of the due diligence provided such repairs are begun within said ten (10) days), the Facilities causing such interference shall be powered down until Lessee is able to repair or replace the interfering equipment (provided that Lessee shall be able to intermittently test the Facilities at times reasonably approved by Lessor).

All notices under this Paragraph 7(b) shall be made to Lessee's emergency contact number at its Network Operations Center: 1-800-638-2822.

(c) Lessor will not, nor will Lessor permit its employees, tenants, lessees, invitees, agents, or independent contractors, to interfere in any way with the Facilities, the operations of Lessee at the Premises or the rights of Lessee under this Lease.

8. Condition of the Premises.

Lessee and Lessor acknowledge and agree that Lessee has accepted the Premises "as is" and Lessor shall have no obligation to improve or modify the Premises in any manner whatsoever.

9. Maintenance and Repairs of Facilities.

Lessee shall be responsible for all maintenance and repair of the Facilities and any appurtenant equipment or facilities of Lessee during the term of this Lease. Lessee shall promptly and diligently respond to any request by Lessor for any such maintenance or repair. Lessor will use its best efforts to maintain and repair the Parcel and access thereto, and all areas of the Premises where Lessee does not have exclusive control, in good order, subject to reasonable wear and tear and damage from the elements.

10. Indemnification.

(a) Lessee indemnifies and holds Lessor and its agents, employees, volunteers, officers and directors harmless from and against all claims, demands, costs, losses, liabilities, fines and penalties, including but not limited to reasonable attorney's fees and costs of defense, arising from (i) the condition of the Facilities; (ii) any activities undertaken on, in, under or near the Premises by, for or at the direction of Lessee or the Lessee's agents, contractors, employees or invitees; (iii) any default or Event of Default (as defined below) by Lessee under this Lease; and (iv) the presence, storage, use, placement, treatment, generation, transport, release or disposal on, in, under or near the Premises by Lessee or any of Lessee's Agents of (1) oil, petroleum or other hydrocarbon derivatives, additives or products, (2) hazardous wastes, (3) hazardous or toxic substances or chemicals, (4) fungicides, rodenticide or insecticides, (5) asbestos or (6) urea formaldehyde, in each case as defined by any applicable state, federal or local law, rule or regulation (collectively, "Hazardous Material").

(b) Lessee hereby agrees to indemnify and hold harmless Lessor, its officers, directors, agents, and all employees and volunteers from any and all claims for bodily injury, death, personal injury, theft, and/or property damage, including cost of investigation, all expenses of litigation, including reasonable attorney's fees, and the cost of appeals arising out of any claims or suits that result from the errors, omissions, or negligent or willful acts of the Lessee and its subcontractors and each of their agents and employees or invitees.

(c) Nothing contained in this Lease shall be deemed to obligate Lessee to indemnify Lessor for claims solely arising out of the gross negligence or intentional wrongful acts of the Lessor or Lessor's agents, employees or contractors.

11. Insurance.

(a) Lessee shall acquire, maintain and pay for commercial general liability insurance with a limit of Two Million Dollars ($2,000,000) per occurrence for bodily injury and property damage and Two Million Dollars ($2,000,000) general aggregate insuring against claims

occurring upon the Premises and/or arising from Lessee's use thereof. Insurance shall include Lessor as an additional insured as their interest may appear. Such insurance must be issued by an insurance company licensed, authorized or permitted to conduct business in the Commonwealth of Virginia and shall have a general policyholder's rating of at least A- and a Financial rating of at least VIII in the current edition of Best's Insurance Reports. Lessee shall provide Lessor an original certificate evidencing such insurance upon (i) the Commencement Date of the term of this Lease, (ii) and at any other time during the term of this Lease upon the request of the Lessor. Notwithstanding the forgoing, Lessee may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Agreement. In the event Lessee elects to self-insure its obligation under this Agreement to include Lessor as an additional insured, the following conditions apply: (i) Lessor shall promptly and no later than thirty (30) days after notice thereof provide Lessee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Lessee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) Lessor shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Lessee; and (iii) Lessor shall fully cooperate with Lessee, at Lessee's expense in the defense of the claim, demand, lawsuit, or the like.

(b) Lessee shall carry hazard insurance or self insurance to cover damage to or destruction of the Lessee's equipment and other property. If the Premises or Facilities are destroyed or damaged and rendered unsuitable for normal use, Lessee may terminate this Lease upon providing thirty (30) days written notice to Lessor. In such event, with the exception of liabilities that arise prior to such termination and liabilities that survive termination of the Lease as provided in Paragraph 15 herein, all rights and obligations of the parties shall cease as of the date of the damage or destruction, without further liability hereunder. Notwithstanding the foregoing, Lessee shall remain responsible for removal of its equipment and other property and for restoration of the Parcel and this provision shall not limit Lessee's obligation to restore the site to its original condition.

12. Liens.

Lessee shall promptly pay for all work, labor, services or material supplied by or on behalf of Lessee at the Premises or in connection with the Facilities. If any mechanics' or materialmen's liens shall be filed affecting the Parcel, Lessee shall cause the same to be released of record by payment, bond, court order or otherwise, within thirty (30) days after notice of filing thereof.

13. Compliance with Laws.

Lessee shall, at is expense, throughout the term of this Lease, obtain all building permits and other governmental or quasi-governmental licenses, permits, consents and approvals required for the construction, installation, operation and use of the Facilities in compliance with all applicable laws, rules, orders, ordinances and requirements, including but not limited to, all laws, rules, orders, ordinances and requirements which relate to the Federal Aviation Administration, Federal Communications Commission, health, safety, environment or land

use. In the event of Lessee's failure to comply with this paragraph, Lessor may, but is not obligated to, take such actions as may be necessary to comply with any such laws, rules, regulations, order, ordinances or requirements, and Lessee shall immediately reimburse Lessor for all costs and expenses incurred thereby.

14. Representations and Warranties.

Lessee represents and warrants to Lessor that (i) it is a limited liability company duly formed and validly existing under the laws of the State of Delaware, (ii) it has all power and authority necessary to own its properties and conduct its business, as presently conducted, and to enter into and perform its obligations under this Lease, (iii) the person executing this Lease on its behalf has been duly authorized to do so, and (iv) that it has not dealt with, nor is any brokerage commission due to, any broker in connection with this Lease.

15. Termination.

Upon the expiration or earlier termination of this Lease, and if Lessee and Lessor are not in negotiations to extend or renew the Lease, Lessee shall remove the Facilities and any foundation from the Premises as provided in Paragraph 2(c) of this Lease, and shall repair any damage to the Premises and associated public utility areas caused by the installation, operation or removal of the Facilities. If Lessee remains on the premises more than sixty (60) days after the expiration or termination of this Lease, Lessee shall pay to Lessor for such holding over a license fee per month equal to 12.5% of the annual installment of the license fee which accrued during the immediately preceding term. The license fee for such holding over shall remain in effect until Lessee removes the Facilities. If the Facilities are not removed within one hundred twenty (120) days after expiration or earlier termination of this Lease, Lessor shall at its option complete the removal and restoration at the Lessee's expense. Acceptance of the license fees upon termination shall not be a waiver by Lessor of any of its other remedies at law or in equity. Paragraphs 2(e), 10, 12 and 15, 18 and 22 of this Lease shall survive termination of this Lease.

16. Default.

(a) If Lessee shall fail to pay when due any of the installments of the lease fee provided for herein or any other sum accruing pursuant to the terms of this Lease, and such failure shall continue for thirty (30) days after written notice from Lessor, or if Lessee shall be in default or fail to perform in a timely manner any other obligation herein provided, other than the payment of license fee installments, and such failure shall continue for forty five (45) days after written notice from Lessor, or if a petition in bankruptcy shall be filed by or against Lessee and not dismissed within one hundred twenty (120) days, or if Lessee shall be adjudicated insolvent, or if Lessee shall make a general assignment for the benefit of its creditors, or if a receiver or trustee shall be appointed to take charge of and wind up Lessee's business, or if the Lessee abandons or vacates the Facilities for more than four (4) consecutive months prior to the termination of this Lease, then Lessee shall be considered to have caused an event of default ("Event of Default"). If Lessee remains in default beyond any applicable cure period, Lessor may elect to terminate this Lease at its sole discretion and pursue its remedies hereunder, at

law or in equity. All time periods set forth in this paragraph for a cure period may be extended by a mutual written agreement.

(b) The following will be deemed a default by Lessor and a breach of this Lease: Lessor's failure to perform any term, condition or breach of any warranty or covenant under this Lease within forty-five (45) days of written notice from Lessee specifying the failure. If Lessor remains in default beyond any applicable cure period, Lessee will have any and all other rights available to it under law and equity. All time periods set forth in this paragraph for a cure period may be extended by a mutual written agreement.

17. Authorized Representative

(a) Lessee and Lessor shall provide the names, titles, email addresses and direct telephone numbers of their qualified individuals employed by Lessor and Lessee (**"Authorized Representatives"**) who can, from time-to-time, and as needed, assist in answering questions or any accounting discrepancies. The Authorized Representative is:

LESSOR:

Name:	Kaylynn Kingery
Title:	Leasing Manager
Email Address:	Kaylynn.kingery@fairfaxcounty.gov
Direct Phone Line:	703-324-2836

LESSEE:

Name:	Network Real Estate Administration
Email Address:	RELeaseAdmin@att.com
Direct Phone Line:	877-231-5447

Or such other employee designated by Lessee from time to time.

18. Notices.

All notices required hereunder or in respect hereof shall be in writing and shall be transmitted by postage prepaid certified mail, return receipt requested, or transmitted by overnight courier to the following addresses:

Lessor:

County of Fairfax, Virginia
Attn: Leasing Manager
12000 Government Center Parkway, Suite 424
Fairfax, VA. 22035

With a copy to: County Attorneys Office
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

Lessee: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Cell Site Name: West Springfield (WABA)
Fixed Asset Number: 10004703
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to AT&T Legal at:
New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Cell Site Name: West Springfield (WABA)
Fixed Asset Number: 10004703
208 S. Akard Street
Dallas, TX 74202

Notices shall be deemed given upon delivery or mailing by certified mail with return receipt requested thereof to the address specified above. Either party may change its address or any address for copies by giving thirty (30) days prior notice of such change in the manner described above.

19. Assignment and Sublease.

(a) Lessee may, upon notice to Lessor, assign this License to any corporation, partnership or other entity which (i) is controlled by, controlling or under common control with the Lessee, (ii) shall merge or consolidate with or into Lessee, or (iii) shall succeed to all or substantially all the assets, property and business of Lessee. In all other instances, Lessee may only assign or transfer its rights and obligations upon Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Lessee shall submit any requests for any requested consents of Lessor at least sixty (60) days before any assignment of this Lease. Upon assignment, Lessee shall furnish to the Lessor six (6) 8 ½" x 11" colored photographs of the existing conditions and six (6) 8 ½"x 11" colored photographs of the assignee's telecommunications Facilities. Photographs will show all Facilities (i.e. monopole, co-locations, antennas, equipment cabinets, fenced compound with landscaping, access road and/or any other related appurtenances).

(b) This Lease shall not be interpreted to create anything other than a lease and, except as otherwise provided herein, shall not create any other right, title or interest in the property or Premises, nor shall it create an easement. In the event of any assignment which requires Lessor's consent, Lessee agrees that it shall remain liable for all obligations hereunder. For all other assignments, the entity to which the Lease is assigned shall be liable for all obligations of the Lessee under this Lease, regardless of whether such obligation arose before or after such

assignment. Lessee may not sublease all or any portion of the Premises. No other parties are permitted use of the Premises without written permission of Lessor. Furthermore, no other party's equipment shall be permitted at the Premises without written permission of Lessor.

20. Sale of Parcel.

(a) If Lessor, at any time during the Term of the Lease, decides to sell or otherwise transfer all or any part of the Premises, or all or any part of the Parcel, to a purchaser other than Lessee, Lessor shall promptly notify Lessee in writing. In the event of a change in ownership, transfer or sale of the Parcel, Lessor shall notify Lessee within ten (10) days of such transfer. In the event of a change in ownership, transfer or sale of the Parcel, (i) the current Lessor (assignor) shall remain legally responsible for any and all of its obligations arising under this Lease prior to such change, transfer or sale and (ii) the new Lessor (assignee) shall be responsible for any and all of its obligations arising under this Lease after such change, transfer or sale. In no case shall such change, transfer or sale relieve any Lessor of its obligations as described hereunder.

(b) Lessor agrees that any future lease or license it executes with other parties for use of the Parcel will include a clause that prohibits the lessee or licensee from installing such equipment that is of the type and frequency which causes harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of Lessee.

The provisions of this Paragraph shall in no way limit or impair the obligations of Lessor under the Lease, including interference and access obligations.

21. Miscellaneous.

This Lease contains the entire agreement between the parties with respect to the subject matter hereof and may not be amended except by a writing signed by the parties hereto. The invalidation of any of the provisions hereof shall not affect any of the other provisions hereof, which shall remain in full force. This Lease shall be binding on the parties hereto and their respective successors and assigns.

22. Applicable Law.

This Lease shall be executed, constructed and enforced in accordance with the laws of the Commonwealth of Virginia, disregarding those laws pertaining to conflicts of law. The only proper jurisdiction and venue for any lawsuit arising out of or relating to this Lease shall be the Circuit Court of Fairfax County or the United States District Court for the Eastern District of Virginia.

23. Quiet Enjoyment.

Lessor covenants that Lessee, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises, subject to the terms and conditions herein contained.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the date first above written.

WITNESS OR ATTEST:

_____

LESSOR:

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY

By: _____

Name: David J. Molchany

Title: Deputy County Executive
Date: _____

WITNESS OR ATTEST:

_____

LESSEE:

NEW CINGULAR WIRELESS PCS, LLC

By: AT&T Mobility Corporation
Its: Manager

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

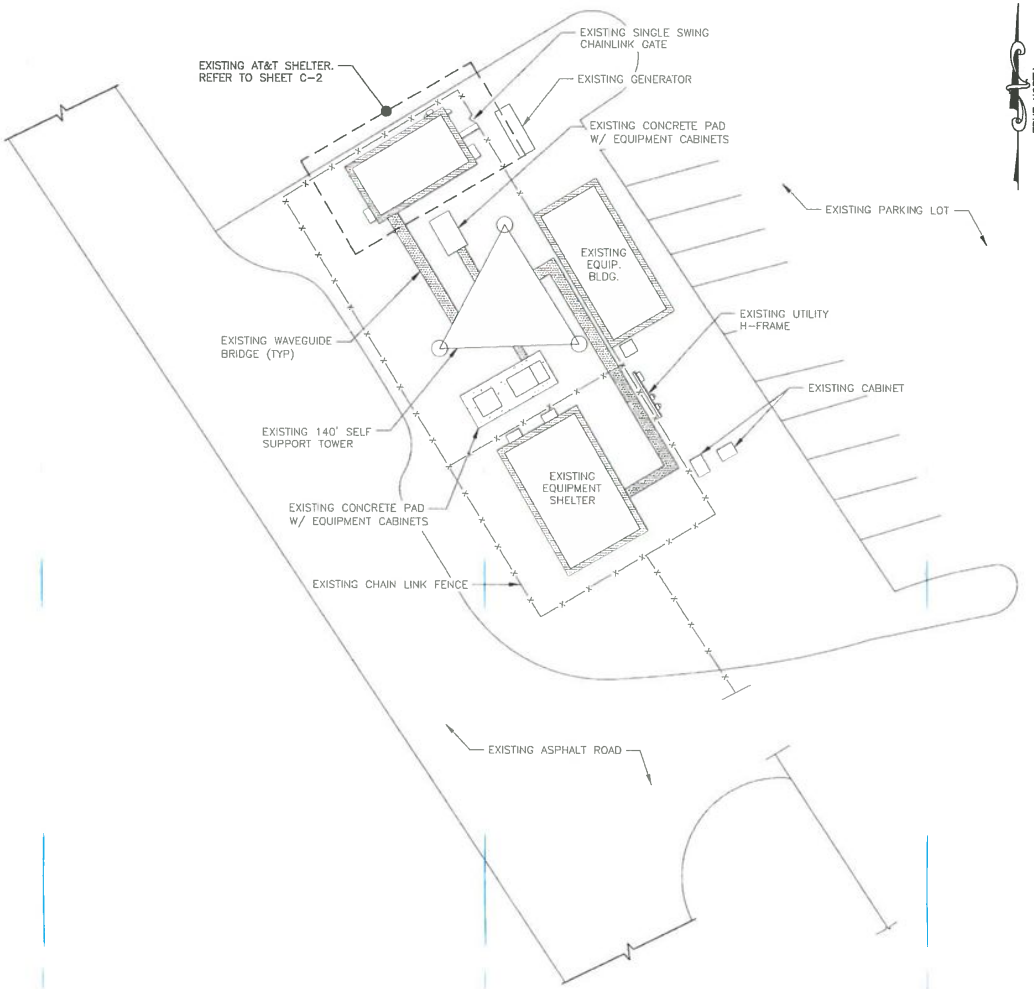
MAJOR COMPONENTS OF LESSEE'S FACILITIES

- 12'x20' equipment shelter
- 1 Emergency backup generator
- Requisite cables (coax/fiber) in support of installation
- Requisite cable support superstructure
- Meter Backboard with necessary meters, distribution boxes, safety lighting and appurtenances
- GPS antennas with supporting mounts and brackets

EXHIBIT B

SITE PLANS

[see attached]



GRAPHIC SCALE

0 10 20 40

(IN FEET)

1 / C-1 **SITE PLAN**
SCALE: 1" = 20'
SCALE BASED ON 11"x17" ONLY

THE CONTRACTOR MUST FIELD VERIFY ALL MEASUREMENTS AND FIELD CONDITIONS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.

at&t
7150 STANDARD DRIVE
HANOVER, MD 21076

NEXIUS
7550 TEAGUE ROAD
#401
HANOVER, MD 21076

PLANS PREPARED BY:
Kimley»Horn
655 NORTH FRANKLIN STREET, SUITE 150
TAMPA, FL 33602
PHONE (813) 620-1460
WWW.KIMLEY-HORN.COM

REV	DATE	DESCRIPTION	BY
1	02/24/15	REVISED PER COMMENTS	RCM
0	02/05/15	FINAL	MAM
D	01/30/15	REVISED PER COMMENTS	JPH
C	01/13/15	REVISED PER COMMENTS	JPH
B	12/09/14	REVISED PER COMMENTS	JPH
A	12/03/14	ISSUED FOR REVIEW	JPH

DRAWN BY: JPH | CHECKED BY: CAR

KHA PROJECT NUMBER: 148995003

ENGINEER SEAL:

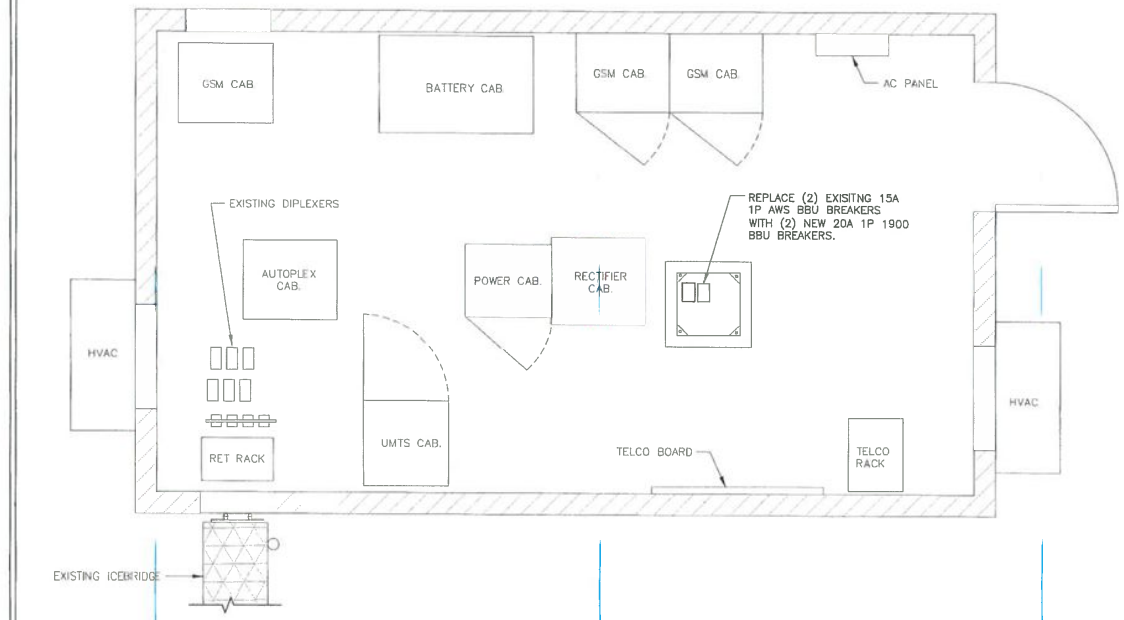
COMMONWEALTH OF VIRGINIA
KEVIN S. GASKEY
No. 20757
2-25-15
PROFESSIONAL ENGINEER
KEVIN S. GASKEY, PE
PROFESSIONAL ENGINEER LIC. #0402020757

PROJECT INFORMATION:
WEST SPRINGFIELD
FA# 10004703
6140 ROLLING ROAD
SPRINGFIELD VA, 22151

SHEET TITLE: SITE PLAN

SHEET NUMBER: C-1

EXHIBIT B



1 C-2 **EQUIPMENT PLAN**
SCALE: N.T.S.

CIVIL SCOPE OF WORK

1. MOVE THE INTERNAL LOOP-BACK PLUG TO ACCOMMODATE THE NEW 1900 PCS RRHS, AND RE-INSTALL, FOR ALL RAYCAP SURGE PROTECTION.
2. REMOVE EXISTING AWS P-TOUCH LABELS ON BREAKERS AND REPLACE WITH NEW 1900 P-TOUCH LABELS.
3. REPLACE (2) EXISTING 10A 1P AWS BBU BREAKERS WITH (2) NEW 20A 1P 1900 BBU BREAKERS.
4. REMOVE LOCK-OUT TAGS ON EXISTING 1900 RRH BREAKERS.
5. INSTALL NEW 100A RECTIFIER IN EXISTING GALAXY PLANT. ONLY (6) INSTALLED AND POWER CALCULATION CALLS FOR (7).

THE CONTRACTOR MUST FIELD VERIFY ALL MEASUREMENTS AND FIELD CONDITIONS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.

at&t
7150 STANDARD DRIVE
HANOVER, MD 21076

NEXIUS
7550 TEAGUE ROAD
#401
HANOVER, MD 21076

PLANS PREPARED BY:
Kimley»Horn
655 NORTH FRANKLIN STREET, SUITE 150
TAMPA, FL 33602
PHONE (813) 620-1460
WWW.KIMLEY-HORN.COM

REV	DATE	DESCRIPTION	BY
1	02/24/15	REVISED PER COMMENTS	RCM
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B	12/09/14	REVISED PER COMMENTS	JPH
A	12/03/14	ISSUED FOR REVIEW	JPH

DRAWN BY:	CHECKED BY:
JPH	CAR

KHA PROJECT NUMBER:
148995003

ENGINEER SEAL:
COMMONWEALTH OF VIRGINIA
KEVIN S. GASKEY
No. 28757
KEVIN S. GASKEY, PE
VIRGINIA PROFESSIONAL ENGINEER LIC. #0402020
PROFESSIONAL ENGINEER

PROJECT INFORMATION:
WEST SPRINGFIELD
FA# 10004703
6140 ROLLING ROAD
SPRINGFIELD VA, 22151

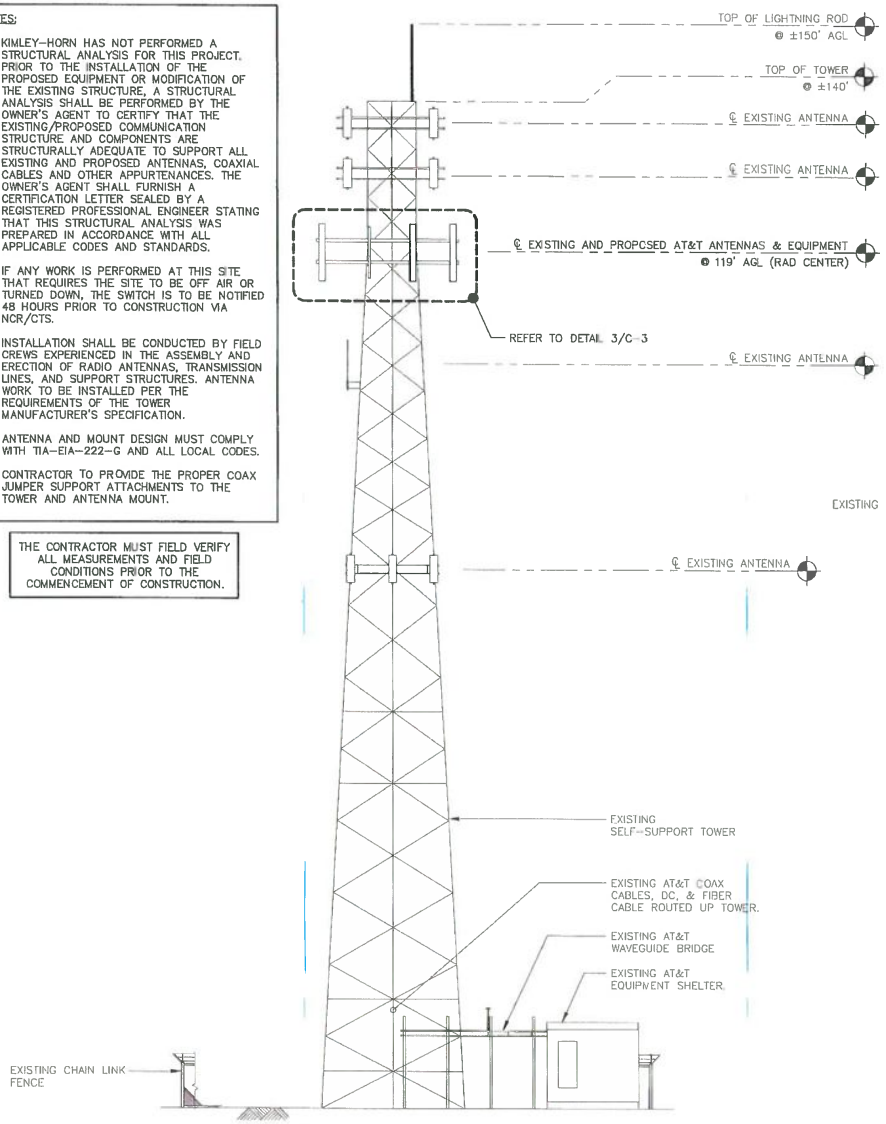
SHEET TITLE:
EQUIPMENT PLAN & SCOPE OF WORK

SHEET NUMBER:
C-2

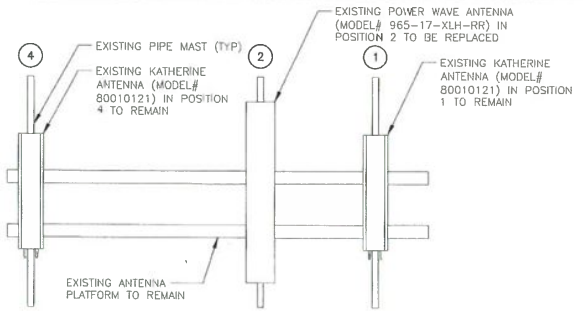
NOTES:

1. KIMLEY-HORN HAS NOT PERFORMED A STRUCTURAL ANALYSIS FOR THIS PROJECT. PRIOR TO THE INSTALLATION OF THE PROPOSED EQUIPMENT OR MODIFICATION OF THE EXISTING STRUCTURE, A STRUCTURAL ANALYSIS SHALL BE PERFORMED BY THE OWNER'S AGENT TO CERTIFY THAT THE EXISTING/PROPOSED COMMUNICATION STRUCTURE AND COMPONENTS ARE STRUCTURALLY ADEQUATE TO SUPPORT ALL EXISTING AND PROPOSED ANTENNAS, COAXIAL CABLES AND OTHER APPURTENANCES. THE OWNER'S AGENT SHALL FURNISH A CERTIFICATION LETTER SEALED BY A REGISTERED PROFESSIONAL ENGINEER STATING THAT THIS STRUCTURAL ANALYSIS WAS PREPARED IN ACCORDANCE WITH ALL APPLICABLE CODES AND STANDARDS.
2. IF ANY WORK IS PERFORMED AT THIS SITE THAT REQUIRES THE SITE TO BE OFF AIR OR TURNED DOWN, THE SWITCH IS TO BE NOTIFIED 48 HOURS PRIOR TO CONSTRUCTION VIA NCR/CTS.
3. INSTALLATION SHALL BE CONDUCTED BY FIELD CREWS EXPERIENCED IN THE ASSEMBLY AND ERECTION OF RADIO ANTENNAS, TRANSMISSION LINES, AND SUPPORT STRUCTURES. ANTENNA WORK TO BE INSTALLED PER THE REQUIREMENTS OF THE TOWER MANUFACTURER'S SPECIFICATION.
4. ANTENNA AND MOUNT DESIGN MUST COMPLY WITH TIA-EIA-222-G AND ALL LOCAL CODES.
5. CONTRACTOR TO PROVIDE THE PROPER COAX JUMPER SUPPORT ATTACHMENTS TO THE TOWER AND ANTENNA MOUNT.

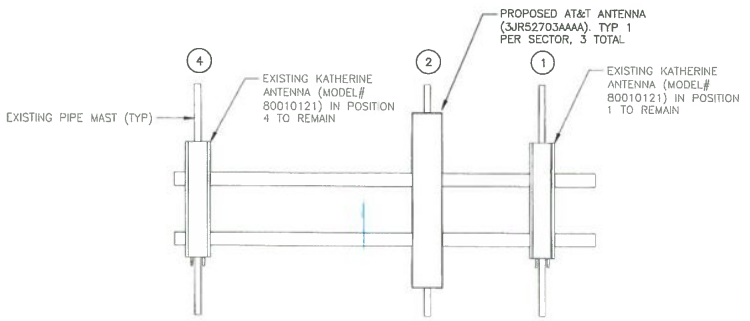
THE CONTRACTOR MUST FIELD VERIFY ALL MEASUREMENTS AND FIELD CONDITIONS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION.



1 C-3 **TOWER ELEVATION**
SCALE: N.T.S.



2 C-3 **EXISITNG SECTOR PROFILE - FRONT**
SCALE: N.T.S.



3 C-3 **PROPOSED SECTOR PROFILE - FRONT**
SCALE: N.T.S.

at&t
7150 STANDARD DRIVE
HANOVER, MD 21076

NEXIUS
7550 TEAGUE ROAD
#401
HANOVER, MD 21076

PLANS PREPARED BY:
Kimley»Horn
655 NORTH FRANKLIN STREET, SUITE 150
TAMPA, FL 33602
PHONE (813) 620-1460
WWW.KIMLEY-HORN.COM

REV	DATE	DESCRIPTION	BY
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B	12/09/14	REVISED PER COMMENTS	JPH
A	12/03/14	ISSUED FOR REVIEW	JPH

DRAWN BY:	CHECKED BY:
JPH	CAR

KHA PROJECT NUMBER: 148995003

ENGINEER SEAL:
COMMONWEALTH OF VIRGINIA
KEVIN S. GASKEY
No. 20757
2-25-15
KEVIN S. GASKEY, PE
PROFESSIONAL ENGINEER LIC. NO. 020[illegible]
PROFESSIONAL ENGINEER

PROJECT INFORMATION:
WEST SPRINGFIELD
FA# 10004703
6140 ROLLING ROAD
SPRINGFIELD VA, 22151

SHEET TITLE:
TOWER ELEVATION

SHEET NUMBER:
C-3

Board Agenda Item
February 20, 2018

ACTION - 1

Approval of License Agreement with the Gum Springs Historical Society for the Use of Space within Gum Springs Community Center (Mount Vernon District)

ISSUE:
Board approval to license space at the Gum Springs Community Center at 8100 Fordson Road to the Gums Springs Historical Society to permit the storage and display of museum artifacts.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors authorize staff to execute a license substantially in the form of Attachment 2 and to direct staff to continue to allow the space to be used as a museum until otherwise directed by the Board.

TIMING:
The Board deferred this board item from the January 23, 2018 meeting until February 20, 2018. Board action is requested on February 20, 2018, to allow the Board to formalize its relationship with the Gums Springs Historical Society and the operation of a museum at the Gum Springs Community Center.

BACKGROUND:
Gum Springs Historical Society, Inc. (GSHS) is a Northern Virginia-based, tax exempt public charity pursuant to Section 501(c)(3) of the Internal Revenue Code whose mission is to promote the historical and cultural heritage of Gum Springs, the oldest African American community in Fairfax County. GSHS currently occupies Suites 136 A-F at the Gum Springs Community Center (Community Center) at 8100 Fordson Road, also identified by Tax Map Parcel No. 1012 01 0047. GSHS uses approximately 1,747 square feet of space (Premises) for the interpretation and storage of pictures and artifacts that are representative of the history of Gum Springs.

The term of the license agreement will be continuous, subject to the right of GSHS to terminate the agreement with 30 days' written notice and the separate right of the County to terminate the agreement 30 days after the Board's approval of the termination. The County will allow the GSHS to use the Premises without charge. Because GSHS is a charitable institution that provides a service to Fairfax County residents, including the educational enrichment of students and the greater community, the Board is authorized to permit the GSHS to use the licensed space without payment of consideration pursuant to Va. Code Ann. § 15.2-953.

Normal operating hours of the museum are Tuesdays and Thursdays from 10 a.m. to 2 p.m., and on Saturdays from 1 p.m. to 3 p.m. GSHS will provide entrance to the

museum at all other times by appointment between 10 a.m. and 5 p.m., Monday through Saturday. GSHS will not have access to the Premises outside of the normal operating hours of the Community Center, and will coordinate its activities with Community Center staff to ensure that its programs and visitors do not interfere with other ongoing public functions at the building.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Location Map for Community Center
Attachment 2 – Draft License Agreement between the Board and GSHS

STAFF:
David J. Molchany, Deputy County Executive
Jose A. Comayagua, Jr., Director, Facilities Management Department
Christopher A. Leonard, Director, Neighborhood and Community Services

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney

ATTACHMENT 1

Gum Springs Community Center

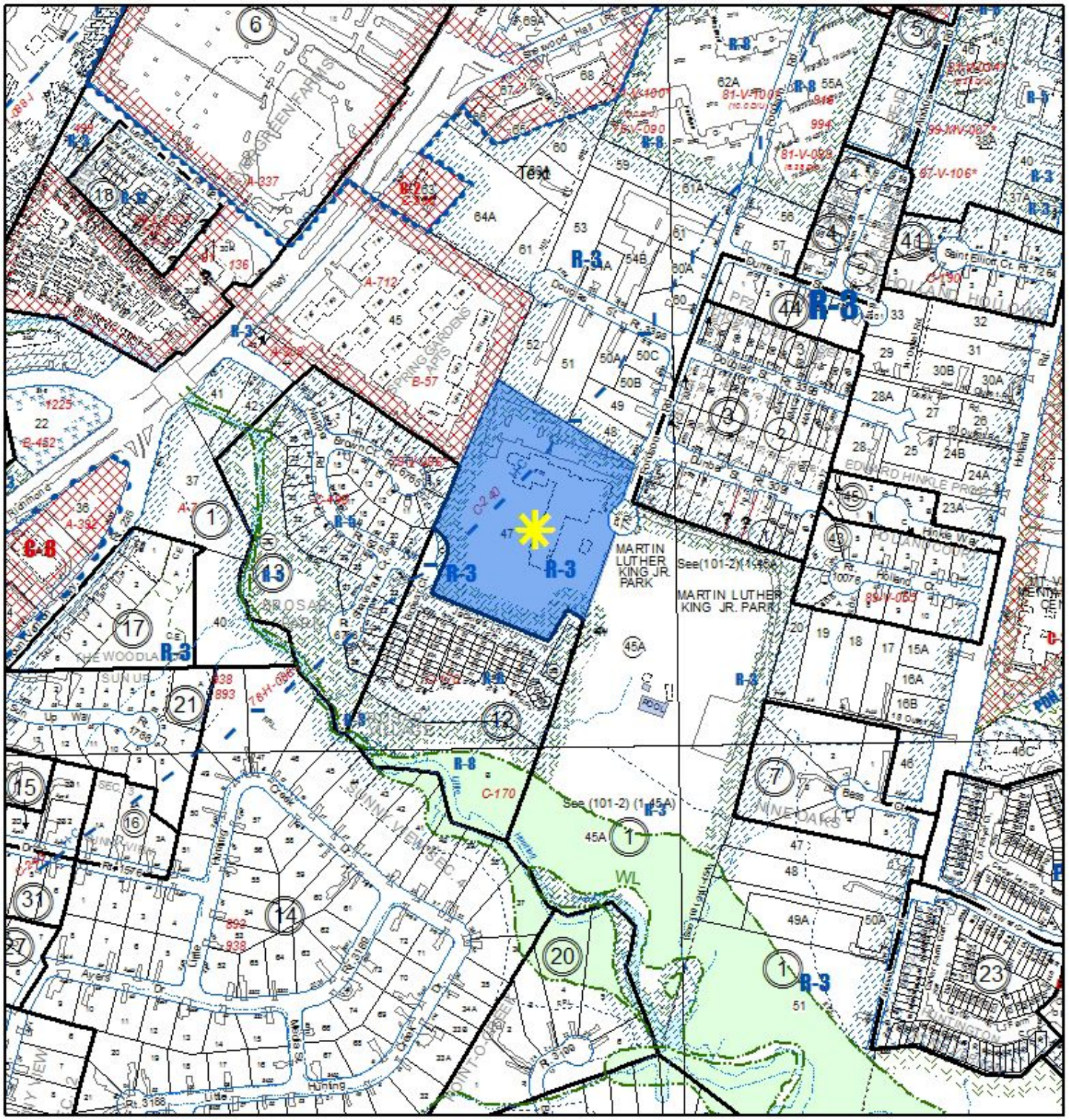
8100 Fordson Road

Tax Map No.1012 01 0047

Mount Vernon District

N

0 155 310 620 Feet



Revised

COUNTY OF FAIRFAX LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is between the **Board of Supervisors for Fairfax County, Virginia**, (the "County") and the **Gum Springs Historical Society, Inc. ("GSHS")**, whose address is 8100 Fordson Road, Alexandria, Virginia 22306.

WHEREAS, the County and GSHS desire to enter into an agreement for certain County-owned premises for the GSHS to promote and to provide long-term support for the customary programs of the Gum Springs Museum and the history of Gum Springs, the oldest African American community in Fairfax County, Virginia through lectures, historical exhibits, research and educational programs for all interested persons (the "permitted use"); and

WHEREAS, GSHS will operate the Gum Springs Museum in accord with the terms of this Agreement, including the provisions of Exhibit A, which is attached hereto and incorporated herein; and

WHEREAS, the County's designated Neighborhood and Community Services Representative shall, except where otherwise stipulated, serve as the representative of the County;

NOW, THEREFORE, the parties mutually agree to the following:

1. **LOCATION OF PREMISES/PROPERTY**

   a. The premises which are the subject of this Agreement, hereafter referred to as the "premises," are Rooms 136 A, 136 B, 136 C, 136 D, 136 E, and 136 F located in the Gum Springs Community Center ("GSCC"), 8100 Fordson Road, Alexandria, Virginia 22306. The premises have been occupied and used by GSHS since 1996 and shall continue to be used by the GSHS solely for the permitted use and for no other purpose.

   b. It is agreed that by occupying the premises, GSHS acknowledges that it has had full opportunity to examine the building and accepts the premises "as is". This Agreement does not grant any right to make changes or additions to the premises. This Agreement does not grant any right to light or air over or about the premises.

   c. GSHS agrees to confine its use of the premises to the areas specifically described in this Agreement and any common areas necessary for entering or leaving the building, which is limited to hallways, stairways, doorways, elevators, and restrooms. GSHS agrees not to use, occupy, or obstruct any room or any area of the building not specifically authorized for use by GSHS.

2. **TERM and RENT:** GSHS has been occupying the premises since 1996. The term of this Agreement shall run indefinitely, unless the Agreement is terminated in accordance with Section 4, Section 10 or Section 18 of the Agreement. GSHS will not be charged monetary rent for its use of the Premises during the term of this Agreement. During the term of the Agreement, the County shall not permit any third party to use the premises for any activity which interferes with the operation of the Gum Springs Museum. The County and its contractors may enter upon the premises, or any portion thereof, for the purpose of inspection of the same, or performing any repairs herein allowed to be performed by the County.

3. **USE:** GSHS warrants that the premises will be used lawfully for the permitted use and agrees to abide by all the laws and regulations of all lawful authorities and for no other purpose. GSHS agrees that its use of the premises will not interfere with the use of the space by the County or any other party authorized by the County. GSHS shall only have access to the premises during regularly scheduled business hours of the Gum Springs Community Center ("GSCC"). County will inform GSHS of any planned building closures and/or scheduling conflicts, not related to inclement weather, in a timely manner. If for some reason GSCC faces an emergency closure not related to inclement weather, County will notify GSHS's single point of contact, who shall be designated in writing by GSHS.

4. **DEFAULT**

a. If GSHS breaches or violates any of the terms, conditions or covenants contained in this Agreement, and such breach or violation continues for thirty (30) days after written notice from the County, then GSHS shall be considered to have caused an event of default ("Event of Default"). If GSHS breaches or violates any of the terms, conditions or covenants contained in this Agreement more than three (3) times in a twelve (12) month period, and the County provides written notice of each such breach or violation, then GSHS shall be considered to have caused an Event of Default. Upon the occurrence of an Event of Default, this Agreement shall, at the sole option of the County, terminate upon 20 days written notice to the GSHS. GSHS shall cease its operations on the premises by close of business on such date of termination and vacate the property by close of business on such date of termination. Further, the County is authorized, with or without process of law, to repossess the premises, and, should GSHS fail to vacate the premises as provided herein, the County is authorized to enter onto the premises, and to expel and remove GSHS, together with all property of every kind belonging to it.

b. If GSHS abandons the premises or ceases to operate or use the premises for the intended use, GSHS shall vacate the premises within 30 days after the premises is abandoned or GSHS ceases to operate or use the premises and the Agreement will be terminated.

5. **PARKING** GSHS and Gum Springs Museum visitors shall have shared use, with other visitors and staff of the GSCC, of the parking lot of the Gum Springs Community Center at the sole risk of GSHS.

6. **MODIFICATION AND REPAIRS**

a. GSHS agrees to accept the premises "as is".

b. All improvements or modifications to the premises, including but not limited to structural, interior and exterior modifications or additions shall be subject to prior written approval by the County. GSHS will submit plans and specifications for approval.

c. If GSHS is approved to make modifications, the modifications shall be and remain the sole property of the County at the termination of the Agreement.

d. GSHS shall not place any of its organizational lettering, signs or objects on doors, windows or outside walls of premises without the permission of the County, which permission shall not be unreasonably withheld but which shall be subject to risk management approval in its absolute discretion. The Gum Springs Museum banner that is currently hanging in the GSCC is approved unless risk management advises otherwise.

e. GSHS shall not, without the prior approval of the County, paint, paper, decorate, or drive nails into, deface or injure the walls, ceiling, woodwork, or floors of premises, install any electrically or mechanically operated equipment (including air conditioners) in the premises. At the termination of this Agreement, or any extension or renewal thereof, all such improvements shall be and remain the property of the county. GSHS agrees that the County may, at its sole and absolute discretion, require such improvements to be removed and premises restored to original condition, with such removal and restoration to be at GSHS's expense.

f. GSHS shall be responsible for repairs or maintenance necessitated by the negligence of the GSHS, it agents, guests or invitees; and all damage to the premises caused by the GSHS or its agents, guests or invitees shall be repaired promptly by or at the expense of the GSHS.

g. Any renovation or improvements made or obtained by GSHS are made at GSHS's sole risk and expense, and the County shall not be held responsible for any claims for injury or loss of property due to renovation or improvements made by or for GSHS.

h. Any movable partition, trade fixtures, floor covering, or equipment installed in the premises at GSHS's expense shall remain the property of the GSHS and may be removed by the GSHS.

7. **SERVICES PROVIDED BY THE COUNTY**

a. County agrees to provide the following utilities to the premises for normal business operations; provided, however, the County shall not be liable for failure to furnish any of these utilities.

1) Electrical service for normal business operations. GSHS shall not connect any additional fixtures, appliances or equipment to the premises electrical system or make any alteration to the system, without the County's written approval.

2) Heat. Provided daily to maintain comfortable occupancy of the premises under normal business conditions.

b. County agrees to provide full maintenance to the premises during the term of this Agreement to include heat, plumbing, electrical, sewer and water systems, snow and ice removal in accordance with the County snow policy, sanding or salting of the driveway, walks and parking areas, grass cutting, and repair to the doors, windows and roof, not caused by the negligence of the GSHS.

c. County agrees to provide support copying/printing for the GSHS museum programing as deemed appropriate by the County.

d. County agrees to include the premises in the scheduled program of custodial services for the GSCC. This subsection (d) does not obviate GSHS's requirements under paragraph 8 of the GSHS Roles and Responsibilities attached as Exhibit A.

e. County agrees to be responsible for maintaining any equipment owned by the County and which the County, at its sole discretion, may provide for use in the premises.

f. County will include advertising regarding GSHS's activities at the GSCC in GSCC publications and will provide printing for the annual GSHS magazine. The scope and extent of the services provided in this subsection (f), including whether any these services are provided during a fiscal year, are subject to the sole discretion of the

Director of NCS or his designee after a review of the annual appropriations dedicated to the Gum Springs Community Center.

8. **LIABILITY AND INSURANCE**

a. Liability for damage to Personal Property and Person. All personal property owned, stored or used by GSHS (including its employees, business invitees, customers, clients, etc.), agents, family members, guests or trespassers, in and on the premises, shall be and remain at the sole risk of the GSHS, and the County shall not be liable to them for any damage to, or loss or theft of such personal property arising from any act of any other persons nor from the leaking of the roof, or bursting, leaking, overflowing of water, sewer or steam pipers, or from heating or plumbing fixtures, or from electrical wires or fixtures, or from air-conditioning failure. The County shall not be liable for any personal injury to the GSHS (including employees, business invitees, customers, clients, etc.), agents, family members, guests or trespassers arising from the use, occupancy and condition of the premises.

b. Liability Insurance. GSHS will maintain commercial general liability insurance with limits of not less than $1,000,000 per occurrence. If GSHS fails to maintain the required insurance, the County may, but does not have to, maintain the insurance at GSHS's expense. The policy shall expressly provide that it is not subject to invalidation of the County's interest by reason of any act or omission on the part of GSHS. The limits of the insurance will not limit the liability of GSHS.

c. GSHS's Insurance Policies. The County does not provide any type of insurance which would protect the GSHS's personal property from loss by fire, theft, or any other type of casualty loss. It is GSHS's responsibility to obtain such insurance. The GSHS, at its sole expense, shall secure its own insurance to protect GSHS and its property against all perils of whatever nature for One Hundred (100%) percent replacement of the stored property. Insurance on the GSHS's property is a material condition of this Agreement. GSHS shall make no claim whatsoever against the County in the event of any loss.

d. Indemnification. GSHS agrees to indemnify and hold harmless the Board of Supervisors of Fairfax County, Fairfax County, its officers, agents and all employees and volunteers from any and all claims for property damage, death, bodily injuries and personal injuries, including cost of investigation, all expenses of litigation, including reasonable attorney fees and the cost of appeals, arising out of any claims or suits because of GSHS, including its agents, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the premises.

9. **RESPONSIBILITIES OF GSHS:** GSHS agrees:

a. Not to injure or deface or suffer to be injured or defaced the premises or any part of the property and to promptly replace or repair any damages to the premises, other than damage to structural portions.

b. To keep the premises in good order and condition at all times and to notify the County of any defects in or damage to the structure, equipment, or fixtures of the premises.

c. Not to strip, overload, damage or deface the premises.

d. Not to keep gasoline of other flammable material or any explosive material in or near the premises. GSHS will not allow any equipment or practice that might void insurance coverage on the premises.

e. To take appropriate measures to conserve and efficiently use energy and other resources such as heat, water and utilities.

f. Not to allow on the premises any illegal, unlawful or improper activity which would be noisy, boisterous or in any manner constitute a nuisance to adjacent properties.

g. To supervise and conduct its activities in such a manner as to insure no disruption to the enjoyment and possession of other occupants of the building.

h. To comply with all rules, regulations, and conditions of this Agreement, which include the GSHS Roles and Responsibilities set forth on the attached Exhibit A and the County's policies applicable to the GSCC, copies of which are available upon request. Any violation of the rules, regulations and conditions, including the GSHS Roles and Responsibilities and the County's policies applicable to the GSCC, shall be a violation of this Agreement.

i. Not to obstruct or use the sidewalks, passages, and stairways and any other parts of the building which are not occupied by GSHS for any other purpose than entering and exiting the building.

j. GSHS shall be responsible for all repairs or maintenance or other damages caused by GSHS's use or occupancy of the premises.

k. GSHS shall not incur any long distance telephone charges. Any such charges incurred will be the financial responsibility of the GSHS, and GSHS will be billed accordingly.

l. GSHS shall be responsible for making a reasonable effort to secure the premises and the equipment held within the property cited in 1.a. of this Agreement. GSHS will be responsible for all equipment stored in the cited property.

10. **DAMAGE BY FIRE OR CASUALTY:** If the premises or any essential part of the premises is destroyed or damaged by fire or other casualty, so as to render it unfit for the use for which authorized by this Agreement, and the County, at its option, determines that use of the premises as required under the Agreement shall cease, the county shall be entitled to terminate this Agreement upon 15 days written notice. The county shall have the right, at its option, to repair such destruction or damage and GSHS shall, when the premises is rendered fit for purposes for which authorized for use by GSHS, continue to use the premises as provided in this Agreement .

11. **WAIVER:** The county shall not be liable for, and GSHS releases the county and its agents, employees, volunteers, contractors, and waives all claims for, damage to person or property sustained by the GSHS or any occupant of the premises resulting from the premises or any equipment or appurtenance becoming out of repair, or resulting from an accident at the building, or resulting directly or indirectly from any act or neglect of any GSHS occupant of the building.

12. **NOTICE OF DEFECTS:** GSHS shall give the County prompt written notice of accidents or defects on or about the premises or damages to the premises.

13. **INTEREST IN PROPERTY:** Nothing in this Agreement shall be interpreted to create anything other than that provided by the terms of the Agreement and shall specifically not create any right, title or interest in property nor shall it create an easement.

14. **COMPLIANCE WITH LAWS**: GSHS agrees to abide by the laws of the Commonwealth and the County in the performance of its services.

15. **SURRENDER OF POSSESSION**: GSHS agrees to remove all its goods, equipment and effects from the premises, in the event this Agreement expires or is terminated, and shall leave the premises in a clean condition reasonably acceptable to the county.

16. **ASSIGNMENT**: GSHS shall not transfer or assign this Agreement, nor sublet any part of the premises without the written consent of the County.

17. **RULES AND REGULATIONS**: GSHS and its agents and employees shall abide by and observe such reasonable rules and regulations as may be promulgated from time to time by the Fairfax County Board of Supervisors for the operation and maintenance of the building.

18. **TERMINATION OF AGREEMENT:** The Agreement is revocable at will by the County with the approval of the County Board of Supervisors, and upon such approval the Agreement will be terminated by the County 30 days after written notice of such termination is provided to GSHS. The County may also terminate the Agreement in compliance with Sections 4 and 10of this Agreement. GSHS may terminate this Agreement by providing the County with 30 days written notice of such termination. GSHS will be required to vacate the premises by close of business of Agreement termination date. Expiration or termination of this Agreement by either party shall not relieve or release GSHS from any liability or obligation which may have been incurred or assumed by GSHS prior to such expiration or termination.

19. **COUNTY'S FINANCIAL OBLIGATION:** All of the County's financial obligations under this Agreement are subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations.

20. **NO PARTNERSHIP**: Nothing contained in this Agreement shall be deemed to create a partnership or joint venture of or between the County and the GSHS.

21. **COMMON AREAS**: The County reserves the right to alter the common areas, as deemed necessary, in the sole discretion of the Fairfax County Board of Supervisors, so long as such alteration does not interfere with the GSHS's reasonable use of the space for the purposes authorized by this Agreement. This includes but is not limited to the parking area, grounds, common hallways, walkways, etc. and such right shall not be infringed by GSHS.

22. **SEVERABILITY**: If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws in effect during the term of this Agreement, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby.

23. **NOTICES**: All notices required or desired to be given hereunder by either party to the other shall be given by certified or registered mail. Notices to the respective parties shall be addressed as follows:

If to the GSHS: Gum Springs Historical Society, Inc.
8100 Fordson Road
Alexandria, VA 22306

If to the County: Fairfax County Government Center
Facilities Management Division
Attention: Leasing Agent
12000 Government Center Parkway
Suite 424
Fairfax, Virginia 22035

24. **ENTIRE AGREEMENT**: This Agreement contains the entire agreement between the County and GSHS. Oral statements, representations, and prior agreements not contained or referenced in this Agreement, shall have no force or effect. This Agreement may be modified only in writing executed by both parties.

GUM SPRINGS HISTORICAL SOCIETY

By: _____
Ronald Chase, GSHS President

08-07-2017
DATE

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA

By: _____
David J. Molchany, Deputy County Executive

_____
DATE

EXHIBIT A

GSHS Roles and Responsibilities

1. GSHS will operate the museum at the GSCC on Tuesdays and Thursdays from 10am – 2pm, and on Saturdays from 1pm – 3pm. GSHS will provide entrance to the museum all other times by appointment during the year at the designated museum location between 10am and 5pm, Monday through Saturday. GSHS will notify GSCC staff when appointments are scheduled outside of the publicized times listed on Tuesdays, Thursdays, and Saturdays. This program will be closed on Fairfax County holidays and times when the GSCC is closed for operation.

2. GSHS will not admit visitors into the museum through the external museum door before 10am or after 5pm. The external museum door must remain locked before 10am and after 5pm regardless of whether the GSCC is otherwise open for operation.

3. GSHS will provide to the County's designated Neighborhood and Community Services Representative ("NCS Representative") by January of each year, a proposed written schedule outlining requested dates and times of room use for special events and programs in the GSCC for that year. The NCS Representative will submit in writing to GSHS approval of the dates and times set aside for the GSHS use within 10 days after the county receives the request. The County agrees to accommodate, schedule permitting, alteration of GSHS's scheduled room usage based on changes to the GSHS's event schedule, provided advance notification is given (at least 30 days in advance, if possible) to the NCS Representative of requested changes.

4. GSHS will abide by the policies and procedures governing use of the GSCC, a written copy of which will be provided to the GSHS by the NCS Representative.

5. GSHS will not make any permanent, significant additions or changes to any NCS property without first obtaining written permission from the county.

6. All property purchased or given to the GSHS will remain the property and responsibility of the GSHS unless otherwise agreed to by the two parties.

7. GSHS will be responsible for returning NCS property to its original condition and location after each use, except for normal wear and tear. GSHS will be responsible for the repair or replacement of any items damaged or removed by the GSHS or its agents, employees or contractors. The GSHS is not responsible for damage caused by any other users of GSCC.

Department of Neighborhood and Community Services
12011 Government Center Parkway, Tenth Floor
Fairfax, VA 22035
703-324-4600, TTY 711, Fax 703-222-9792
www.fairfaxcounty.gov/ncs

8. GSHS will be responsible for maintaining in clean and safe condition all areas of the museum, the office area, and museum storage areas.

9. GSHS will make available to NCS limited complimentary tickets/admission for GSHS sponsored special event or program at the GSCC. These tickets may be distributed, at NCS's discretion, to persons served by the GSCC or other county programs or to individuals identified in the community who might not otherwise be able to attend for financial reasons.

10. GSHS will include, without charge, publicity/advertising regarding GSCC programs and activities in GSHS publications.

11. GSHS will designate a member who will serve as the single point of contact for NCS on GSCC use and scheduling issues.

12. GSHS will track and report to NCS total monthly visitation data from the museum.

13. GSHS will have a staff person present for all times during museum operating hours.

14. GSHS will develop and maintain a manual of procedures and checklists for museum operations in order for museum employees and volunteers to safely staff the museum.

Board Agenda Item
February 20, 2018

ACTION - 2

Approval of License Agreement with the Southeast Fairfax Development Corporation for the Use of Space within the South County Building at 8350 Richmond Highway (Lee District)

ISSUE:
Board approval to license space at the South County Building at 8350 Richmond Highway to the Southeast Fairfax Development Corporation (SFDC) for office use purposes.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors authorize staff to execute a license with SFDC substantially in the form of Attachment 2 and to direct staff to allow the space to be used as office space until otherwise directed by the Board.

TIMING:
Board action is requested on February 20, 2018, to allow SFDC to occupy space within the South County Building as soon as practicable.

BACKGROUND:
Southeast Fairfax Development Corporation is a non-profit organization pursuant to Section 501(c)(3) of the Internal Revenue Code whose mission is to develop, implement and support projects designed to stimulate economic growth in the Richmond Highway corridor of Fairfax County by working closely with business owners, developers and local residents. SFDC currently pays to lease space in a privately owned building on Richmond Highway; however, these premises are inadequate for its needs and the location is not in close proximity to the offices of County agencies and other stakeholders which are key partners in SFDC's development initiatives. Consequently, SFDC has requested to use available space at the South County Building located at 8350 Richmond Highway and identified by Tax Map Parcel No. 1013 01 0016A.

The County has identified approximately 459 square feet on the first floor of the building that would be suitable for office use by SFDC. The term of the license agreement will be five (5) years with one 3-year option to extend the term. The County will allow SFDC to use the Premises without charge, and will supply furniture and telephone service. Because SFDC is a non-profit institution that provides benefits to Fairfax County residents, including the facilitation of development efforts and public outreach to homeowners and businesses within the Richmond Highway corridor, the Board is authorized to permit the SFDC to use the licensed space without payment of consideration pursuant to Va. Code Ann. § 15.2-953.

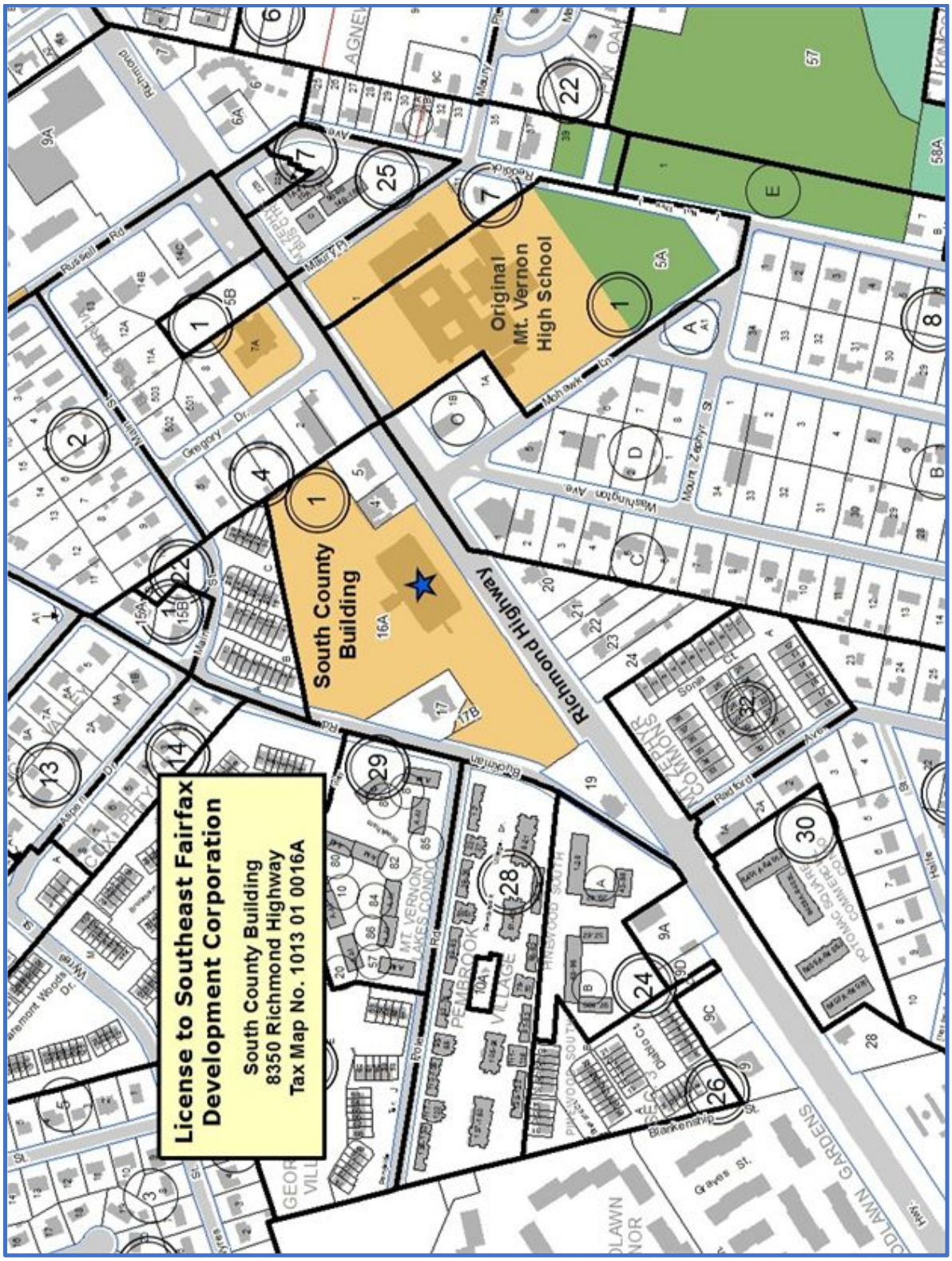
Board Agenda Item
February 20, 2018

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Location Map for South County Building
Attachment 2 – Draft License Agreement between the Board and SFDC

STAFF:
David J. Molchany, Deputy County Executive
Jose A. Comayagua, Jr., Director, Facilities Management Department
Christopher A. Leonard, Director, Neighborhood and Community Services

ASSIGNED COUNSEL:
David L. Honadle, Assistant County Attorney


License to Southeast Fairfax Development Corporation
South County Building
8350 Richmond Highway
Tax Map No. 1013 01 0016A
South County Building
Original Mt. Vernon High School
Richmond Highway

ATTACHMENT 2

COUNTY OF FAIRFAX
LICENSE AGREEMENT

THIS LICENSE AGREEMENT dated _____, 2018 is between the **Board of Supervisors of Fairfax County**, hereafter referred to as the "County" located at 12000 Government Center Parkway, Fairfax, Virginia 22035 and **Southeast Fairfax Development Corporation,** a 501(c)(3) non-profit organization, hereafter referred to as "Licensee".

WHEREAS, Licensee is an organization whose primary mission is to develop, implement and support projects designed to stimulate economic growth in the Richmond Highway corridor by working closely with business owners, developers and local residents;

WHEREAS, the County desires to license to the Licensee certain County owned premises for office use;

NOW, THEREFORE, the parties mutually agree to the following:

1. **LOCATION OF PREMISES/PROPERTY:**

   a. The South County Center, located at 8350 Richmond Highway**,** Alexandria, VA 22309 is owned by the County (the "Property")**.** Licensee shall have access to the Property, specifically Suite 123, which consists of approximately **459 square feet** of rentable floor area (the "Premises").

   b. Licensee agrees to confine its use of the Premises to the areas specifically described in this License and any common areas necessary for entering or leaving the Premises, which is limited to hallways, stairways, doorways, elevators, and restrooms. Licensee agrees not to use, occupy or obstruct any room or any area of the Premises not specifically licensed to the Licensee.

   c. The County agrees that the Licensee shall have access to the Premises on weekdays between 8:00 a.m. and 9:30 p.m. Access during any other day and time must be scheduled in advance of the requested date(s) with Neighborhood and Community Services. Licensee's staff, volunteers, employees and their guests will not have access to the Property or Premises unless otherwise agreed to by the County.

   d. The County has absolute control over matters of safety and security. Licensee's staff shall be issued key cards to enable access to the Premises and the hallways and bathrooms on the first floor of the Property.

2. **TERM AND RENT**:

   a. Subject to the early termination right set forth in Section 18, the term of this License Agreement shall run for five (5) years beginning on _____, 20__, and ending at midnight on _____, 20___ (the "Term"), unless terminated as otherwise provided under the License Agreement.

   b. This Agreement shall automatically be renewed for one (1) additional term of three (3) years (for a total, with the initial 5-year term, of 8 years) unless, not less than three (3) months before the date of expiration of the initial 5-year term, either party provides to the other party written notice of its intention to exercise its right to terminate the Agreement as of the expiration of such term.

c. Licensee shall not have to pay any money as consideration for the use of the Premises or for utilities, custodial and other building services during the term of the License, except as a result of any default under Paragraph 4.

3. **USE:** The Premises shall be used by the Licensee for general office use (non-medical) and storage incidental thereto ("Use"), and for no other purpose. Except as otherwise provided in this License, the Licensee may use the Premises only for purposes consistent with the permitted use allowed in this License.

4. **DEFAULT:**

a. If Licensee breaches or violates any of the terms, conditions or covenants contained in this License, then this License shall, at the sole option of the County, terminate, upon written notice to the Licensee. Licensee shall cease its operations on the Premises by close of business on such date of termination and vacate the Premises by close of business on such date of termination. Further, the County is authorized, with or without process of law, to repossess the Premises, and, should Licensee fail to vacate the Premises as provided herein, the County is authorized to enter onto the Premises, and to expel and remove Licensee, together with all property of every kind belonging to it.

b. If the Licensee abandons the Premises or ceases to operate or use the Premises in conformance with the Use set forth in Section 3, the Licensee shall vacate the Premises within 30 days after the Premises is abandoned or Licensee ceases to operate or use the Premises as required under this License.

5. **PARKING:** Parking of vehicles at the Premises shall be at the Licensee's own risk and in accordance with applicable County parking policies. Licensee will require all deliveries to be made only in areas designated by the County.

6. **MODIFICATION AND REPAIRS:**

a. Licensee agrees to accept the Premises "as is".

b. Licensee shall not make any improvements or modifications to the Premises, including but not limited to structural, interior and exterior modifications or additions.

c. Licensee shall not place any of its organizational lettering, signs or objects on doors, windows or outside walls of Premises without written approval of the County. No signs shall be visible through or on windows.

d. Licensee shall not, without the prior written approval of the County, paint, paper, decorate, or drive nails into, deface or injure the walls, ceiling, woodwork, or floors of Premises, install any electrically or mechanically operated equipment (including air conditioners) in the Premises.

e. Licensee shall be responsible for repairs or maintenance necessitated by the negligence of the Licensee, its agents, guests or invitees; and all damage to the Premises caused by the Licensee or its agents, guests or invitees shall be repaired promptly by or at the expense of the Licensee.

f. Any modifications made or obtained by Licensee are made at Licensee's sole risk and expense, and the County shall not be held responsible for any claims for injury or loss of property due to renovation or improvements made by or for Licensee.

g. Any movable partition, trade fixtures, floor covering, or equipment installed in the Premises at the Licensee's expense shall remain the property of the Licensee and may be removed by the Licensee.

7. **SERVICES PROVIDED BY THE COUNTY:**

a. County agrees to provide utilities to the Premises for normal business operations in accordance with Licensee's Use. However, the County shall not be liable for failure to furnish any of these utilities when such failure is caused by conditions beyond the control of the County.

1) Electrical service for normal business operations. Licensee shall not connect any additional fixtures, appliances or equipment to the Premises electrical system or make any alteration to the system, without the County's written approval.

2) Heat and Air Conditioning. Heat and Air Conditioning will be provided daily to maintain comfortable occupancy of the Premises under normal business conditions.

3) Water. Cold water for drinking, lavatory and toilet purposes and hot water for lavatory purposes at reasonable temperatures.

4) Telecommunications. County will provide existing cable to enable Licensee to obtain its own telecommunications services, including any and all telephone, cable and internet services. Licensee must obtain and bear the cost of its own telecommunications services. Other than telephone equipment, which will be provided by County to Licensee upon request, Licensee shall provide its own computers, fax machines or other office equipment necessary for the Use of the Premises.

5) Furniture. County shall work with Licensee to provide furniture for the Use at no cost to Licensee to the extent such furniture is available.

b. County agrees to provide full maintenance to the Property during the term of this License to include, but not limited to custodial services, heat, plumbing, electrical, sewer and water systems, grass cutting, and repair to the doors, windows and roof, provided that the required maintenance is not caused by the negligence of the Licensee, its agents, guests or invitees. Snow and ice removal, sanding or salting of the driveway, walks and parking areas are performed according to the Fairfax County Maintenance & Stormwater Management Division's priority schedule.

8. **LIABILITY AND INSURANCE:**

a. Liability for damage to Personal Property and Person. All personal property of the Licensee (including its employees, business invitees, customers, clients, etc.), its agents, family members, guests or trespassers, in and on the Premises, shall be and remain at the sole risk of the Licensee and the County shall not be liable to them for any damage to, or loss of such personal property arising from any act of any other persons nor from the leaking of the roof, or bursting, leaking, overflowing of water, sewer or steam pipers, or from heating or plumbing fixtures, or from electrical wires or fixtures, or from air-conditioning failure. The County shall not be liable for any personal injury to the Licensee (including employees, business invitees, customers, clients, etc.), its agents, family members, guests or trespassers arising from the use, occupancy and/or condition of the Premises.

b. Liability Insurance. During the term of this Agreement, LICENSEE shall maintain a policy of commercial general liability insurance insuring the County and LICENSEE against any liability arising out of the ownership, use, occupancy, or maintenance of the Property. The insurance will be maintained for personal injury and property damage liability adequate to protect the County against liability for injury or death of any person in connection with the use, operation and condition of the Property, in an amount of not less than ONE MILLION DOLLARS ($1,000,000) per occurrence/aggregate. The limits of the insurance shall not limit the liability of LICENSEE. If LICENSEE fails to maintain the required insurance, the County may, but is not required to, maintain the insurance at LICENSEE's expense. The policy shall expressly provide that it is not subject to invalidation of the County's interest by reason of any act or omission of LICENSEE.

c. Licensee's Insurance Policies. Insurance Policies: Insurance carried by Licensee will be with companies acceptable to the County. Licensee shall deliver to the County a certificate evidencing the existence and amounts of the insurance within thirty (30) days of the execution of this Agreement. No policy shall be cancelable or subject to reduction of coverage or other modification except after 60 days' prior written notice to the County. Licensee shall, at least 60 days prior to the expiration of the policies, furnish the County with renewals or "binders" for the policies, or the County may order the required insurance and charge the cost to Licensee.

d. Indemnification. Licensee agrees to indemnify and hold harmless the Board of Supervisors of Fairfax County, Fairfax County, its officers, agents and all employees and volunteers from any and all claims for property damage, death, bodily injuries and personal injuries, including cost of investigation, all expenses of litigation, including reasonable attorney fees and the cost of appeals arising out of any claims or suits because of the Licensee, including his agents, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the Premises.

9. **RESPONSIBILITIES OF LICENSEE:**

a. Licensee agrees not to injure or deface or suffer to be injured or defaced the Premises or any part of the Property and to promptly replace or repair any damages to the Premises, other than damage to structural portions, caused by the negligence of the Licensee, its agents, guests or invitees.

b. Licensee agrees to keep the Premises in good order and condition at all times and to notify the County of any defects in or damage to the structure, equipment, or fixtures of the Premises.

c. Licensee agrees not to strip, overload, damage or deface the Premises.

d. Licensee agrees not to keep gasoline or any other flammable material or any explosive material in or near the Premises. Licensee will not allow any equipment or practice that might void insurance coverage on the Premises.

e. Licensee agrees to take appropriate measures to conserve and efficiently use energy and other resources such as heat, water and utilities.

f. Licensee agrees not to allow on the Premises any illegal, unlawful or improper activity which will be noisy, boisterous or in any manner constitute a nuisance to adjacent properties.

g. Licensee agrees to supervise and conduct its activities in such a manner as to insure no disruption to the enjoyment and possession of other occupants of the Property.

h. Licensee agrees to comply with all rules, regulations, and conditions of this License. Any violation of the rules, regulations and conditions shall be a violation of this License.

i. Licensee agrees not to obstruct or use the sidewalks, passages, and stairways and any other parts of the Premises which are not occupied by the Licensee for any other purpose that entering and exiting the Premises.

j. Licensee shall be responsible for making a reasonable effort to secure the Premises and the equipment held within the Premises cited in 1.a. of this license. Licensee will be responsible for all equipment stored in the cited Property.

k. Licensee agrees to adhere to the County's Smoking Policy. Smoking is prohibited in all County buildings, within 50 feet of all public accessible entrances and 15 feet of all other entrances.

l. Licensee agrees to adhere to the County's policy ensuring animals (except service animals) are prohibited from entering all County buildings.

m. Licensee has been provided two (2) proxy card(s) for access to building/suite for which Licensee will be responsible for during term of this agreement and shall return at end of the term. There is a replacement fee charged for lost cards.

n. Licensee must coordinate all access for its contractors to the Building and/or Premises through staff for the Facilities Management Department.

10. **DAMAGE BY FIRE OR CASUALTY:** If the Premises or any essential part of the Premises is destroyed or damaged by fire or other casualty, so as to render it unfit for the use for which licensed, and the County, at its option, determines that use of the Premises shall cease, the County shall be entitled to terminate this Agreement upon 15 days written notice. The County shall have the right, at its option, to repair such destruction or damage and Licensee shall, when the Premises is rendered fit for purposes for which licensed continue to use the Premises as provided in the Agreement.

11. **WAIVER:** The County shall not be liable for and the Licensee releases the County and its agents, employees, volunteers, contractors, and waives all claims for, damage to person or property sustained by the Licensee or any occupant of the Premises resulting from the Premises or any equipment or appurtenance becoming out of repair, or resulting from an accident at the building, or resulting directly or indirectly from any act or neglect of any Licensee or occupant of the building.

12. **NOTICE OF DEFECTS:** Licensee shall give the County prompt written notice of accidents or defects on or about the Premises or damages to the Premises.

13. **INTEREST IN PROPERTY:** Nothing in this Agreement shall be interpreted to create anything other than a license and shall specifically not create any right, title or interest in property nor shall it create an easement.

14. **COMPLIANCE WITH LAWS**: Licensee agrees to abide by the laws of the Commonwealth and the County in the performance of its services.

15. **SURRENDER OF POSSESSION**: Upon termination of this License, Licensee agrees to remove all its goods, equipment and effects from the Premises and shall leave the Premises in a clean condition reasonably acceptable to the County.

16. **ASSIGNMENT**: Licensee shall not transfer or assign this License, nor sublet any part of the Premises without the written consent of the County.

17. **RULES AND REGULATIONS**: Licensee and its agents and employees shall abide by and observe such reasonable rules and regulations as may be promulgated from time to time by the County Board of Supervisors for the operation and maintenance of the building.

18. **TERMINATION OF LICENSE:** The License may be terminated at any time during the term of this License by either party as stated in Section 2. Licensee will be required to vacate the property cited in 1.a. by the close of business on the license termination date. Expiration or termination of this License by either party shall not relieve or release Licensee from any liability or obligation which may have been incurred or assumed by Licensee prior to such expiration or termination.

19. **COUNTY'S FINANCIAL OBLIGATION:** All of the County's financial obligations under this Agreement are subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. In the event funds are not appropriated at the beginning of any fiscal year for the County's obligations under this Agreement, then this Agreement shall terminate on the last day of the fiscal year for which appropriations were received. The County shall furnish Licensee with written notice that funds were not appropriated by the Board of Supervisors at least sixty (60) days prior to the beginning of the fiscal year involved.

20. **NO PARTNERSHIP**: Nothing contained in this License shall be deemed to create a partnership or joint venture of or between the County and the Licensee.

21. **COMMON AREAS**: The County reserves the right to alter the common areas, as deemed necessary, in the sole discretion of the Board of Supervisors, so long as such alteration does not interfere with the Licensee's reasonable use of the space for the purposes contracted for. This includes but is not limited to the parking area, grounds, common hallways, walkways, etc. and such right shall not be infringed by Licensee.

22. **SEVERABILITY**: If any clause or provision of this License is illegal, invalid or unenforceable under present or future laws in effect during the term of this License, it is the intention of the parties that the remainder of this License shall not be affected thereby.

23. **ENTIRE AGREEMENT**: This License contains the entire agreement between the County and the Licensee. Oral statements, representations, and prior agreements not contained or referenced in this License, shall have no force or effect. This License may be modified only in writing executed by both parties.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

LICENSE AGREEMENT

SIGNED BY:

SOUTHEAST FAIRFAX DEVELOPMENT CORPORATION	**BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**
By: Edythe Kelleher Its: President	By: David J. Molchany Its: Deputy County Executive
DATE	DATE

Board Agenda Item
February 20, 2018

ACTION – 3

Authorization to Waive the Option to Purchase One Workforce Dwelling Unit at Sunrise Square (Hunter Mill District)

ISSUE:
Board of Supervisors authorization is requested to waive the option to purchase one Workforce Dwelling Unit (WDU) in the Sunrise Square development.

The Sunrise Square development is located on Roland Clarke Place north of Sunrise Valley Drive in the Hunter Mill District (see Attachment). The development is a residential project that when completed will have a total of 34 townhouses and 10 condominiums. Four of the condominiums have been designated as WDUs.

Pursuant to the Board of Supervisors Countywide Workforce Dwelling Unit Administrative Policy Guidelines (WDU Policy), the Board has the option to purchase up to one-third of the WDUs within 90 days after a Sales Offering Agreement for the WDUs is executed by the Department of Housing and Community Development (HCD) on behalf of the Board.

RECOMMENDATION:
The County Executive recommends that the Board waive its option to purchase one Workforce Dwelling Unit at Sunrise Square.

TIMING:
Immediate.

BACKGROUND:
The Sunrise Square project will complete construction on the four WDU condominiums in March/April 2018. The WDUs are two-bedroom and two-bathroom units, each with one reserved parking space. The WDUs will be sold through HCD's First Time Homebuyers Program. Two units will be sold to households with incomes at or below 70 percent of the area median income (AMI) and two units will be sold to households with incomes at or below 100 percent of the AMI. The sale prices of the units are $241,850 for the units set at 70 percent of the AMI and $371,350 for the units set at 100 percent of the AMI. These sale prices are currently pending County Executive approval per the WDU Policy. The market rate units are priced starting at $550,000.

If the Board were to exercise its option to purchase one of the WDUs, it would purchase one of the units affordable at 70 percent of AMI for $241,850; the WDU would likely be placed in the Fairfax County Redevelopment and Housing Authority's (FCRHA) Fairfax

County Rental Program (FCRP). This process is similar to the process under the Affordable Dwelling Unit (ADU) Program, in which the FCRHA has the option to purchase up to one-third of the ADUs. However, the opportunity to purchase ADUs and place them in the FCRP is generally a more favorable business opportunity because ADUs are typically priced between $100,000 and $160,000.

The County Executive recommends that the Board waive its option to purchase one WDU at Sunrise Square based on the following considerations:

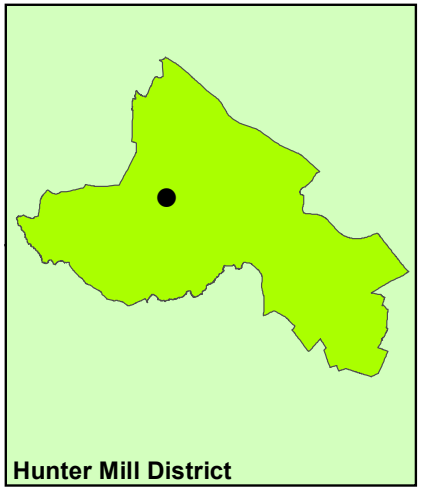
1. If the Board waives its option to purchase the WDU, the unit would be sold through HCD's First Time Homebuyers Program, which would increase affordable homeownership opportunities in the Hunter Mill District. There have been limited affordable homeownership opportunities throughout the county and in the Hunter Mill District in the past several years.
2. The purchase would not be a favorable business opportunity because of the WDU sales price relative to the ADU sales price. In addition, the cost to HCD to own and operate a single unit would be high and expected to continue to increase as labor costs rise.
3. The recommendation also supports the FCRHA's Strategic Plan to generate and increase opportunities for homeownership, and is aligned with the Board's Strategic Plan to Facilitate the Economic Success of Fairfax County, specifically, the goal to promote a full spectrum of housing types, densities, and prices that are essential to provide choices not otherwise provided by the market.

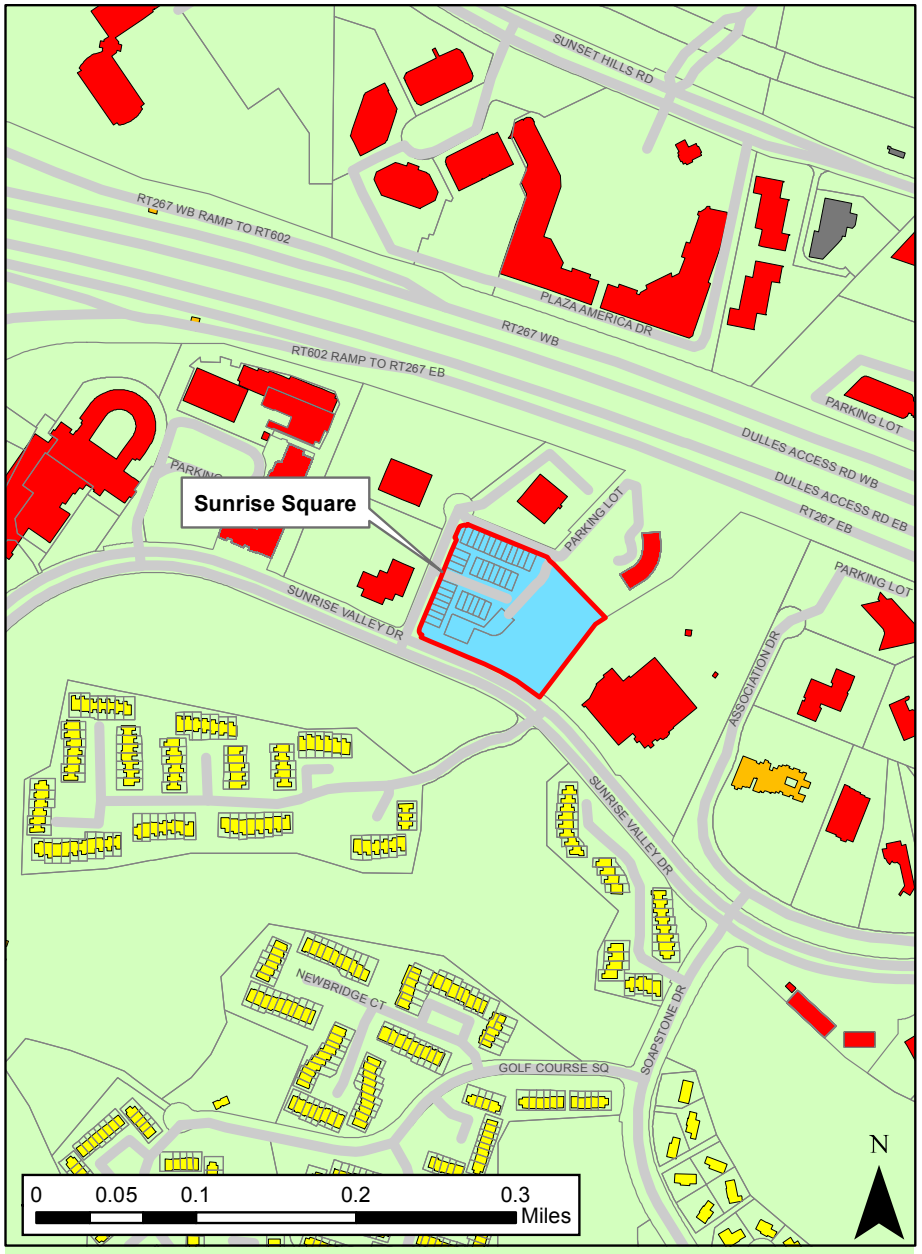
FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: Location Map

STAFF:
Tisha Deeghan, Deputy County Executive
Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)
Hossein Malayeri, Deputy Director of Real Estate, Finance and Development, HCD
Ahmed Rayyan, Director, Design, Development and Construction (DD&C), HCD
Abdi Hamud, Affordable and Workforce Housing Program Administrator, DD&C, HCD

Sunrise Square
Roland Clarke Place, Reston, VA 20191





Board Agenda Item
February 20, 2018

ACTION – 4

Authorization for the Fairfax County Redevelopment and Housing Authority (FCRHA) to Make Loans to Wesley Housing Development Corporation from Housing Blueprint Funds for the Construction of The Arden, Located at 2317 Huntington Avenue, Alexandria, VA (Mount Vernon District)

ISSUE:
The Board of Supervisors is requested to authorize the Fairfax County Redevelopment and Housing Authority (FCRHA) to make two loans in the aggregate amount of $7,400,000 to Wesley Housing Development Corporation and/or its affiliates (WHDC) for the construction of two buildings consisting of a total of 126 units of affordable multifamily housing, to be known collectively as “The Arden”.

RECOMMENDATION:
The County Executive recommends that the Board authorize the FCRHA to make the proposed loans to WHDC.

TIMING:
Immediate. WHDC will be submitting an application to the Virginia Housing and Development Authority (VHDA) on March 16, 2018 for nine percent competitive low-income housing tax credits for “Building A,” to contain 79 units.

BACKGROUND:
In July 2017, the Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for the Housing Blueprint Funds of $12,945,923. In response to the NOFA, WHDC submitted an application requesting $8,855,223 for the acquisition and redevelopment of 2317 Huntington Avenue, Alexandria, VA, to be known as “The Arden”. HCD received two other proposals requesting a total of $6,500,000 and staff will bring forward those recommendations to the Board of Supervisors at a later date. While the other two projects are still being evaluated, the Selection Advisory Committee is recommending approval of approximately $7,400,000 for the Arden project.

The subject property (Attachment 1) consists of two vacant duplexes and an occupied 12-unit apartment building on 1.04 acres. The duplexes and apartment building will be demolished in order to construct 126 multifamily units composed of studio, one bedroom (BR), two-BR, and three-BR units. In addition to the multifamily units, there will be a minimum of 3,534 square feet (sq. ft.) of retail space. The property is currently owned by 2317 Huntington, LLC, which has a Property Purchase Agreement with A&R-

Huntington Metro, LLC, as the contract purchaser. Once A&R-Huntington Metro, LLC purchases the property from 2317 Huntington, LLC, they will sell it to WHDC for a price of $6,617,520. This has been memorialized in a Purchase and Sale Agreement between the two entities that expires on June 30, 2018. The agreement allows for three one-month extensions for a fee of $12,000 per extension, with the latest possible closing date being September 30, 2018. WHDC will obtain an acquisition/bridge loan in order to close on the land acquisition by September 30, 2018.

The property is currently zoned Planned Residential Mixed-Use District (PRM), which permits a mixed-use development on the lot. The existing zoning permits an overall Floor Area Ratio (FAR) of 2.99 on 1.04 acres of land. WHDC has also applied for a zoning amendment to construct office space of 6,131 sq. ft., where they will move their own headquarters, in lieu of the 3,534 sq. ft. of retail space that is currently planned for the project. In anticipation of the zoning amendment being approved, WHDC has also applied for a reduction in the parking ratio at the building because the office space will reduce the number of parking spaces (because the office space is larger than the retail space and will take up parking spaces on the first floor) at the project. Should WHDC not be able to obtain this zoning amendment, WHDC would pursue the project, by-right, with 3,534 sq. ft. of retail space.

The FCRHA has reviewed the item for the authorization of Blueprint funds for the Arden project and approved it at their February 1st 2018 meeting.

Applicant:
WHDC has provided affordable housing solutions in Northern Virginia since 1974. Since constructing its first community, Strawbridge Square Apartments in Fairfax County, WHDC has developed 25 communities in the Washington DC region and 1,700 plus total housing units serving more than 22,000 persons. They have also worked on cutting edge green redevelopment of existing market affordable housing into mixed-income housing that will be 60 percent at high market rents and 40 percent at low income rents including some at 30 percent and 50 percent of Area Median Income (AMI), all within walking distance of two Metro stops. WHDC produced the region's first affordable housing for people with chronic disease and the region's first barrier-free housing community—Coppermine Place I and II, for individuals with special needs, featuring a building for senior residents and a building for individuals with disabilities. Residents of the proposed Arden community will have access to WHDC's portfolio-wide service offerings provided by the corporate office. A dedicated WHDC staff member assists residents at risk of eviction due to arrears or lease violations, by referring and connecting them with appropriate resources. Additionally, WHDC has an Employment Specialist position intended to assist residents across WHDC properties with career development plans.

All residents of WHDC properties have access to Money Management International, a 24/7 (accessible via internet and telephone) resource to assist individuals with

budgeting, credit repair, debt recovery, asset development accounts, etc. This resource provides targeted learning and presentations for residents across WHDC properties.

Project Description

The applicant, WHDC, is proposing to construct 126 units, along with 3,534 sq. ft. of retail space, or possibly with office space of 6,131 sq. ft. (as described above). The project will be less than a block from the Huntington Metro Station. The project will be separated into two buildings, each to be owned by a separate limited liability companies (LLC) controlled by WHDC: Building A will have 79 units and be financed by nine percent tax credits, a first mortgage, and a Housing Blueprint Loan of $4,055,120. Building B will have 47 units and the retail/office space and will be financed by four percent tax credits, a tax-exempt bond proceed funded first mortgage, a deferred developer's fee, and a Housing Blueprint Loan of $3,344,880. Both buildings will be built at the same time and sit on top of a shared underground parking garage. The project will be affordable to low-income households and will be restricted to serve residents with incomes at 40 percent, 50 percent and 60 percent of the AMI, along with one market-rate unit that will be set at Fair Market Rent (FMR). Forty-nine percent (39 units) of the units in Building A will be affordable at 60 percent AMI, 41 percent (32 units) of the units will be at 50 percent AMI, and 10 percent (8 units) of the units affordable at 40 percent AMI. All but one of the units (46 units) in Building B will be income and rent-restricted at 60 percent AMI, with the exception of the market-rate unit.

As a condition to the rezoning of the property from C-5 (retail) to PRM (mixed-use), the developer agreed to certain proffers that will be required as a part of the redevelopment of the site, including a noise mitigation plan; sustainable design; 15 percent of total units to be workforce units; installation of cisterns to capture storm runoff; on-site recreational amenities totaling a minimum of $1,255 per non-workforce unit, or $134,300 overall; off-site recreational amenities totaling $107,074; contribution of $24,622 for construction of a bicycle lane; construction of a median along Huntington Avenue; installation of pedestrian crosswalk; contribution of $18,810 for additional pedestrian improvements; and a contribution of $72,334 for schools. WHDC has included the proffers in the development budget.

The project will be designed to exceed the Universal Design Concept principles required in the Uniform Federal Accessibility Standards (UFAS) for physically disabled residents. Eight units will be UFAS compliant to be accessible for disabled residents. However, those units have not yet been designated in the plans. Eight one-bedroom units will be designated for Project-Based Vouchers (PBVs) and the units will be set at 40 percent AMI. However, the PBV units may not be the same as the UFAS units. In 2016, the FCRHA awarded eight (8) PBVs to the project through a competitive process separate from the Blueprint RFP.

Relocation

At this point, WHDC expects to acquire the property with the possibility of relocating the tenants of the apartment building. WHDC has set aside $125,000 in their development

budget for relocation should they be asked to assume the responsibility of relocation. Because WHDC has been awarded PBVs for this project, WHDC will have to comply with the federal Uniform Relocation Act (URA) and Fairfax County Relocation Guidelines when performing relocation. WHDC has prepared a Relocation Plan for the tenants of the apartment building and HCD staff has reviewed and approved the initial draft of the relocation plan.

Potential Benefits

(a) Except for one (1) market-rate unit, all of the other 125 units will serve residents at 40 percent, 50 percent, and 60 percent AMI levels.
(b) Eight units will be UFAS compliant to be accessible for disabled residents and WHDC will accept referrals of special needs households on the FCRHA waiting lists.
(c) The units at 40 percent AMI will be marketed toward elderly and formerly homeless individuals, and towards individuals with mental/physical disabilities.
(d) The project will be compliant with Universal Design features.
(e) 2317 Huntington Avenue is ideally situated within walking distance of the Huntington Metro stop and multiple retail outlets.
(f) The project will help in revitalizing the Huntington Avenue area.
(g) The FCRHA will have a Right of First Refusal.

Appraised Value

HCD ordered its own appraisal of the subject property that gave a value of $20,900,000 for Building A and $12,665,000 for Building B, which are the forced liquidation decontrol values, which take into account that both Building A and Building B will remain affordable for a period of three years, should the buildings be foreclosed upon and the buildings become a market-rate project. The Department of Tax Administration (DTA) has reviewed the appraisal and validated the values, as well as the methodology used to determine those values.

Assessed Value (2017)

Land: $4,865,000
Building: $100
Total: $4,865,100

Financing Plan; Ownership Structure; Terms of Housing Blueprint Loans, Affordability

Please see Attachment 2.

Closing

The loans will be closed following approval by the FCRHA and Board of Supervisors. However, requirements for the closing include, but are not limited to the following items being completed:

1. First mortgage loan, and tax-exempt bond financing closing and disbursement of funds

2. Reservation of tax credits from VHDA
3. Commitment and disbursement of the tax credit equity
4. Approval of the Relocation Plan by HCD Staff
5. Final underwriting by HCD Staff
6. Receipt and approval of all third party reports by HCD staff
7. Inclusion of Right of First Refusal in favor of FCRHA
8. Other factors as deemed necessary to protect the interest of the FCRHA and Fairfax County

STAFF IMPACT:
Real Estate Finance staff has spent a considerable amount of time in structuring this transaction.

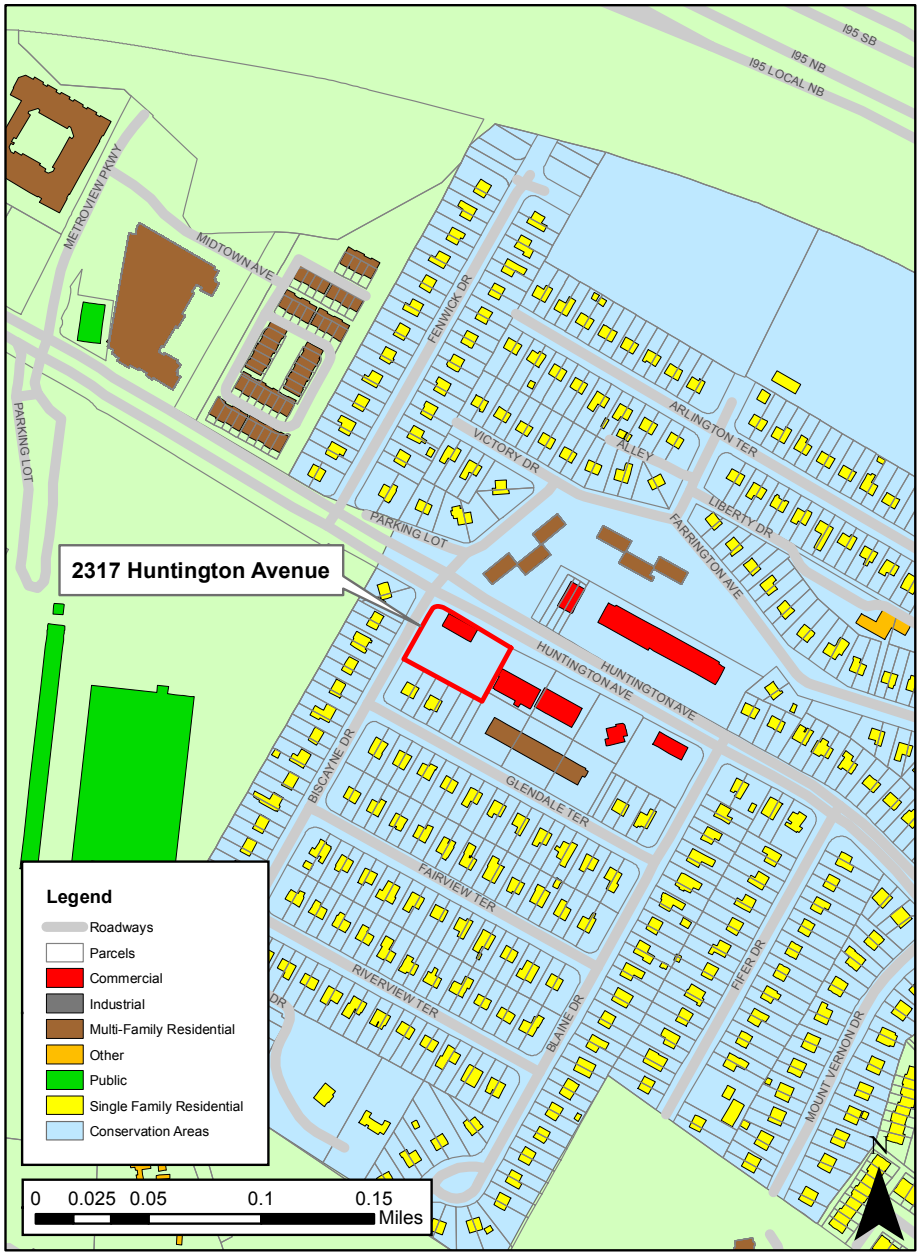
FISCAL IMPACT:
Funding in an amount of $7,400,000 will be allocated from funds identified as part of the FY 2018 Housing Blueprint Project in Fund 300-C30300, the Penny for Affordable Housing Fund, with a project balance of $12,936,966 as of January 3, 2018. There will also be an annual monitoring fee of $5,000 to be received by the FCRHA from each of the building owners and placed in Fund 810-C81000, FCRHA General Operating Fund beginning in FY 2018.

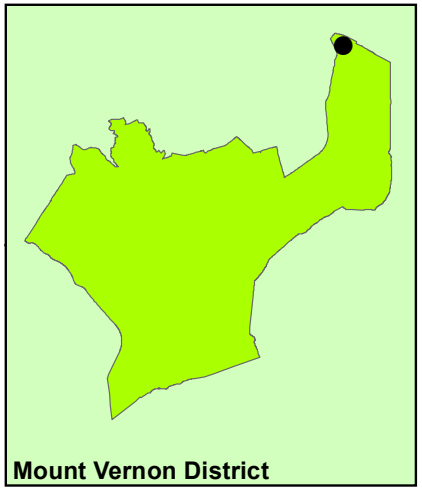
ENCLOSED DOCUMENTS:
Attachment 1 – Vicinity Map
Attachment 2 – Financing Plan; Ownership Structure; Terms of Housing Blueprint Loans, Affordability

STAFF:
Tisha M. Deeghan, Deputy County Executive
Thomas Fleetwood, Director, Department of Housing and Community Development (HCD)
Hossein Malayeri, Deputy Director, Real Estate, Finance and Development, HCD
Aseem K. Nigam, Director, Real Estate Finance and Grants Management, (REFGM), HCD
Debashish Chakravarty, Senior Real Estate Finance Officer, REFGM, HCD

ASSIGNED COUNSEL:
Cynthia A. Bailey, Deputy County Attorney
Alan M. Weiss, Assistant County Attorney
Ryan A. Wolf, Assistant County Attorney

The Arden
2317 Huntington Avenue, Alexandria, VA 22303





Financing Plan; Ownership Structure; Terms of Housing Blueprint Loans, Affordability

Building A

Permanent Sources	**Sources**
Tax Credit Equity	$22,874,077
First Mortgage	$8,713,435
Housing Blueprint Loan	$4,055,120
Total Permanent	**$35,642,632**
Summarized Uses	**Uses**
Acquisition Costs	$7,066,409
Construction Costs	$20,253,169
Architecture and Engineering	$810,719
Construction Costs Contingency	$1,012,658
Owner and 3rd Party Costs	$1,522,276
Legal	$94,084
Market Study/Appraisal	$25,080
Proffers	$376,193
Real Estate Taxes	$125,397
Insurance During Construction	$37,619
Title and Recording	$28,754
Soft Cost Contingency	$62,698
Relocation Costs	$78,373
Financing Costs	$1,431,894
Tax Credit Fees	$163,819
Accounting and Cost Certifications	$40,000
Operating and Debt Service Reserves	$513,489
Developer's Fee	$2,000,000
Total Uses	**$35,642,632**

The first mortgage for the development for Building A is expected to be financed by VHDA at this stage, although other lenders are being explored. The annual debt service for the first mortgage is projected to be $481,878 based on a loan amount of $8,713,435 with a blended interest rate of 4.19 percent with a 35-year term and amortization. Building A's share of Fairfax County's Housing Blueprint Loan is $4,055,120.

Building B

Permanent Sources	**Sources**
Tax Credit Equity	$5,292,966
Tax-Exempt Bonds	$7,669,455
Housing Blueprint Loan	$3,344,880
WHDC Funds	$1,500,000
Deferred Developer Fee	$1,500,000
Total Permanent	**$19,307,301**
Summarized Uses	**Uses**
Construction Costs	$12,049,354
Architecture and Engineering	$449,605
Construction Costs Contingency	$602,468
Owner and 3rd Party Costs	$1,007,568
Legal	$55,952
Market Study/Appraisal	$14,920
Proffers	$223,811
Real Estate Taxes	$74,603
Insurance During Construction	$22,381
Title and Recording	$25,309
Soft Cost Contingency	$37,302
Relocation Costs	$46,627
Financing Costs	$1,266,642
Tax Credit Fees	$40,182
Accounting and Cost Certifications	$40,000
Operating and Debt Service Reserves	$350,577
Developer's Fee	$3,000,000
Total Uses	**$19,307,301**

The first mortgage for the development for Building B is expected to be financed by VHDA through tax-exempt bonds at this stage, although other lenders are being explored. The annual debt service for this first mortgage is projected to be $376,854 based on a loan amount of $7,669,455 with a blended interest rate of 3.37 percent with a 35-year term and amortization. Building B's share of Fairfax County's Housing Blueprint Loan is $3,344,880. Along with the bond financing and four percent tax credits, WHDC will defer developer's fee by $1,500,000, which will be paid from cash flow of the project. In addition, WHDC will provide $1,500,000 of WHDC funds to cover the gap in the financing sources.

Affordability

Building A (79 Units):

AMI	**60%**	**50%**	**40%**
Number of Units	4	3	8
Bedrooms/Bathrooms	1/1	1/1	1/1
Net Rent	$1193	$986	$779
Utilities	$49	$49	$49
Gross Rent	$1242	$1035	$828
Number of Units	25	29	-
Bedrooms/Bathrooms	2/2	2/2	-
Net Rent	$1425	$1176	-
Utilities	$65	$65	-
Gross Rent	$1290	$1241	-
Number of Units	10	-	-
Bedrooms/Bathrooms	3/2	-	-
Net Rent	$1631	-	-
Utilities	$90	-	-
Gross Rent	$1721	-	-

Building B (47 Units):

AMI	60%	Market Rate
Number of Units	9	1
Bedrooms/Bathrooms	Studio/1	Studio/1
Net Rent	$1118	$1210
Utilities	$42	N/A
Gross Rent	$1160	$1210
Number of Units	10	-
Bedrooms/Bathrooms	1/1	-
Net Rent	$1193	-
Utilities	$49	-
Gross Rent	$1242	-
-		
Number of Units	27	-
Bedrooms/Bathrooms	2/2	-
Net Rent	$1425	-
Utilities	$65	-
Gross Rent	$1490	-

Ownership Structure

WHDC will form two separate single-purpose LLCs, tentatively named Wesley Huntington A LLC and Wesley Huntington B LLC, to acquire the property and construct and operate a total of 126 units of affordable housing, with a proposed tax credit mix of four percent and nine percent credits similar to the financial structure for The Residences at Government Center and other recent FCRHA assisted tax credit projects. Building A will have 79 units financed in part by nine percent tax credits and Building B will have 47 units and retail space, financed in part with four percent tax credits. A tax credit investor will be admitted to each of the LLCs as a member in exchange for tax credit equity that will be contributed to the project. WHDC intends to apply to VHDA for nine percent tax credits in March of 2018, and for four percent tax credits at a later date. Buildings A and B will be built simultaneously. The owner of

Building A will take out one or more interim loans ("Interim Financing") to cover the acquisition of the site and the construction cost of the entire project, including Building B. Upon substantial completion of construction of the entire project, the owner of Building A will form a three-unit condominium structure covering (1) a block of 79 units, (2) a block of 47 units, and (3) the retail space. The remainder of the building (including first floor management offices and the parking garage) will be common elements of the condominium shared by both Building A and Building B. Wesley Huntington A LLC, as the temporary owner of the entire project, will then sell the 47 units of Building B and the retail space to Wesley Huntington B LLC. The permanent financing for the project (which will pay off the Interim Loans), will consist of first mortgage tax-exempt bonds, tax credit equity, Housing Blueprint Loans, and other sources of financing. No Housing Blueprint Loan dollars will be released until the project is substantially complete, the condominium structure is established, and the other permanent financing is ready to simultaneously close.

Separate deeds of trust for the permanent loans will be placed on property owned by each of the LLCs. However, during construction, the entire project will be collateral for all the debt under Building A's interest in the property (although no Housing Blueprint funds will be released at that time). There will be a single deed of trust for both Buildings A and B during construction, with a release of that single deed of trust and new deeds of trust executed for the respective shares of Building A and Building B at construction substantial completion. No Housing Blueprint funds will be released until the entire project is substantially complete, but there will be no cross-collateralization or cross-default of debt between the two LLCs after construction completion.

Terms of Housing Blueprint Loans

The subordinate Housing Blueprint Loans, the subordinate loans, will be closed simultaneously with all other permanent funding sources in this project. The interest rate for the Blueprint Loans will be two percent simple interest per annum. The Housing Blueprint Loans will be disbursed at construction completion. Interest will start accruing at the time the first mortgage and tax-exempt bonds begin to amortize.

The payment of all principal and interest will be deferred and simple interest will accrue for 30 years or such other term as is coterminous with the first mortgage, and tax-exempt bonds. The entire indebtedness will become due and payable upon (i) the transfer of the Property, unless approved in advance by the FCRHA, (ii) refinancing, unless approved in advance by the FCRHA, or (iii) failure to comply with the Housing Blueprint and/or first mortgage, and tax-exempt bond loan document requirements. The FCRHA will be "cash flow" loans, which means that principal and interest payments are deferred unless there is sufficient cash flow, in which case cash flow is applied first to the accrued interest and then to the principal. At the end of the term of 30 years or such other term as is coterminous with the first mortgage loan, and tax-exempt bonds, the outstanding principal balance along with any accrued interest shall become due and payable. The annual loan payments shall be payable only from 50 percent of the cash flow remaining after payment of the deferred developer fee in full. As mentioned in the

attached proforma, during the 30-year term or such other term as is coterminous with the first mortgage loan, and tax-exempt bonds, refinancing may occur at the discretion of the FCRHA and as allowed by FCRHA policies. In the event that the Housing Blueprint Loans are paid off before maturity of the loans, the project owner shall maintain the affordability period according to the Housing Blueprint goals, for a minimum term of 30 years or for a term coterminous with the first mortgage, whichever is longer.

Board Agenda Item
February 20, 2018

ACTION – 5

Approval of Adjustment of the Land Development Services Unit Price Schedule (UPS) that is Used to Determine Development Agreement Bond Amounts

ISSUE:
Board of Supervisor's (Board's) adoption of the 2018 Comprehensive Unit Price Schedule (UPS) and the timing of periodic reviews and adjustments.

RECOMMENDATION:
The County Executive recommends that the Board approve the proposed UPS effective March 1, 2018, with subsequent annual adjustments based on the most current Construction Cost Index as reported by *Engineering News Record* (ENR). And, further recommends that a complete review of the entire UPS be performed by an independent construction cost estimating consultant periodically. Land Development Services (LDS) will administratively adjust the UPS accordingly.

TIMING:
Routine.

BACKGROUND:
The Public Facilities Manual requires developers to provide the County with an agreement supported by a bond or other security to cover the construction costs of all required improvements that are shown on the approved plan. The cost to construct required improvements is based on a schedule of prices for individual items that are defined in the UPS.

An independent construction cost estimating firm was retained to prepare the proposed UPS. The consultant established the proposed unit prices by consolidating many of the existing UPS similar line items into one line item.

The proposed UPS was coordinated with the Northern Virginia Building Industry Association, the trade association NAIOP, and the Engineer's and Surveyor's Institute/Fairfax. In addition, internal County agencies typically involved in capital construction projects and in completing defaulted development projects reviewed the proposed UPS.

The proposed UPS simplifies the cost estimate process, as the development industry had requested as part of the Fairfax First initiative.

LDS maintains current unit prices to ensure that sufficient security is available for the completion of outstanding required improvements in the event a developer defaults on a development agreement. In order to ensure the bond amounts obtained by the County remain consistent with market rate construction costs, LDS adjusts the UPS on an annual basis using the most current Construction Cost Index as reported by ENR. It also is recommended that LDS review items using an independent construction cost estimating consultant periodically. The results of the consultant's work would be coordinated with industry and other appropriate County agencies before being presented to the Board for approval. Under this proposal, effective March 1, for each of the intervening years, prices in the UPS will be automatically adjusted based on the most current ENR Construction Cost Index. A letter will be sent to industry at least one month in advance notifying them of the effective date of the change.

If approved by February 20, 2018, staff will distribute a Letter to Industry providing notice of the 2018 UPS and its effective date. The 2018 UPS also will be distributed to industry developers and builders and posted on the County's website prior to the March 1, 2018, effective date. All new development agreements, surety replacements, reduction applications, and extension requests submitted to the County after February 28, 2018, will be subject to the new pricing schedule.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1: Proposed 2018 Comprehensive Unit Price Schedule

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services

Proposed UPS Description	2018 Unit Cost	UNIT
GENERAL CONDITIONS: Includes Field Offices and Temp Facilities; General Supervision, Job Sign and Mobilization		
NOTE: As a percentage total for Surety Value Estimate Form (SVE): **Minimum of $13,500.00 for estimates up to $270,000.00 (item 8 on SVE) plus 5% for any amount over $270,000.00 (item will automatically calculate under Section 9 of SVE)**		
NOTE: Rock excavation in trenches, De-watering & select Backfill for Storm Sewer, Sanitary Sewer and Water Service are uniform for all pipe types.		
Rock Excavation in Trench, Blast - All Pipes	$ 120	CY
Rock Excavation in Trench, Hoe ram - All Pipes	$ 150	CY
Select Backfill, 0'-6' Deep (3"-24" pipe)	$ 25	LF
Trench De-watering	$ 3	LF
STORM SEWER		
CMP Plain 12 GA, 72" to 120" equivalent	$ 440	LF
CMP Plain 12 GA, 36" to 60" equivalent	$ 200	LF
CMP Plain 14 GA, 21" to 30" equivalent	$ 94	LF
CMP Plain 16 GA, 15" to 18" equivalent	$ 80	LF
CMP Plain 12 GA, 36" to 48" equivalent	$ 160	LF
CMP Plain 14 GA, 24" to 30" equivalent	$ 100	LF
CMP Plain 16 GA, 18" equivalent	$ 75	LF
Elliptical, RCP Class III, 18" to 30" equivalent	$ 160	LF
Elliptical, RCP Class III, 36" to 48" equivalent	$ 350	LF
Elliptical, RCP Class III, 60" equivalent	$ 630	LF
HDPE, 6" to 12"	$ 48	LF
HDPE, 15" to 30"	$ 110	LF
HDPE, 36" to 48"	$ 180	LF
HDPE, 60"	$ 270	LF
RCP Class III to V, 12" to 30"	$ 99	LF
RCP Class III to V, 33" to 48"	$ 230	LF
RCP Class III to V, 54" to 84"	$ 480	LF
RCP Class III to V, 96" to 109	$ 880	LF
RCP Extra Strength, 8" to 10"	$ 50	LF
CMP Plain 12 GA, 36" to 48"	$ 150	LF
CMP Plain 12 GA, 54" to 84"	$ 340	LF
CMP Plain 12 GA, 96" to 108"	$ 580	LF
CMP Plain 14 GA, 24" to 30"	$ 88	LF
CMP Plain 16 GA, 6" to 12"	$ 46	LF
CMP Plain 16 GA, 15" to 21"	$ 70	LF
STORM SEWER - CULVERTS		
Box Culverts on Piles (BC-P), Timber Piles - Treated	$ 27	LF
Gravity Wing for Box Culvert (1 Side Only), 4' high	$ 1,030	EA
Gravity Wing for Box Culvert (1 Side Only), 5' high	$ 1,580	EA
Gravity Wing for Box Culvert (1 Side Only), 6' high	$ 2,100	EA
Gravity Wing for Box Culvert (1 Side Only), 8' high	$ 3,580	EA
Gravity Wing for Box Culvert (1 Side Only), 10' high	$ 4,270	EA
Oversized Single Box Culvert, 12'x6' to 12'x8'	$ 1,310	LF

Oversized Single Box Culvert, 12'x10' to 12'x12'	$	1,570	LF
Single Box Culvert, 4'x4'	$	410	LF
Single Box Culvert, 5'x5'	$	500	LF
Single Box Culvert, 6'x6'	$	610	LF
Single Box Culvert, 8'x8'	$	840	LF
Single Box Culvert, 10'x10'	$	1,030	LF
Standard Wing for Box Culvert (1 Side Only), 4' high	$	820	EA
Standard Wing for Box Culvert (1 Side Only), 5' high	$	1,230	EA
Standard Wing for Box Culvert (1 Side Only), 6' high	$	1,640	EA
Standard Wing for Box Culvert (1 Side Only), 8' high	$	3,040	EA
Standard Wing for Box Culvert (1 Side Only), 10' high	$	4,050	EA
Standard Wing for Oversized Box Culvert (BBC-W), 6' high	$	1,620	EA
Standard Wing for Oversized Box Culvert (BBC-W), 8' high	$	2,670	EA
Standard Wing for Oversized Box Culvert (BBC-W), 10' high	$	3,990	EA
Standard Wing for Oversized Box Culvert (BBC-W), 12' high	$	5,830	EA
STORM SEWER - PRECAST DROP INLETS			
Curb Drop Inlets, Precast, 12"-30" Pipes	$	7,270	EA
Curb Drop Inlets, Precast, 36"-48" Pipes	$	10,390	EA
Drop Inlet 48", Cast In Place & Precast 12"-24" Pipes	$	7,570	EA
STORM SEWER - CAST IN PLACE DROP INLETS			
Yard Inlet or Drop Inlet (DI-6A), 12"-24" Pipe, Inlet (H=8')	$	5,120	EA
Yard Inlet or Drop Inlet (DI-6B), 12"-24" Pipe, Inlet (H=8')	$	5,200	EA
Yard Inlet or Drop Inlet (DI-6C), 30"-48" Pipe, Inlet (H=10')	$	6,830	EA
Yard Inlet or Drop Inlet (DI-6D), 30"-48" Pipe, Inlet (H=10')	$	6,940	EA
Median Drop Inlet/Ditch Drop Inlet and Standard Yard Inlet (DI-7) (DI-7A) (DI-7B) Type III Top, 12"-42" Pipe, Inlet (H=10')	$	7,680	EA
STORM SEWER - END SECTIONS & END WALLS			
End Section, 12" - 36" Pipes, Concrete (ES-1)	$	1,070	EA
End Section, 42" - 60" Pipes, Concrete (ES-1)	$	3,060	EA
End Section, 12" - 60" Pipes, CMP (ES-2)	$	1,020	EA
End Wall, Round 12" - 36" Pipes, Cast In Place (EW-1)	$	1,670	EA
End Wall, Round 12" - 36" Pipes, Precast (EW-1)	$	1,920	EA
End Wall, Elliptical 18" - 24" Pipes, Cast In Place (EW-1A)	$	930	EA
End Wall, Elliptical 30" - 36" Pipes, Cast In Place (EW-1A)	$	1,720	EA
End Wall, Elliptical 53" x 34" (42") Pipe, Cast In Place (EW-1)	$	2,530	EA
End Wall, Elliptical 18" - 24" Pipes, Precast (EW-1A)	$	990	EA
End Wall, Elliptical 30" - 36" Pipes, Precast (EW-1A)	$	1,510	EA
End Wall, Elliptical 53" x 34" (42") Pipes, Precast (EW-1A)	$	2,140	EA
End Wall, Round 42" - 60" Pipes, Cast In Place (EW-2)	$	7,890	EA
End Wall, Round 72" - 84" Pipes, Cast In Place (EW-2)	$	14,050	EA
End Wall, Round 42" - 60" Pipes, Precast (EW-2)	$	7,550	EA
End Wall, Round 72" - 84" Pipes, Precast (EW-2)	$	10,630	EA
End Wall, Elliptical 48" Pipes, Cast In Place (EW-2A)	$	7,340	EA
End Wall, Round 42" - 48" Pipes, Precast (EW-2PC)	$	6,760	EA
End Wall, Elliptical 60" x 38" (48") Pipes, Precast (EW-2APC)	$	7,000	EA
End Wall, Double 2-12" - 2-24" Pipes, Precast (EW-6PC)	$	1,350	EA
End Wall, Double 2-30" - 2-36" Pipes, Precast (EW-6PC)	$	2,890	EA
End Wall, Right Angle 12" - 24" Pipes, Cast In Place (EW-8)	$	1,120	EA
End Wall, Right Angle 30" - 36" Pipes, Cast In Place (EW-8)	$	2,350	EA

End Wall, Right Angle 42" - 48" Pipes, Cast In Place (EW-8)	$	3,540	EA
End Wall, Right Angle 12" - 24" Pipes, Precast (EW-8PC)	$	1,750	EA
End Wall, Right Angle 30" - 36" Pipes, Precast (EW-8PC)	$	2,690	EA
End Wall, Right Angle 42" - 48" Pipes, Precast (EW-8PC)	$	3,490	EA
End Wall, Arch 15" - 24" Pipes, Precast (EW-9PC)	$	1,270	EA
End Wall, Arch 30" - 36" Pipes, Precast (EW-9PC)	$	1,890	EA
End Wall, Arch 42" - 48" Pipes, Precast (EW-9PC)	$	3,110	EA
STORM SEWER - MANHOLES			
Standard Brick Manhole - (MH-1), 6' depth with frame and cover	$	5,370	EA
Standard Brick Manhole - (MH-1), Depth below 6'	$	190	VF
Standard Frame and Cover (MH-2) 4 FT ID, 6' depth with frame and cover	$	4,600	EA
Standard Frame and Cover (MH-2) 4 FT ID, Depth below 6'	$	210	VF
STORM SEWER - MISCELLANEOUS			
Connection to Existing Structure, 6"-60" pipe	$	890	EA
Filter Fabric, Class I, II & IIII	$	4	SY
Gabions (No excavation), Mattress, Revetment & Wall	$	210	CY
Paved Ditch - 4" Thick, Concrete (Non-reinforced)	$	77	SY
Paved Ditch - 4" Thick, Bituminous concrete	$	34	SY
Plug Pipe, 6"-60" pipe	$	380	EA
Remove Old Pipe, New Pipe in Same Trench, Restore Trench (0'-10'), 6"-12" pipe (RCP)	$	57	LF
Remove Old Pipe, New Pipe in Same Trench, Restore Trench (0'-10'), 15"-36" pipe (RCP)	$	150	LF
Remove Pipe, Relay Existing Pipe in Another Trench, Restore Both Trenches (0'-10'), 6"-60" pipe	$	170	LF
Rip rap, Dry -Class I, II & III, 18"; Grouted, Class I - 18"	$	69	SY
Shoring and piles (No mobilization), Pre-stressed concrete piles (12"); Remove Steel H, Timber, Sheet, Steel (10") (H Section), Treated Timber & Untreated Timber (12") Piles	$	28	LF
STORMWATER FACILITIES			
Bioretention Basins & Filters	$	400	CY
Constructed Wetlands	$	1,860	CY
Extended Detention Pond (Dry Pond)	$	45	CY
Extended Detention and Retention Riser Structure	$	450	VLF
Manufactured BMP Systems - Hydrodynamics	$	78	CY
Manufactured BMP Systems - Filtering	$	110	CY
Permeable Pavement System - Asphalt with gravel base and perforated drains, brick & grass pavers with gravel base	$	130	SY
Reforestation	$	58,280	AC
Retention Basin (Wet Pond)	$	2,900	AC
Tree box filter - with grate and frame 6'x6 & 8'x8', without tree	$	3,670	EA
Tree box outfall 4" schedule 40 PVC with gravel backfill	$	41	LF
Vegetated Roofs - Aluminum Curbing for 6 & 12 inch depth	$	12	LF
Vegetated Roof	$	830	SY
Vegetated Swales	$	230	CY
Infiltration	$	16	CF
Rainwater Harvesting	$	38	CF
Access Gate	$	2,650	EA
Stormwater Sign	$	99	EA
SANITARY SEWER - PIPE			
DIP Class 50 to 53, 30"	$	220	LF
DIP Class 50 to 53, 36" to 48"	$	350	LF

DIP Class 50 to 53, 54"	$	520	LF
PVC, 6" to 12"	$	94	LF
PVC, 15" to 27"	$	170	LF
RCP Class III to V, 12" to 30"	$	120	LF
RCP Class III to V, 33" to 48"	$	280	LF
RCP Class III to V, 54" to 84"	$	520	LF
RCP Class III to V, 96" to 108"	$	960	LF
SANITARY SEWER - MANHOLES			
Manhole Vent 4' Diameter, 6' High	$	760	EA
Inside Diameter 3' to 6', with frame and cover	$	4,030	EA
Inside Diameter 7' to 10', with frame and cover	$	9,600	EA
Depth below 6' (Vertical Separation of Top and Bottom)	$	690	VF
SANITARY SEWER - MISCELLANEOUS			
Air Relief Valve (No manhole), 1-1/4" and 1-1/2" Valve	$	370	EA
Air Relief Valve (No manhole), 2" and 2-1/2" Valve	$	760	EA
Air Relief Valve (No manhole), 3", 4" & 6" Valve	$	2,040	EA
Class B concrete for unsuitable foundation material, Foundation material A3	$	970	CY
Class B concrete for unsuitable foundation material, Foundation material A4	$	650	CY
Concrete Pier for Storm Drainage Crossing Sanitary Sewer, 6" Pipe, 15" Pipe & 27" Pipe	$	220	EA
Connection to Existing Manhole, 8" core bore	$	1,300	EA
Force Main Pipe, 4" - 10"	$	38	LF
Force Main Pipe, 12" - 16"	$	75	LF
Internal Drop Connection to Manhole, 8" Pipe PVC	$	780	EA
Connect to Existing Main with Clean Out	$	1,940	EA
Standard Concrete Encasement, 8"- 21" Pipe	$	76	LF
Standard External Drop Connection To Manhole, CI; Inc. Bend - 2 Ea Wye - 1 Ea Extra Core, 8" - 15" Pipe	$	1,170	EA
Temporary Pump Around, 8" Line Each Location	$	12,950	Monthly
Tunnel Liner Plate (8 Gauge) - Medium OD, 48"-54" OD (15"-24" carrier pipe)	$	1,140	LF
Tunnel Liner Plate (8 Gauge) - Large OD, 60"-66" OD (27"-36" carrier pipe)	$	1,700	LF
Tunnel Liner Plate (8 Gauge) - Extra-Large OD, 72"-84" OD (42"-54" carrier pipe)	$	2,350	LF
SANITARY SEWER - PUMPING STATION			
Drywell Type or wet well type, 8' ID with standby generator and 8 foot diameter wet well: concrete, fiberglass, & steel	$	628,150	LS
Wet well Type with stand by generator, Duplex Grinder Pump in 4 foot diameter wet well	$	38,210	LS
Wet well Type with stand by generator, Simplex Grinder Pump in 4 foot diameter wet well	$	32,380	LS
Wet well Type with stand by generator, Submersible Pumps in 6 foot diameter wet well	$	300,480	LS
WATER SYSTEM			
DIP Class 52, 3" to 6"	$	75	LF
DIP Class 52, 8" to 12"	$	120	LF
DIP Class 51, 14" to 18"	$	200	LF
DIP Class 51, 20" to 24"	$	340	LF
WATER SYSTEM - MISCELLANEOUS			
Jack and bore casing (3/8" wall thickness), 16" - 30" ID (6" - 12" carrier pipe)	$	600	LF
01" Service Connection (Incl Corp. Stop, Tubing, Meter)	$	690	EA

Jack Pit	$	4,530	EA
Fire Hydrant Assembly (4): with 20 LF 6" Dip	$	4,610	EA
Valve Assembly with valve box: 3" Ball	$	390	EA
Valve Assembly with valve box: 4" to 12" Gate	$	1,280	EA
Valve Assembly with valve box: 14" to 24" Butterfly	$	7,320	EA
Wet Tap of Live Line - Grass Area, 6" to 12" Tap & in Street Patch	$	4,400	EA
STREET CONSTRUCTION			
Bituminous Concrete, Subbase, Base Course, Top Course & Coat per Square Yard	$	63	SY
Bituminous Concrete, Milling & Paving per Square Yard	$	19	SY
Concrete Curb & Gutter (CG-2, CG-3, CG-6 & CG-7)	$	27	LF
Curb Cut, CG-12 with exposed aggregate	$	650	EA
Street Intersection CG-10A	$	97	SY
Portland Cement, reinforced, 6" Gravel (Rebar #4, 12" OC/EW), 8" & 9" deep, WWF, 6" Gravel, 7", 8" & 9"	$	150	SY
Cover Material, No. 8, 68 & 79	$	3	SY
Entrances/Driveways, Commercial, CG-11, CG-13 and Entrance CG-10	$	69	SY
Standard driveway, C&G/Sidewalk 4 transition DE-2	$	1,680	EA
Standard driveway, no curb, D-5 (DE-5)	$	63	SY
Median Barrier, MB-3 (L=6'-3") & (L=12"-6")	$	450	EA
Standard blocked-out W beam strong post, GR2, Standard W beam, Weak Post GR9	$	43	LF
Terminal, GR-6 (L=12'-6"), GR-7 (L=6'-3"), MB-4 (L=37'-6"); Type I, GR-8 Terminal (L=25'), Type I, MB-5 Terminal (L=27'-1")	$	3,260	EA
Guardrail Type II, GR-8 & MB-5 Terminal (L=13'-6")	$	1,380	EA
Complete CE-7 package, Initial Street Acceptance Package, Final Street Acceptance Package	$	11,050	LS
Pipe stem from C&G & ditch, PS-2	$	45	SY
Slope erosion, Control MC-3A Straight	$	6	LF
Street lighting, including pole, bracket and light	$	5,180	EA
Street Light Upgrade	$	1,490	EA
Street name signs	$	520	EA
TB-1 Barricade	$	52	LF
Traffic control signs	$	450	EA
Shoulder Type I, Aggregate Base, 4"	$	13	SY
Soil Stabilization, Cement (6" depth) 6% & , Lime (6" depth) 6%	$	16	SY
Surface Treatment, Double Seal	$	4	SY
SIDEWALKS AND TRAILS			
Sidewalk, Concrete 4" - no reinforcement and no base & Concrete 4" with WWF & no base	$	52	SY
Sidewalk, Bituminous concrete - 2" with 4" base	$	36	SY
Handrail 3 rail 1-1/4" finish	$	120	LF
Underdrains, Sidewalk (UD-3)	$	20	LF
Concrete yard steps with railings, 4' wide with steps	$	1,910	EA
Pedestrian bridge, prefabricated, Bridge Abutments, 4' wide	$	3,240	EA
Pedestrian bridge, prefabricated, Bridge Abutments, 8' wide	$	5,830	EA
Pedestrian bridge, prefabricated, Bridge Abutments, Fair weather crossing	$	1,820	LF
Pedestrian bridge, prefabricated, Steel frame with wood deck (PA-1), 4' wide	$	780	LF

Pedestrian bridge, prefabricated, Steel frame with wood deck (PA-1), 8' wide	$	1,170	LF
Trails - Includes excavation and grading. Bituminous concrete - Type I, TX-2, Up to 10' wide, Concrete trail with gravel base, Type IV, 4' - 6' Wide	$	65	SY
Trails - Includes excavation and grading. Earth trail (Type VI, 6' Wide), Seal coat with 4" soil cement base (Type III, TX-2, 6' Wide), Stone Dust with blue stone chip base (type II, TX-2, 6'wide); Wood Chip, 4' wide, Woodchip trail with gravel base (Type VII, 6'-8' Wide)	$	18	SY
RETAINING WALLS			
Retaining Walls, Concrete Gravity (height less than or equal to 6 FT)	$	520	LF
Retaining Walls, Concrete Gravity (higher than 6 FT)	$	920	LF
MISCELLANEOUS SITE IMPROVEMENTS			
Ball Fields, Backstop (PA-10), Baseball infield (PA-6), Bleacher pad (PA-9), Little League infield (PA-5), Outfield & Infield fence, Players Area fence, and Softball Infield (PA-7)	$	11,090	EA
Bike racks(4 bikes)	$	320	EA
Bus shelter	$	25,900	EA
Multi-Use Court & Equipment, PA 25 and 27	$	32,380	EA
Tennis Courts (2), PA-15 Thru 19	$	58,280	EA
Tennis Practice Court and Wall, PA-19 to 24	$	25,900	EA
Board, Standard, Safety & Chain Link Fence	$	52	LF
Farm fence (H=5') FR-3A	$	32	LF
Remove and reset existing chain link fence	$	13	LF
Painted metal bollards with concrete base	$	780	EA
Picnic Table, (PA-2)	$	740	EA
Soccer Field (includes grading), Turf field	$	45,330	EA
Soccer Field (includes grading), Sodded field	$	194,270	EA
Swimming Pool, Community, School (Olympic)	$	94	SF
Miscellaneous Site Improvements, Tot Lot Equipment, PA 3-4, revolving, sliding, stationary, & swinging devices	$	6,960	EA
Miscellaneous Site Improvements, Tot Lot Equipment, Tot Lot - Mulch Surface, Synthetic Surface	$	16	SF
Miscellaneous Site Improvements, Trash Enclosures/Receptacles, Trash enclosures-brick/CMU 6' high, Trash receptacles-Victor Stanley Model S-45, Trash enclosures-wood 6' high	$	6,530	EA
Miscellaneous Site Improvements, Trash Pads, Trash pads 6" thick concrete	$	13	SF
ENGINEERING AND SURVEY			
As-Built Drawing and Survey	$	7,680	LS
Geotech Testing & Inspection	$	140	HR
R.O.W. Monuments Surveyed In Place	$	650	EA
Storm and Sanitary As-Built, and Video Inspection	$	12	LF
Test Pits (not allowing for rock excavation), Each location but not exceeding 15' deep	$	1,460	EA
CLEAR & GRUB			
Clear & Grub, Grading, Remove vegetation, grass areas, shrubs, trees, out buildings, utilities, water feeder lines, sanitary laterals, gas and electrical feeds, sanitary sewer. Remove utility poles, underground utility lines, and boxes/vaults of same. Remove fencing, Remove parking lot asphalt and curb and gutter. Remove pools and in ground spas and all associated footings and foundations. Remove large fencing built with iron/steel pickets, razor wire, brick or concrete piers/foundations.	$	12,790	AC
DEMOLITION			
Building Demo includes demolition, load haul and dump fee, Small Building Wood or Masonry, Haul, Rubbish 10 mi. R/T, Concrete Pavement and Sidewalk WWF Reinforced, Non-reinforced and Disposal	$	100	SY
Remove and reset guardrail	$	27	LF
Remove traffic barricade	$	170	EA

Remove sanitary & storm manholes/structures	$	460	EA
Remove sanitary & storm pipe	$	52	LF
Relocate existing utility pole with wires - urban setting	$	64,760	EA
Relocate underground power, Encased duct bank, includes cable and trenching	$	520	LF
EARTHWORK			
Borrow (Buy/Load) Non-Structural Fill & Select Structural Fill, Excavation, Rock, Blast/ Hoe Ram, Rip	$	40	CY
Grading, Site Grading	$	1	SY
Unsuitable Material: Load and haul, Dump Charge-unsuitable material	$	36	CY
LANDSCAPING			
12" 2 gallon (or smaller)	$	49	EA
18" 3 gallon	$	62	EA
24" 5 gallon	$	84	EA
Deciduous, 1" caliper	$	440	EA
Deciduous, 2" caliper	$	880	EA
Deciduous, 3" caliper	$	1,170	EA
Deciduous, 4” caliper and larger	$	1,740	EA
Evergreen, 6' in height	$	270	EA
Evergreen, 8' in height	$	490	EA
Evergreen, 10' in height	$	870	EA
Evergreen, 12' in height	$	1,170	EA
Tree Well, Stone (D=10', H=3')	$	4,530	EA
Standard Root Pruning to include Trenching, Pruning and Backfilling with Soil/Compost	$	10	LF
EROSION AND SEDIMENT CONTROL			
Gabions	$	200	CY
Grid Pavers	$	120	SY
Outlet Protection - Concrete 4"	$	58	SY
Outlet Protection - Grouted and Non-grouted Rip Rap 18", Structural Streambank Protection - Grouted and Non-grouted Rip Rap 18"	$	72	SY
Paved Flume	$	82	SY
Stormwater Channel Excavation Grass Line Seeded	$	16	SY
Stormwater Channel Excavation Grass Line Seeded Rip Rap 12" & 18" non-grouted	$	73	SY
Stormwater Channel Excavation Grass Line Sodded	$	22	SY
Stormwater Channel Excavation Grass Line Sodded Rip Rap 12" & 18", non-grouted	$	79	SY
Biologs with live stakes	$	19	LF
Jute mesh, Paper and nylon mesh, Plastic netting, 20 mil., 1" x 2" grid	$	2	SY
Seeding includes fertilizing & with soil treatment and watering	$	3	SY
Sodding includes fertilizing - Banks & Flat; soil treatment and watering	$	8	SY
Straw Mulch with tack	$	2	SY
Check dam - gravel	$	260	EA
Gravel construction entrance, including wash rack	$	3,240	EA
Sediment basin cut	$	26	CY
Sediment basin remove and fill upon completion	$	32	CY
Sediment trap basin	$	10	CY
Silt Fence	$	5	LF
Super Silt Fence	$	13	LF

Storm drain inlet control	$	210	EA
Concrete encasement of H sect., 3000psi	$	26	VLF
Granular backfill	$	34	CY
Pre-auger, 24" diameter to 30 feet, normal soil	$	31	VLF
Sheet piling	$	43	SF
Soil stabilization fabric	$	3	SY
Steel H section, 12 x 54	$	34	VLF
Whaler, 12"x12" prestressed concrete	$	32	LF
Whaler, 12"x12" treated timber	$	23	LF
Cut and haul	$	32	CY
Fill diversion and restore stream bank upon completion	$	26	CY
Rip Rap base/sides with filter cloth	$	26	SF
Sand bag diversion in water	$	160	CY
Temporary Diversion Dike	$	10	LF
Temporary sediment trap and gravel outlet	$	32	LF
Tree Protection Fencing	$	10	LF
Temporary riser structure up to 10' tall - install and remove	$	4,660	EA
RESIDENTIAL CONSERVATIONS			
Up to 0.5 Acres	$	3,000	EA
0.5 - 3.0 Acres	$	5,000	EA
3.0 - 5.0 Acres	$	7,000	EA
5.0 Acres & gerter	$	9,000	EA
Townhouse Conservation - Per Unit	$	1,000	EA

Board Agenda Item
February 20, 2018

ACTION - 6

Approval of Adjustment to Fairfax Center, Centreville, Tysons, Tysons-Wide, Tysons Grid of Streets, and Reston Road Funds and Approval of Route 7 Alternatives Analysis. (Dranesville, Springfield, Hunter Mill, Braddock, Sully, and Providence Districts)

ISSUE:
Adjustments to Fairfax Center, Centreville, Tysons, Tysons-Wide, Tysons Grid of Streets, and Reston Road Funds are needed to compensate for inflation, as defined in the Consumer Price Index, to keep pace with increases in construction costs for which the fund areas were established (Attachment 1). Approval is also requested for a new proposed project to be funded from the Tysons Road Fund (Attachment 3).

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve:

- The attached rate schedule (Attachment 1), including a 2.5 percent adjustment of the existing contribution rates in all fund areas with the new rate effective March 1, 2018.
- Funding up to $950,000 for a Route 7 alternatives analysis using Tysons Road Fund proffer dollars.

TIMING:
Board action is requested on February 20, 2018, so that the new rates can take effect on March 1, 2018, and keep the Route 7 alternatives analysis on schedule.

BACKGROUND:
One of the principles of the Comprehensive Plan for the each of the road funds areas is that development above the baseline level established in the plan may be approved, if the developer contributes to a fund for the provision of off-site road improvements. All aforementioned road funds function in this manner.

Attachment 1 reflects the increase in developer contribution rates as calculated with the 2.5 percent inflation since 2017. The 2.5 percent is taken from the Consumer Price Index for All Urban Consumers (CPI-U) as required by the Code of Virginia. The rate increase is necessary to keep pace with inflationary construction cost increases.

Staff provides the Board on an annual basis, the progress of projects funded in part using road fund dollars. Attachment 2 includes these projects.

Attachment 3 includes a new project, Route 7 Alternatives Analysis, to be funded by the Tysons Road Fund. The new project would be a study of Route 7 from I-495 to Route 123. Staff is requesting up to $950,000 be approved for this project to determine how the planned widening of Route 7 will be implemented and provide guidance on how to integrate Bus Rapid Transit in the Corridor. This funding would allow staff to advance the planned widening of Route 7 between I-495 and Route 123 identified in the Tysons Urban Center Plan.

FISCAL IMPACT:
Adoption of the revised rates will increase the funds contributed by developers to Fund 30040, Contributed Roadway Improvements, by approximately 2.5 percent over previously anticipated amounts. However, the Procedural Guidelines for the Fairfax Center, Tysons-Wide, and Tysons Grid of Streets specifically stipulate that the contribution amount is determined by the effective rate at the time of development approval by the Board, and that such amounts are fixed for site plans submitted for that approved development during a two-year period. Thus, the primary effects of this increase will impact future fiscal years.

Tysons Road Fund proffer dollars of up to $950,000 are available in Fund 30040, Contributed Roadway Improvements. This project detail will be established under project 2G40-035-000, Tysons Corner Developer Contributions.

ENCLOSED DOCUMENTS:
Attachment 1: Calculation of Revised Contribution Rate for 2018
Attachment 2: Projects Previously Approved by the Board for use of Fund 30040 funds
Attachment 3: Route 7 Alternatives Analysis Proposed to be Funded from Tysons Fund

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Ray Johnson, Senior Transportation Planner, FCDOT
Janet Nguyen, Transportation Planner, FCDOT

Attachment 1

CALCULATION OF REVISED CONTRIBUTION RATE – 2018

Inflation rate for 2017 based on the Consumer Price Index published by the US Department of Labor, Bureau of Labor Statistics

Proposed 2018 Contribution Rate

Road Fund Area	Type	Current Rate	Inflationary Increase	Proposed Rate
Tysons	non-residential	$4.46	x 1.025	$4.57
	residential	$989	x 1.025	$1,014
Tysons-Wide	non-residential	$6.02	x 1.025	$6.17
	residential	$1,066	x 1.025	$1,093
Tysons-Grid of Streets	non-residential	$6.87	x 1.025	$7.04
	residential	$1,066	x 1.025	$1,093
Fairfax Center	non-residential	$6.06	x 1.025	$6.21
	residential	$1,342	x 1.025	$1,376
Centreville	non-residential	$6.51	x 1.025	$6.67
	residential	$2,573	x 1.025	$2,637
Reston	non-residential	$9.56	x 1.025	$9.80
	residential	$2,090	x 1.025	$2,142

Attachment 2

FUND 30040 Projects Approved by the Board

PROJECTS	PROJECT DESCRIPTION	PRELIMINARY COST ESTIMATES*	STATUS
TYSONS ROAD FUND			
Tysons East Modified Intersection Treatment (Superstreets) Simulation	Conduct a simulation for a portion of Route 123 in the Tysons East area for 2013 and 2020 conditions to demonstrate the feasibility of a potential superstreet concept. The superstreet concept modifies left turn movements to facilitate regional through movement. The analysis will assist in the preliminary design of the superstreet section currently being developed.	$150,000**	This simulation has been completed. Further work on this project is being implemented as part of the Route 123 Modified Intersection Treatment.
Tysons Transportation Management Association – Start Up Funding	To assist TYTRAN in establishing a TMA in Tysons. Funding will allow a Tysons TMA to operate over the next five years. After this five year period the TMA will be funded through dues from TYTRAN membership.	As Proffers Dictate	To date $339,000 has been transferred to the Tysons TMA

*Project cost estimates were prepared without survey and right-of-way needs information, and could change significantly.
**Funding amount represents Board Authorized Funding from Fund 30040, project total is listed in parenthesis ().

PROJECTS	PROJECT DESCRIPTION	PRELIMINARY COST ESTIMATES*	STATUS
State Street Study	Develop and evaluate concepts for a new roadway named State Street, which will connect the future Boone Boulevard and Greensboro Drive in Tysons. Study will assess the potential alignments, property impacts, costs and feasibility	$39,000**	Study completed. Project will be implemented through redevelopment.
Cleveland Ramp Alternatives Analysis	Develop and assess design concepts for a new ramp connecting the Dulles Airport Access Road to the new Tysons East grid of streets	$145,000**	Alternative Analysis is complete. This analysis identified two preferred alternatives, a Braided Ramp Concept and an Auxiliary Lane concept, to be carried forward in an Interchange Modification Report (IMR).
Route 7/Route 123 Street Simulation and Operational Analysis	Develop plan for widening Route 7 and potential improvements to the Route 7 /Route 123 Interchange. This work will include Operational Analysis of the road and interchange, conceptual engineering design of Route 7 corridor, and schematic design of recommended improvements to the Route 7/Route 123. Plans will assess the potential alignments property impacts and construction cost.	$600,000**	Study completed. Project is moving forward to conceptual interchange design concepts.
Jones Branch Connector	The Jones Branch Connector will provide an alternative route between Tysons East (Route 123) and West (Jones Branch Drive), bypassing the I-495/Route 123 Interchange. Currently the existing Jones Branch Connector carries traffic between Jones Branch Drive and the I-495 Express Lanes ramps. This project will also provide improved access to the I-495 Express Lanes from the east side of Tysons.	$7,200,000** ($60,000,000)	Notice to Proceed for construction was issued on January 27, 2017. Construction is approximately 34% complete and on schedule. One lane in each direction is expected to be completed by the end of 2018.

*Project cost estimates were prepared without survey and right-of-way needs information, and could change significantly.
**Funding amount represents Board Authorized Funding from Fund 30040, project total is listed in parenthesis ().

PROJECTS	PROJECT DESCRIPTION	PRELIMINARY COST ESTIMATES*	STATUS
Route 123 Operational Analyses and Conceptual Engineering Design Outside/Inside the Beltway	This project involves an examination of the existing and 2040 long term future roadway and traffic conditions for the segments of Route 123 for both the outside the Beltway (segment between International Drive and I-495) and Inside the Beltway (segment between I-495 and Anderson Road). For this purpose, alternative roadway geometric and corridor improvements will be assessed and developed which include, but not be limited to, the analysis of a Restricted Crossing U-turn (superstreet) design concept. Funding will be used for the analysis, design of the Route 123 segments and to support the preliminary engineering related efforts. Funding will also be used to assess how the segments outside and inside the Beltway are to be implemented (i.e. consecutively, or in parallel).	$3,000,000** ($34,000,000)	Consultant was selected and the project was initiated in Spring 2017. Existing condition analyses completed with 2040 long term conditions currently being analyzed. Preferred concepts will be developed, supplemented with a detailed traffic analysis for Route 123 segments along both the outside the Beltway and inside the Beltway. For the Inside the Beltway segment, Preliminary design plans (30% level) were previously developed and a detailed traffic analysis for 2020 mid-term condition has been completed. The developed concept will further be assessed, refined and supplemented based on the detailed traffic analysis for the 2040 long term conditions.
Route 123 / Route 7 Interchange	This project consists of reconstructing the interchange of Route 123 & Route 7 to improve operation and safety for all travel modes. Funding will be used to analyze design concepts with input from stakeholders, finalize a preferred concept and begin design work.	$5,000,000** ($52,000,000)	Advancing design concepts based on design stakeholders charrette recommendation.

*Project cost estimates were prepared without survey and right-of-way needs information, and could change significantly.
**Funding amount represents Board Authorized Funding from Fund 30040, project total is listed in parenthesis ().

			Planning to meet with stakeholders in late Summer 2018 to present findings.
PROJECTS	**PROJECT DESCRIPTION**	**PRELIMINARY COST ESTIMATES***	**STATUS**
Cleveland Ramps	This project consists of modifying the existing interchange of the Dulles Connector with Dolley Madison Boulevard (Route 123) to facilitate a direct connection from the eastbound Dulles Connector Ramp to Scotts Crossing Road. This connection will provide an alternate route to the already congested Route 123. To facilitate this connection changes will need to be made to the eastbound-off ramps and eastbound on-ramps of the Dulles Connector. These changes include adding new signals, possible reconstruction of the eastbound Dulles Connector bridge over Route 123, and the addition of lanes to Route 123 and the eastbound Dulles connector to facilitate merging traffic.	$2,000,000** ($80,000,000)	The Alternatives Analysis is now complete. This analysis identified two preferred alternatives, a Braided Ramp Concept and an Auxiliary Lane concept, to be carried forward in an Interchange Modification Report (IMR) at an appropriate time.
TYSONS-WIDE ROAD FUND			
Jones Branch Connector	See description above.	$1,243,000** ($60,000,000)	See status above.
TYSONS GRID ROAD FUND			
Lincoln Street	Lincoln Street is a proposed street on the Tysons Grid of Streets map that connects Route 123 to Magarity Road. It is intersected by existing Old Meadow Road as well as three other future local streets. Lincoln Street serves an important role, moving traffic from the existing and approved developments along Old	$1,200,000**	Funding approved for feasibility study by the Board of Supervisors on October 18, 2016.

*Project cost estimates were prepared without survey and right-of-way needs information, and could change significantly.
**Funding amount represents Board Authorized Funding from Fund 30040, project total is listed in parenthesis ().

	Meadow Road (such as The Regency, The Encore, The Highland District, etc.) to Magarity Road.		The Lincoln Street Feasibility Study is ongoing. The study performs operational analysis and conceptual engineering design for the proposed connection between Old Meadow Road and Magarity Road. The study is anticipated to complete in Summer 2018.
PROJECTS	**PROJECT DESCRIPTION**	**PRELIMINARY COST ESTIMATES***	**STATUS**
FAIRFAX CENTER AREA ROAD FUND			
Route 50/Waples Mill Road Interchange	Design of entire interchange including at-grade and flyover components; construction to be phased depending on funding availability.	$5,800,000** (at-grade)	Construction of at-grade improvements completed in December 2006.
Tall Timbers Drive	Construct an east-west roadway, connecting Fields Brigade Drive and North Lake Drive.	$1,800,000**	Completed in February 2007.
CENTREVILLE AREA ROAD FUND			
Old Centreville Road at Route 28	Construct improvements to Old Centreville Road approach to Route 28.	$200,000**	Complete.
Stone Road	Construct center raised median with left turn lanes between Granville Lane and Sully Park Drive.	$1,000,000**	Completed in July 2008.
Clifton Road	Widen to 4-lanes between Braddock Road and Lee Highway (Route 29).	$4,300,000**	Completed in 2006.
Centreville Fire Station Emergency Signal	Preemptive Emergency Signal for Centreville Fire Station Access to Old Centreville Road	$30,000**	Complete.

*Project cost estimates were prepared without survey and right-of-way needs information, and could change significantly.
**Funding amount represents Board Authorized Funding from Fund 30040, project total is listed in parenthesis ().

Attachment 3

Proposed Projects and Studies for Approval

PROJECT	PROJECT DESCRIPTION	PRELIMINARY COST ESTIMATES	STATUS
Tysons Area			
Route 7 Alternatives Analysis	The Route 7 Alternatives Analysis will be conducted to study the multimodal cross-section of Route 7 from I-495 to Route 123 and to provide detail on how to implement the planned widening of Route 7. The study will also provide details on how Bus Rapid Transit on Route 7 will operate in Tysons, including station locations and type of bus lanes.	$950,000	Project Development (Scoping)

ACTION - 7

Approval of a Project Agreement Between the Department of Rail and Public Transportation and the County of Fairfax for the Provision of Funding Transit Oriented Development Planning for the Richmond Highway Corridor (Lee and Mount Vernon Districts)

ISSUE:
Approval for the Director of the Fairfax County Department of Transportation (FCDOT) to sign a Project Agreement with Department of Rail and Public Transportation (DRPT) to perform transit-oriented development planning for the Richmond Highway Corridor.

RECOMMENDATION:
The County Executive recommends that the Board approve the project agreement in substantially the form of Attachment 1 and authorize the Director of the Department of Transportation to execute it.

TIMING:
The Board of Supervisors should act on this item on February 20, 2018, so that DRPT can release funding for this project.

BACKGROUND:
Funding for the Transit-Oriented Development (TOD) Planning for the Richmond Highway Corridor project will support and enhance the Comprehensive Plan Amendment work by better integrating planning for the future BRT system with traditional land use planning activities, increasing access to transit, improving pedestrian and bicycle connections, and enabling high-quality mixed-use development around BRT station areas.

The Richmond Highway Corridor extends approximately 7.7 miles from the Capital Beltway on the north to Fort Belvoir and Woodlawn Plantation on the south. Embark Richmond Highway is the county's initiative to remake the corridor through a multimodal approach to transit and higher density residential and mixed-use projects. A new Bus Rapid Transit System, which would consist of dedicated bus lanes in the center of Richmond Highway from the Huntington Metrorail Station to Fort Belvoir, is the lynchpin to Embark.

In October 2016, the Federal Transit Administration (FTA) announced Fairfax County was one of the 16 entities across the country chosen to receive a grant to assist with

TOD planning. The primary goal of the grant is to help communities support and improve public transportation by integrating land use and transportation planning with capital investment.

The award of $400,000 from the FTA will be matched with $400,000 from State and local funds to provide $800,000 for the Embark Richmond Highway initiative. Both the DRPT and FCDOT will each contribute $200,000, for a total of $400,000 to match the grant from the FTA. These funds will support TOD planning and the implementation of a new fixed guideway BRT project. In addition, the Southeast Fairfax Development Corporation has agreed to act as a private partner.

The funds will assist in planning for the Richmond Highway corridor's revitalization to 1) attract new opportunities, jobs and housing, and 2) develop and enhance BRT station area concept plans and street grid networks with detailed urban design guidelines.

CREATION OF POSITIONS:
No positions will be created through this action.

FISCAL IMPACT:
Total expenses for the project are $800,000. Upon execution of the attached agreement, $200,000 from DRPT will be transferred to the County and $400,000 from FTA to continue the ongoing work on Embark Richmond Highway. Funding in the amount of $200,000 for this project agreement is provided in Fund 40010 (County and Regional Transportation Projects, 2640-144,400-C40011). There is no impact on the General Fund.

ENCLOSED DOCUMENTS:
Attachment 1 – Project Agreement for Use of Commonwealth Transportation Funds for the Provision of Funding Transit-Oriented Development Planning for the Richmond Highway Corridor
Attachment 2 – Resolution: Transit Oriented Development for the Richmond Highway Corridor

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Joanna L. Faust, Assistant County Attorney

Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2018
Federal Transit Administration Grant Number VA-2017-016
Grant Number 71117-06

This Project Agreement ("Agreement"), effective March 1, 2017, by and between the Commonwealth of Virginia Department of Rail and Public Transportation ("Department") and Fairfax County ("Grantee") (collectively, the "Parties"), is for the provision of funding transit-oriented development planning for the Richmond Highway Corridor ("Project").

WHEREAS, on January 3, 2017, the Grantee requested technical assistance funding for the Project through a mid-cycle application request; and

WHEREAS, the Commonwealth Transportation Board ("CTB") has specified that the Director of the Department of Rail and Public Transportation ("Director"), after consultation with the CTB member for the district, is authorized up to $200,000 to reallocate funds among existing grants, to allocate additional funds to existing projects up to $200,000 per grant, and to award additional federal and state funds for rail and public transportation projects up to $200,000, and to deobligate funds from projects, as may be necessary to meet the goals of the CTB; further, the Director is authorized to make changes to the scope of a CTB approved grant as needed in order to accomplish the intended project and/or outcome; and

WHEREAS, on March 1, 2017, the Director, after consulting with the CTB member for the district, approved funding of $200,000 for the Project; and

WHEREAS, on July 7, 2017, the Federal Transit Administration ("FTA") approved funding for the Project; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:

   a. Perform transit-oriented development planning for the Richmond Highway Corridor.

2. The Department agrees to provide funding as detailed below:

   a. State grant funding in the amount of $200,000 to match Federal funds for the Project. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.

3. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

ARTICLE 2. INCORPORATION OF MASTER AGREEMENT FOR USE OF COMMONWEALTH FUNDS

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Transit-Oriented Development Planning for the Richmond Highway Corridor

FTA Grant Number VA-2017-016

State Technical Assistance Project Agreement

Project Number: 71117-06
Project Start Date: March 1, 2017
Project Expiration Date: December 31, 2018

Fund Code		Item Amount
477	Grant Amount (State share of Project cost - 25%)	$200,000
1200	Federal expense (share of Project cost - 50%)	$400,000
1400	Local expense (share of Project cost - 25%)	$200,000
	Total Project Expense	$800,000

In no event shall this grant exceed $200,000.

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, February 20, 2018, at which a quorum was present and voting, the following resolution was adopted.

WHEREAS, funding for the Transit-Oriented Development (TOD) Planning for the Richmond Highway Corridor project will support and enhance the Comprehensive Plan Amendment work by better integrating planning for the future Bus Rapid Transit (BRT) system with traditional land use planning activities, increasing access to transit, improving pedestrian and bicycle connections, and enabling high-quality mixed-use development around BRT station areas.

.

WHEREAS, in October 2016, the Federal Transit Administration (FTA) announced Fairfax County was one of the 16 entities across the country named to receive a grant to assist with TOD planning.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, hereby authorizes the Director of the Fairfax County Department of Transportation to sign a Project Agreement with Department of Rail and Public Transportation (DRPT) to perform transit-oriented development planning for the Richmond Highway Corridor.

This Resolution shall take effect immediately.

A Copy Teste:

_____
Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
February 20, 2018

ACTION - 8

Refinancing Virginia Railway Express' 2007 Railroad Rehabilitation and Improvement Financing (RRIF) Loan for the Purchase of Sixty Gallery Railcars

ISSUE:
Board approval for the Virginia Railway Express (VRE) to refinance the 2007 Railroad Rehabilitation and Improvement Financing (RRIF) loan used to purchase 60 Gallery railcars for VRE.

RECOMMENDATION:
The County Executive recommends that the Board:

1. Approve VRE's refinancing of the 2007 RRIF loan for the purchase of 60 Gallery railcars.

2. Approve, in substantial form, the resolution, Attachment I, approving the refinancing of the RRIF loan through the Virginia Pooled Financing Program (VPFP) of the Virginia Resources Authority (VRA), in accordance with the terms of VRE's Master Agreement and incurrence of the loan by the Northern Virginia Transportation District Commission (NVTC) and the terms and conditions described in the VRA Term Sheet dated December 15, 2017, approved by NVTC, Resolution 2354, on January 4, 2018, Attachment II.

TIMING:
Board approval is requested on February 20, 2018, because VRE has applied for VRA's spring 2018 issuance, and the deadline for all VRE member jurisdictions to have approved the proposed loan is March 2018.

BACKGROUND:
The RRIF program was established by the Transportation Equity Act for the 21st Century (TEA-21), which authorized the FRA to provide direct loans and loan guarantees to finance the development of railroad infrastructure. Eligible RRIF borrowers include railroads, state and local governments, government-sponsored authorities and corporations, and certain freight shippers.

VRE's Master Agreement states that the Northern Virginia Transportation District Commission (NVTC) and the Potomac and Rappahannock Transportation District Commission, (Commissions), which jointly own and operate VRE, shall utilize reasonable debt financing to the extent that such financing is advantageous to VRE and

is in the interests of the parties to the Master Agreement, which includes Fairfax County. However, in no event shall the Commissions issue a debt related to the commuter rail service without the unanimous consent of all Participating and Contributing Jurisdictions.

VRE entered a RRIF agreement with FRA in October 2007 for the purchase of new Gallery railcars. Between FY 2008 and FY 2012, 60 new railcars were purchased and delivered to VRE – 35 to replace older railcars and 25 to provide expanded capacity. The total cost of the new cars was $114.0 million, of which $69.0 million was borrowed through the RRIF program and $45.0 million was funded through a combination of state and federal grants, proceeds from the sale of other railcars to the Maryland Transit Administration, and interest earnings.

As of April 2017, the management of the RRIF program has been transferred from FRA to the newly created Build America Bureau (BAB) within the U.S. Department of Transportation. This change has no impact on the terms of VRE's RRIF loan.

Current Debt Service:
VRE's annual debt service on the RRIF loan is $4.78 million, payable in equal quarterly installments. The total principal amount outstanding (following a payment on December 15, 2017) is $52.9 million, and the final payment is due in March 2033. Of the total annual payment amount, $4.67 million is grant funded, and $110,000 is paid solely with local funds. (As part of the original purchase of the railcars, approximately $1.5 million of RRIF loan proceeds were used as a match to federal funds. Federal funds cannot also be used to pay the debt service on that portion of the RRIF loan, so this $110,000 of debt service is "segregated" from the remaining railcar debt service and is completely funded by local subsidy). The current grant funding is 80% federal, 16% state, and 4% local, with the federal funding coming from a combination of 5307 Urbanized Area and 5337 State of Good Repair formula grants.

The RRIF loan bears an interest rate of 4.74%, equal to the 30-year Treasury rate as of the execution date. Pursuant to the terms of the Security Agreement, the loan is secured by VRE's gross revenues (subordinate to the then-outstanding revenue bonds) as well as security interest in the railcars themselves as collateral. The gross revenue pledge was given to the Series 1998 Bonds.

Refinancing Alternatives:
In the spring of 2017, VRE's financial advisor, PFM Financial Advisors LLC, reviewed a range of alternatives for refinancing the RRIF loan at a lower interest rate, including:

- Refunding with a direct bank loan
- Refunding with publicly offered bonds through the Virginia Pooled Financing Program (VPFP) of the Virginia Resources Authority (VRA)
- Refunding with publicly offered VRE bonds
- Requesting modification of the existing RRIF loan

The preferred alternative, given the various advantages and disadvantages of each approach, is refunding with publicly offered bonds through the VPFP of the VRA. The size and remaining term (just under 16 years) of the RRIF loan make it relatively unattractive for refunding via a direct placement with a bank. Offering VRE bonds directly would require credit agency review for establishment of an inaugural credit rating, significant disclosures, and a longer and costlier timeline for issuance. A request to the BAB to modify the terms of the original RRIF loan is likely to be time-consuming and have an uncertain outcome. Prior inquiries to lower the interest rate on the RRIF loan have been unsuccessful and are not allowed under RRIF policy.

Refinancing Through VRA:
VRA was created by the General Assembly in 1984 to provide an additional source of funding for local infrastructure projects. VRA initially focused on financing for water and wastewater projects but has expanded to cover transportation, public safety, solid waste, and many other areas. Since its inception, VRA has financed investments across the Commonwealth exceeding $7 billion.

VRA's VPFP offers several advantages to VRE. A public credit rating is not required to access the "AAA/AA" interest rates of the pooled program, and the lower cost of issuance is spread across the participants in the pool. VRA offers loan terms of up to 30 years and can custom-tailor the loan structure to meet the borrower's needs. VRA also requires relatively limited disclosures, as compared to what a direct issuance by VRE would entail.

FISCAL IMPACT:
Based on analysis by PFM assuming current market conditions as of January 2, 2018, VRE is projected to save approximately $600,000 per year in debt service costs through the proposed refinancing with VRA. At current market conditions, the net present value (NPV) of the projected savings relative to the refunded principal amount is over 12 percent, which is above the minimum threshold of three percent that VRE is seeking to achieve through the refinancing. Actual savings will be subject to change depending on actual market conditions at the time of the bond issuance.

ENCLOSED DOCUMENTS:
Attachment I – Resolution Approving Issuance of Refinancing Debt for Virginia Railway Express Equipment
Attachment II – Northern Virginia Transportation Commission Resolution 2354 and Virginia Pooled Financing Program–Revenue Pledge-Terms and Conditions

Board Agenda Item
February 20, 2018

STAFF:
Robert A. Stalzer, Deputy County Executive
Joe Mondoro, Chief Financial Officer, Department of Management and Budget
Tom Biesiadny, Director, Department of Transportation, FCDOT
Todd Wigglesworth, Division Chief, Coordination and Funding Division, FCDOT
Mike Lake, Senior Transportation Planner, Coordination and Funding Division, FCDOT

ASSIGNED COUNSEL:
Patricia Moody McCay, Assistant County Attorney, Office of the County Attorney

RESOLUTION APPROVING ISSUANCE OF REFINANCING DEBT FOR VIRGINIA RAILWAY EXPRESS EQUIPMENT

WHEREAS, the Northern Virginia Transportation District Commission ("NVTC") and the Potomac and Rappahannock Transportation District Commission ("PRTC," and, together with NVTC, the "Commissions") jointly operate the Virginia Railway Express (the "VRE") commuter rail service in Northern Virginia pursuant to the Master Agreement dated as of October 3, 1989, as amended (the "Master Agreement"), among the Commissions and the Participating and Contributing Jurisdictions described in such Master Agreement; and,

WHEREAS, NVTC, with the consent of PRTC and the Participating and Contributing Jurisdictions, entered into a financing agreement with the Federal Railroad Administration pursuant to its Railroad Rehabilitation and Improvement Financing program in 2007 and subsequently borrowed a total of $68,953,913 pursuant to a series of draws under the program for railcars delivered between 2008 and 2012 (collectively, the "FRA Loan"); and,

WHEREAS, the FRA Loan is now administered by the U.S. Department of Transportation's Build America Bureau; and

WHEREAS, the Fairfax County Virginia, is a Participating Jurisdiction under the terms of the Master Agreement; and,

WHEREAS, the Commissions have recommended to the Participating and Contributing Jurisdictions the refinancing of the FRA Loan with the proceeds of a loan to be obtained from the Virginia Resources Authority ("VRA"); and,

WHEREAS, the Master Agreement provides that the Commissions shall utilize reasonable debt financing to the extent that such financing is advantageous to the VRE and is in the interest of the parties to the Master Agreement, but requires that the Commissions not incur debt related to the VRE without the consent of all Participating and Contributing Jurisdictions.

NOW, THEREFORE, BE IT RESOLVED THAT Fairfax County Virginia consents, in accordance with the terms of the Master Agreement, to the incurrence of a VRA loan by NVTC to refinance the FRA Loan upon substantially the terms and conditions described in the VRA Term Sheet dated as of December 15, 2017, accepted by the Commissions as of January 4, 2018, and presented to this meeting (the "VRA Loan"); and,

BE IT FURTHER RESOLVED THAT it is acknowledged that the repayment obligations of the VRA Loan and the related financing covenants will be evidenced by a local bond to be issued by NVTC and a local bond sale and financing agreement to be negotiated and entered into by NVTC and VRA; and,

BE IT FURTHER RESOLVED THAT the consent to the VRA Loan is contingent upon the achievement of net present value debt service savings of not less than three percent (3%) of the outstanding principal amount of the FRA Loan; and,

BE IT FURTHER RESOLVED THAT as required by VRA as a condition to the making of the VRA Loan, Fairfax County further consents to the Commissions' granting to VRA of security interests in the Commissions' rights to participating jurisdictions' jurisdictional payments under the Master Agreement; and,

BE IT FURTHER RESOLVED THAT as required by VRA as a condition to the making of the VRA Loan, Fairfax County agrees that VRA shall be deemed a third party beneficiary of the Master Agreement for purposes of repayment of the VRA Loan; and,

BE IT FURTHER RESOLVED THAT as a condition to the making of the VRA Loan, Fairfax County further acknowledges that (i) the VRA Loan may be payable from and will be secured by amounts derived pursuant to the Master Agreement, (ii) VRA would not make the VRA Loan without the security and credit enhancement provided by the Participating Jurisdictions under the Master Agreement, and (iii) VRA is treating Fairfax County's obligations under the Master Agreement as a "local obligation" pursuant to Section 62.1-199 of the Code of Virginia of 1950, as amended. In the event of the failure of Fairfax County to appropriate a payment under the Master Agreement that causes a nonpayment on the VRA Loan, VRA may institute the "state-aid intercept" process set forth in Section 62.1-216.1 of the Code of Virginia of 1950, as amended, under which the Governor may cause the Comptroller to withhold all further payment to Fairfax County of funds appropriated and payable by the Commonwealth to Fairfax County until the unpaid sum is obtained. The funds so withheld will be directed to VRA to cure the nonpayment; and,

BE IT FURTHER RESOLVED THAT the appropriate officers of Fairfax County are authorized to execute and deliver such agreements, instruments and certificates as may be necessary to accomplish the foregoing.

Adopted this 20th day of February, 2018, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

RESOLUTION #2354

SUBJECT: Authorize VRE to Refinance the VRE RRIF Loan

WHEREAS: The Northern Virginia Transportation District Commission ("NVTC") and the Potomac and Rappahannock Transportation District Commission ("PRTC," and, together with NVTC, the "Commissions") jointly own and operate the Virginia Railway Express (the "VRE") commuter rail service in Northern Virginia and the District of Columbia pursuant to the "Master Agreement for Provision of Commuter Rail Services in Northern Virginia – Establishment of the Virginia Railway Express" dated as of October 3, 1989, as amended (the "Master Agreement"), among the Commissions and the Participating and Contributing Jurisdictions described in such Master Agreement;

WHEREAS: NVTC, with the consent of PRTC and the Participating and Contributing Jurisdictions, entered into a financing agreement with the Federal Railroad Administration pursuant to its Railroad Rehabilitation and Improvement Financing program in 2007 and subsequently borrowed a total of $68,953,913 pursuant to a series of draws under the program for railcars delivered between 2008 and 2012 (collectively, the "FRA Loan");

WHEREAS: The FRA Loan is now administered by the U.S. Department of Transportation's Build America Bureau;

WHEREAS: The Master Agreement provides that the Commissions shall utilize reasonable debt financing to the extent that such financing is advantageous to the VRE and is in the interest of the parties to the Master Agreement, but requires that the Commissions not incur debt related to the VRE without the consent of all Participating and Contributing Jurisdictions;

WHEREAS: The Commissions have determined to refinance the FRA Loan with the proceeds of a loan to be obtained from the Virginia Resources Authority ("VRA") in an amount not to exceed $56,000,000, for a term not to exceed 15 years from its delivery date, and generating net present value savings of at least three percent of the refunded principal (collectively, the "VRA Loan"); and

WHEREAS: The VRE Operations Board recommends the following.

NOW, THEREFORE, BE IT RESOLVED that the Northern Virginia Transportation Commission does hereby approve the following:

1. The VRA Loan, upon the terms and conditions set forth in the VRA Term Sheet dated December 15, 2017 (a copy of which has been provided to the Commissions), with such changes thereto as may be approved in writing by the Chairman, Vice Chairman or Executive Director of NVTC, is hereby authorized.

2. The Chairman, Vice Chairman or Executive Director of NVTC is authorized to determine and approve the final details of the VRA Loan, including, without limitation, the aggregate principal amount of the VRA Loan, the interest rates on the VRA Loan, the dates (including payment dates) of the VRA Loan documents and the amounts and prices of any optional or mandatory prepayments, provided, however, that the aggregate principal amount of the VRA Loan shall not exceed $56,000,000, its term shall not exceed 15 years from its delivery date, it shall generate net present value savings of at least three percent of the refunded principal, and its other terms and conditions shall be substantially as provided in the VRA Term Sheet described above. The VRA Loan will require that the Commissions grant the VRA security interests in the participating jurisdictions' jurisdictional payments under the Master Agreement. The approval of the Chairman, Vice Chairman or Executive Director of NVTC of such details shall be conclusively evidenced by the execution and delivery of the loan documents for the VRA Loan, which VRA Loan documents shall be prepared or reviewed by VRE's bond counsel and reviewed by its general counsel, it being acknowledged and understood that the repayment obligations of the VRA Loan and the related financing covenants will be evidenced by a local bond to be issued by NVTC and a local bond sale and financing agreement to be negotiated and entered into by NVTC and VRA. The consummation of the VRA Loan shall be subject to the consent of the Participating and Contributing Jurisdictions as described in the recitals to this Resolution.

3. The Chairman, Vice Chairman or Executive Director of NVTC is authorized to approve, execute and deliver on behalf of NVTC, and, if required, the Secretary or any Assistant Secretary of NVTC is authorized to affix and attest the seal of NVTC to, the VRA Loan documents described above and such other documents, instruments or certificates as they deem necessary or appropriate, in consultation with VRE's bond counsel and general counsel, to carry out the VRA Loan transaction authorized by this resolution. The approval of the Chairman, Vice Chairman or Executive Director of NVTC shall be conclusively evidenced by the execution and delivery of such documents, instruments or certificates. Such officers of NVTC and the Executive Director are further authorized to do and perform such other things and acts as they deem necessary or appropriate, in consultation with VRE's bond counsel and general counsel, to carry out the VRA Loan transaction authorized by this resolution. All of the foregoing previously approved, executed, delivered, done or performed by such officers of NVTC or the Executive Director are in all respects hereby approved, ratified and confirmed.

4. This resolution shall take effect immediately upon its adoption.

Approved this 4th day of January 2018.

_____

Chairman

_____

Secretary-Treasurer

VRA Virginia Resources Authority

Northern Virginia Transportation Commission

Virginia Pooled Financing Program – Revenue Pledge –Terms and Conditions

Below is an outline of the proposed principal terms and conditions for the type of financing requested in the Northern Virginia Transportation Commission application for funding from the spring Series 2018 Virginia Pooled Financing Program ("VPFP"), which has been authorized by the Credit Committee of Virginia Resources Authority ("VRA"), subject to receipt and satisfactory review of the City of Manassas Park fiscal year 2016 audited financial statements. The final terms and conditions will be set forth in the Local Bond Sale and Financing Agreement between VRA and the Northern Virginia Transportation Commission, which will be executed in advance of the VPFP spring Series 2018 bond issue pricing in May 2018. The following proposed terms are valid through June 30, 2018.

Borrower: Northern Virginia Transportation Commission (the "Borrower"), as co-owner of the Virginia Railway Express ("VRE"), the provisions for which are detailed in the Master Agreement for Provision of Commuter Rail Services in Northern Virginia document originally dated October 3, 1989, as amended (the "Master Agreement").

Amount: Requested proceeds of up to $52,000,000 plus costs of issuance and an amount sufficient to provide for the below-referenced local debt service reserve fund, if debt financed.
(Any changes in the Requested Proceeds amount should be submitted no later than March 23, 2018)

Purpose: To refinance the Borrower's promissory note payable to the Federal Railroad Administration issued in fiscal year 2008, together with related expenses (the "Project").

Security: Gross pledge of Borrower revenues properly allocable to VRE in accordance with generally accepted accounting principles or resulting from the ownership or operation of VRE, specifically including: (1) fares and other operating revenues, (2) contributions to costs of VRE by the below defined Participating Jurisdictions and Contributing Jurisdictions, (3) federal, state, and local grants, subsidies, or other governmental revenues received with respect to VRE that can be legally pledged and (4) any investment or other income allocable to VRE that can be legally pledged (collectively, the "Gross Revenues");

Equity or debt-funded local debt service reserve equal to $2,000,000 to be held by the VPFP trustee and if equity funded, the local debt service reserve requirement may be

	funded in four annual installments of $500,000 on each July 1 in 2018, 2019, 2020, and 2021;
	Moral obligation pledges as described below.
Moral Obligation Pledges:	Moral obligation pledges of the Counties of Fairfax, Prince William, Stafford, and Spotsylvania, and the Cities of Fredericksburg, Manassas, and Manassas Park (collectively, the "Participating Jurisdictions") evidenced in resolutions of the governing body of each locality that acknowledge and consent to the following: (1) the issuance of the proposed debt, (2) VRA's treatment of the Master Agreement and the related, subject to appropriation, financial responsibilities of the Participating Jurisdictions as a "local obligation" within the meaning of Section 62.1-199 of the Code of Virginia of 1950, as amended, which will enable VRA to invoke the "state-aid intercept" in the event of a non-payment under the ~~master agreement that results in a payment default on the~~ proposed VRA loan, and (3) VRA's status as a third party beneficiary of the Master Agreement; It is understood that the County of Arlington and the City of Alexandria (collectively, the "Contributing Jurisdictions") are not providing moral obligation support for the proposed loan.
Rate Covenant:	Net revenues available for debt service consisting of Gross Revenues less cash-based operating and maintenance expenses ("Net Revenues Available for Debt Service") shall be 100% of Borrower's annual debt service on the proposed loan and any other debt obligations secured by a pledge of Gross Revenues, inclusive of contributions from the Participating Jurisdictions and Contributing Jurisdictions (the "Rate Covenant"); it is understood that debt obligations secured by a leasehold interest in property are excluded from the rate covenant calculation. In the event that the Borrower does not meet the Rate Covenant based on results of the Borrower's annual audited financial statements, the Borrower agrees to take immediate action to adjust the VRE budget to restore compliance with

	the Rate Covenant, including adjusting revenues and / or expenses and / or taking action under Section III(D) of the Master Agreement to seek supplemental appropriations from all Participating Jurisdictions that provided funding in support of VRE in the then current budget year and the most recent prior fiscal year.
Qualified Independent Consultant Report:	If as of the end of any fiscal year, the Borrower is not in compliance with the revenue covenant, the Borrower will within 30 days of receipt of the annual audited financial statements request a consultant report with recommendations to bring the Borrower into compliance with the rate covenant.
Liquidity Covenant:	Borrower covenants to maintain no less than 90 days of budgeted annual cash operating expenses (excluding budgeted annual debt service) in unrestricted cash as a working capital reserve fund (the "Working Capital Reserve Fund Requirement"); VRA will test compliance as of the end of the Borrower's fiscal year (each June 30) based on audited financial statements, and if at any time during the life of the proposed loan the Borrower maintains an amount less than the Working Capital Reserve Fund Requirement, the Borrower covenants to replenish the related, unrestricted cash balance to the Working Capital Reserve Fund Requirement within six months of completion of the audited financial statements that showed non-compliance.
Parity Provisions:	In addition to the necessary local approvals required to issue additional debt, the Borrower may issue parity bonds on behalf of VRE provided that while the proposed VRA 2018 loan is outstanding: (1) Borrower provides evidence of compliance with the Rate Covenant in each of the five most recently audited fiscal years, (2) Borrower provides evidence of compliance with the Working Capital Reserve Fund Requirement in each of the five most recently audited fiscal years, and (3) Borrower will provide a third-party independent consultant certification that during the first three complete fiscal years following the completion of the improvements to be financed with the parity debt, the projected Net Revenues Available for Debt Service will be sufficient to meet the Rate Covenant; it is understood that the

	independent consultant may use the Borrower's six-year plan as the basis for projected Net Revenues Available for Debt Service.
Other Conditions:	Notice to VRA prior to the pricing of the VPFP spring Series 2018 bond issue if the Borrower becomes aware of any threatened or filed litigation with respect to the Project[1]; Notice to VRA of intent to participate in the VPFP spring Series 2018 bond issue no later than March 30, 2018[2] through the execution of the Borrower's Local Bond Sale and Financing Agreement related to the proposed loan; Loan commitment is contingent on receipt and satisfactory review of the fiscal year 2016 audited financial statements of the City of Manassas Park.
Other Highlighted Documentation:	Certified copies of the Borrower, Potomac and Rappahannock Transportation Commission, Participating Jurisdictions, and Contributing Jurisdictions local resolutions authorizing the proposed financing.
Legal Opinions:	Customary opinions as to authorization, validity, no litigation, and no private activity and other matters requested by VRA
General Covenants:	To include those customary for these types of transactions, including events of taxability and others that are appropriate in the context of the financing
Payment Dates:	April 1 - Interest October 1 – Principal and interest
Final Local Bond Maturity:	No later than October 1, 2032

[1] *In the event of threatened or filed litigation with respect to the Borrower or the Project, VRA reserves the right to withdraw or alter the terms of this commitment in its sole discretion.*

[2] *If a material adverse change has occurred in the financial condition of the Borrower as indicated in the financial statements, application and other information furnished to VRA between the date of the Borrower's loan application to the VPFP and the VPFP bond pricing, VRA reserves the right to withdraw or alter the terms of this commitment in its sole discretion.*

December 15, 2017

VRA Virginia Resources Authority

Northern Virginia Transportation Commission

Virginia Pooled Financing Program – Revenue Pledge –Terms and Conditions

VRA Loan Origination Fee:	12.5 basis points of par amount and added to costs of issuance (not to exceed $25,000)
Annual Administrative Fee:	12.5 basis points of outstanding principal and payable semi-annually
Annual Pass-through fees:	Annual trustee fees; allocable costs associated with arbitrage rebate calculations

Acknowledgement:

The foregoing terms and conditions are hereby acknowledged the _____ day of _____, 2017 / 2018.

By: _____

Its: _____

VRA Contact:

Peter D'Alema
Director of Program Management
Virginia Resources Authority
1111 East Main Street
Suite 1920
Richmond, VA 23219
804-616-3446
pdalema@virginiaresources.org

December 15, 2017

Board Agenda Item
February 20, 2018

ACTION - 9

Approval of a Resolution Endorsing Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2018 to FY 2023 Regional Funding (Providence and Dranesville Districts)

ISSUE:
Board approval of a resolution (Attachment 1) endorsing an application submitted by the City of Falls Church to Northern Virginia Transportation Authority (NVTA) for FY 2018 – FY 2023 Regional Funding. Projects submitted by the County and other regional partners were endorsed by the Board on December 5, 2017, and January 23, 2018.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve Attachment 1 endorsing the Falls Church Multimodal Improvements Project for NVTA's regional funding program.

TIMING:
Board of Supervisors' approval is requested on February 20, 2018, to provide NVTA a resolution of support for the project, which was due on January 19, 2018. NVTA is expected to approve projects for its regional transportation funding in June 2018.

BACKGROUND:
At its meeting on October 12, 2017, NVTA approved issuance of the FY 2018 – FY 2023 Program Call for Projects. Funding for these capital projects is provided by NVTA's 70 percent share of regional revenues that NVTA retains. Project applications were due to NVTA on December 15, 2017, with a resolution of endorsement from the governing body where the project is physically located due by January 19, 2018.

At its December 5, 2017, meeting, the Board of Supervisors adopted a resolution endorsing 15 projects to be submitted by Fairfax County to NVTA, as well as support of several projects submitted by regional partners. On January 23, 2018, the Board also took action to endorse WMATA projects and concur with Arlington County in submitting an ART bus facility project in North Springfield.

Following the actions taken by the Board, the County received a request from the City of Falls Church for support of the Falls Church Multimodal Improvements Project. The scope of this project includes intersection and signal improvements, pedestrian access

improvements, bicycle access improvements, bus stop enhancement, and utility relocation/undergrounding. Signals will be installed or updated at or near the Chestnut Street & West Broad Street/Route 7 intersection, Haycock Road & West Broad Street/Route 7 intersection, and Haycock Road and Schools Access Road intersection. A high-intensity activated crosswalk (HAWK) signal will be installed on Haycock Road. Pedestrian access improvements will be made at the above-listed intersections, as well as along West Broad Street between the Metrorail Station Exit and Haycock Road. Improvements will also be made along both sides of Haycock Road between West Broad Street/Route 7 and the City line. Utility relocation and bicycle access improvements will take place along Haycock/Shreve Road and along West Broad Street within the project boundary. Expanding multimodal transportation options and extending the catchment area of the West Falls Church Metro Station will increase travel options and reduce pressure on the regional highway system.

NVTA's application requirements state that "Projects that are located in multiple jurisdictions must demonstrate multijurisdictional support in order to advance (e.g. resolutions of support from the governing body of each affected jurisdiction.)". As component of the City of Falls Church project may be located in Fairfax County, staff recommends that the Board supports the City of Falls Church efforts to apply for the Falls Church Multimodal Improvements Project.

FISCAL IMPACT:
There is no direct fiscal impact associated with this action.

ENCLOSED DOCUMENTS:
Attachment 1 – Resolution Endorsing Additional Projects Being Submitted to the Northern Virginia Transportation Authority for FY 2018 to FY 2023 Regional Funding

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Chief, Coordination and Funding Division, FCDOT
Ray Johnson, Senior Transportation Planner, Coordination and Funding, FCDOT
Noelle Dominguez, Senior Transportation Planner, Coordination and Funding, FCDOT

Attachment 1

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia, on Tuesday, February 20, 2018, at which meeting a quorum was present and voting, the following resolution was adopted.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby endorses the efforts of the City of Falls Church submitting an application to the Northern Virginia Transportation Authority (NVTA) for regional funding for FY 2018 – FY 2023 for the following project located in or near Fairfax County:

- Falls Church Multimodal Improvements Project, TransAction ID#334.

Adopted this 20th day of February 2018, Fairfax, Virginia.

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
February 20, 2018

ACTION – 10

Approval of Project Agreements Between the Department of Rail and Public Transportation (DRPT) and Fairfax County to Provide Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality Improvement (CMAQ) Program Funds for Operation of Five Connector Stores

ISSUE:
The Fairfax County Department of Transportation (FCDOT) is seeking the Board's approval of project agreements between DRPT and the County to provide CMAQ program funds, and matching funds, for the operation of five Connector Stores.

RECOMMENDATION:
The County Executive recommends that the Board approve the attached Project Agreements with DRPT (Attachments 1 and 2) and authorize the Director of the Department of Transportation to execute the finalized Agreements substantially in the form of Attachments 1 and 2 on behalf of Fairfax County.

TIMING:
Board action is requested on February 20, 2018, so DRPT can reimburse the County for its expenses associated with this project.

BACKGROUND:
With passage of the Clean Air Act Amendments of 1990, Congress implemented strategies to attain the National Ambient Air Quality Standards (NAAQS). The 1990 amendments required reductions in the amount of allowable vehicle tailpipe emissions, initiated more stringent control measures in areas that still failed to meet the NAAQS, known as nonattainment areas, and provided for a stronger, more rigorous link between transportation and air quality planning. Further establishing this link, Congress passed the Intermodal Surface Transportation Efficiency Act-the ISTEA of 1991. This legislation recognized the role that transportation plays in reducing harmful emissions. Part of this approach was the newly authorized CMAQ Program. The CMAQ program was implemented to support surface transportation projects and other related efforts that contribute to air quality improvements and provide congestion relief.

Jointly administered by the FHWA and the Federal Transit Administration (FTA), the CMAQ Program has been reauthorized under every successive Transportation Bill up to and including the Fixing America's Surface Transportation (FAST) Act in 2015. The program provides a flexible funding source for transportation projects that help improve

air quality and reduce congestion. State and local governments can use the funding to support efforts to meet NAAQS under the Clean Air Act in both nonattainment and maintenance areas for carbon monoxide, ozone, and particulate matter.

As of January 2015, the Washington D.C. metropolitan area was designated by the Environmental Protection Agency (EPA) as “Marginal” nonattainment for the 2008 ozone standard. The region has made significant progress in reducing emissions of ozone precursors such as, volatile organic compounds (VOC) and nitrogen oxides (NOx) from both transportation and non-transportation sectors over the years. As a result, the region met the 2008 ozone standard of 75 parts per billion (ppb) based on the data for the period 2012 through 2014. The region is currently working on developing a request for EPA to re-designate the area to attainment for the 2008 ozone standard along with a required demonstration to maintain compliance in the future (maintenance plan).

However, EPA published a revised and tougher health based ozone standard of 70 ppb in October 2015. The draft data for the period 2014 through 2016 shows the region’s design value for ozone at 72 ppb. Further, in December 2017, the EPA sent a preliminary list of counties and cities designated as nonattainment. All the counties and cities within the Metropolitan Washington Council of Governments Transportation Planning Board jurisdictions were on the preliminary list of areas designated as nonattainment. This indicates that even though the region has made significant progress in reducing emissions, it needs to continue its efforts to meet the 2015 ozone standard.

The Connector Stores grant is used to fund the operating costs of five Fairfax Connector Stores. The stores provide information to potential riders of the Fairfax Connector bus system and various other transit systems in Northern Virginia. They distribute schedules and help plan trips using public transportation with the end result of reducing congestion on the roads and vehicle emissions. This grant has been awarded to the County for several years.

FISCAL IMPACT:
Funding from the Commonwealth is provided on a reimbursement basis after the purchase and/or project is completed. These funds are already included in Fund 40000 (County Transportation Systems) in Fairfax County’s FY 2018 Adopted Budget. There will be no fiscal impact to the General Fund, if this item is approved, and no local match is required. These funds, totaling $560,000, will be retroactive from November 13, 2017, the effective date of the agreement, and are available through December 31, 2018.

Board Agenda Item
February 20, 2018

ENCLOSED DOCUMENTS:
Attachment 1: Agreement for the Use of Federal Highway Administration Congestion Mitigation Air Quality Program Funds, FY 2018
Attachment 2: Project Agreement between the Virginia Department of Rail and Public Transportation and Fairfax County for the Provision of Funding for the Connector Transit Stores

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Todd Wigglesworth, Division Chief, Coordination and Funding Division, FCDOT
Dwayne Pelfrey, Division Chief, Transit Services Division, FCDOT
Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Daniel Robinson, Assistant County Attorney

AGREEMENT

FOR THE USE OF

FEDERAL HIGHWAY ADMINISTRATION

CONGESTION MITIGATION AIR QUALITY PROGRAM FUNDS

FISCAL YEAR 2018

PROJECT 47018-05

CM 5A01 (904)

UPC T207

FAIRFAX COUNTY

This Project Agreement ("Agreement"), effective November 13, 2017, by and between the Commonwealth of Virginia Department of Rail and Public Transportation ("Department") and Fairfax County ("Grantee") (collectively, the "Parties"), is for the provision of funding the Fairfax Connector Transit Stores ("Project").

WHEREAS, under provisions set forth under 23 U.S.C. § 149, the Congestion Mitigation and Air Quality Improvement ("CMAQ") program was established to fund transportation projects or programs that are likely to contribute to attainment of national ambient air quality standards or maintain national ambient air quality standards in maintenance areas; and

WHEREAS, the Parties wish to secure and utilize these 23 U.S.C. § 149 grant funds to reduce traffic congestion, maximize the use of existing public transportation and to help improve air quality and mobility by providing commuter assistance; and

WHEREAS, on November 13, 2017, the Federal Highway Administration ("FHWA") approved funding for the Project.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

SECTION 1. Purpose and Source of Funds

Provided the requirements of this Agreement are met, the Department agrees to make available to the Grantee the sum of $448,000 in 23 U.S.C. § 149 CMAQ Federal funds. This amount is provided to carry out the work activities described in the approved Project scope of work in Appendix A, attached and made a part of this Agreement. The

Project is contained in the approved Transportation Improvement Plans of both the urbanized area of which the Grantee is a part and the Commonwealth of Virginia ("Commonwealth"). It is understood that in this Agreement, the Department is merely serving as the entity to distribute Federal government funding, and the funds provided in this Agreement are not Commonwealth funds.

SECTION 2. Project Budget

The Project Budget is the latest requested by the Grantee and approved by the Department. The Project Budget is contained in the attached Appendix A and is made a part of this Agreement. The Grantee shall carry out the Project and shall incur obligations against and make disbursements of the Project funds only in conformity with the latest approved budget for the Project. Indirect costs are an allowable expense if they are based on a cost allocation plan that has been approved by the Department.

Federal funds provided in this Agreement are contingent upon FHWA funding. In no event shall the Department be liable to the Grantee for any portion of the Federal share of the Project cost. The Department's responsibility for the Project cost shall be limited to the cost of coordination and processing of the Grantee's reimbursement requests to the FHWA.

SECTION 3. Requisitions and Payments

a. Requests for Payment by the Grantee. The Grantee will make requests for payment of eligible costs as defined in 23 U.S.C. § 601. The request for payment will be for the Federal share of the total Project cost at the rate of Federal

participation shown in the Project Budget. In order to receive payments, the Grantee must:

1. Submit a reimbursement request in the OLGA Grants Management System to the Department; and
2. Identify the source or sources of the non-Federal share of financial assistance under this Project from which the payment is to be derived.

b. Upon receipt of satisfactory documentation, the Department will use all reasonable means to electronically transfer funds for the Federal share of allowable costs to the Grantee within 30 days.

SECTION 4. Termination

For convenience. The Department may terminate this Agreement at any time without cause by providing written notice to the Grantee of such termination. Termination shall be effective on the date of the receipt of notice by the Grantee. In the event of such termination, the Grantee shall be compensated for allowable costs as defined by the State Master Agreement, through the date of receipt of the written termination notice from the Department.

SECTION 5. Contracts of the Grantee

Without prior written authorization by the Department, the Grantee shall not: (1) assign any portion of the work to be performed under this Agreement; (2) execute any contract, amendment, or change order concerning this Agreement; or (3) obligate itself in any manner with any third party with respect to its rights and responsibilities under this

Agreement. Further, the Grantee may not issue a Request for Proposal ("RFP") that uses 23 U.S.C. § 149 CMAQ funds without prior review and approval of the RFP by the Department.

SECTION 6. Restrictions, Prohibitions, Controls, and Labor Provisions

The Grantee shall comply with all of the restrictions, prohibitions, controls, and labor provisions set forth in Appendix B, attached and made a part of this Agreement.

SECTION 7. Liability Waiver and Insurance Requirements

The Grantee shall not seek redress for damages or injury caused in whole or in part by the Commonwealth or the Department, and their respective officers, agents, and employees acting within the scope of their duties. The Grantee shall reimburse the Commonwealth, the Department, and their respective officers, agents, and employees for any damage or injury arising from or relating to the use by the Grantee, its officers, agents, or employees of funds provided under this Agreement.

The Grantee hereby certifies that it is covered by and will keep in force either: (a) a comprehensive liability self-insurance plan administered by Virginia's Division of Risk Management providing protection against liability and claims pursuant to § 2.2-1839 of the *Code of Virginia* (1950), as amended (the "DRM Plan"); (b) a commercial insurance policy acceptable to the Department ("Commercial Insurance"); or (c) a liability self-insurance program acceptable to the Department providing equal or better coverage than the DRM Plan ("Self-Insurance Program").

(a). The DRM Plan. If the Grantee chooses to satisfy its obligations under this Section by procuring the DRM Plan:

1. The Commonwealth and the Department, and their respective officers, agents, and employees shall be "additional covered parties" under the DRM Plan.

2. The Grantee shall provide the Department a Certificate of Liability Coverage that states, "The Commonwealth and the Department, and their respective officers, agents, and employees shall be indemnified to the extent permitted by law in terms of being added as additional covered parties pursuant to and specific to this Certificate."

(b). Commercial Insurance. If the Grantee chooses to satisfy its obligations under this Section by procuring Commercial Insurance:

1. The Grantee shall obtain an endorsement to the Commercial Insurance naming the Commonwealth and the Department, and their respective officers, agents, and employees as additional insureds under the policy.

2. The Grantee shall provide the Department a Certificate of Insurance providing evidence of the required coverage and naming the Commonwealth and the Department, and their respective officers, agents, and employees as additional insureds.

(c). Self-Insurance Program. If the Grantee chooses to satisfy its obligations under this Section through a Self-Insurance Program:

1. The Grantee shall provide evidence of the authority for such Self-Insurance Program, evidence of the limits of the Self-Insurance Program, and evidence that the Self-Insurance Program is funded to an actuarially sound level.
2. The Grantee shall provide the Department with a certificate or letter from an authorized Grantee official confirming coverage for the duration of the Agreement.

The requirements of this Section shall not be deemed to limit any other obligations or liabilities of the Grantee.

The Grantee shall be responsible to pay the full amount of any deductibles or self-insured retentions of any coverages.

SECTION 8. Compliance with Title VI of the Civil Rights Act of 1964

The Grantee shall comply with the provisions of Title VI of the Civil Rights Act of 1964, and the provisions in Appendix C, attached and made a part of this Agreement.

SECTION 9. Incorporation of Provisions

The Grantee shall make all covenants and provisions of this Agreement a part of any contracts and subcontracts relating to the Project which utilize the funds provided in this Agreement. These covenants and provisions shall be made binding on any contractor, subcontractor, and their agents and employees. In addition, the following required provision shall be included in any advertisement for procurement for the Project:

Statement of Financial Assistance: This contract is subject to a financial assistance contract between the Commonwealth of Virginia and the United States Department of Transportation ("U.S. DOT").

SECTION 10. Special Provisions

a. Special Condition Pertaining to Financing CMAQ Projects.

Sufficient funds must be available from the U.S. DOT and an adequate liquidating cash appropriation must have been enacted into law before payments may be made to the Grantee under this Agreement.

b. All funds made available by this Agreement are subject to audit by the Department or its designee, and by the FHWA or its designee. Current audit guidelines for the Department are set forth in Appendix D, attached and made a part of this Agreement.

This area intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix A: Project Description and Budget

Grantee: Fairfax County

Project: Fairfax Connector Transit Stores

FHWA Grant Number CM 5A01 (904)
UPC T207

Project Number: 47018-05
Project Start Date: November 13, 2017
Project Expiration Date: December 31, 2018

Fund Code		Item Amount
401	Federal Grant Amount (share of Project cost - 80%)	$448,000
472	State expense (share of Project cost - 20%)	$112,000
	Total Project Expense	$560,000

In no event shall this grant exceed $448,000.

Appendix B: <u>Restrictions, Prohibitions, Controls, and Labor Provisions</u>

a. The Grantee, its agents, employees, assigns, or successors, and any persons, firms, or agency of whatever nature with whom it may contract or make agreement, in connection with this Agreement, shall not discriminate against any employee or applicant for employment because of age, race, religion, handicap, color, sex, or national origin. The Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their age, race, religion, handicap, color, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. Disadvantaged Business Enterprises ("DBE"). It is the policy of the U.S. DOT that DBEs, as defined in 49 C.F.R. pt. 26, have the maximum opportunity to participate in the performance of contracts financed in whole or in part with the Federal funds under this Agreement. Consequently, the DBE requirements of 49 C.F.R. pt. 26 apply to this Agreement.

   The recipient or its contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. pt. 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. pt. 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The recipient will utilize the Virginia Department of Transportation's DBE program, as required by 49 C.F.R. pt. 26 and as approved by the U.S. DOT, which is incorporated by reference in this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. § 3801 *et seq*.).

   Pursuant to the requirements of 49 C.F.R. pt. 26, the following clause must be inserted in each third party contract:

   > "The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. pt. 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited

to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible."

c. Interest of Member of, or Delegates to, Congress. No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

d. Conflict of Interest. The Grantee and its officers and employees shall comply with the provisions of the State and Local Government Conflict of Interests Act, §§ 2.2-3100 *et seq*. of the *Code of Virginia* (1950), as amended.

e. The Grantee, its agents, employees, assigns, or successors, and any persons, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Fair Employment Contracting Act, §§ 2.2-4200 *et seq.* of the *Code of Virginia* (1950), as amended.

Appendix C: Title VI

During the performance of this Agreement, the Grantee, for itself, its assignees, and successors in interest, agrees as follows:

a. **Compliance with Regulations**: The Grantee shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (U.S. DOT), 49 C.F.R. pt. 21, as amended ("Regulations").

b. **Nondiscrimination**: The Grantee, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Grantee shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations.

c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding or negotiation, made by the Grantee for work to be performed under a subcontract, including procurements of materials, leases, or equipment, each potential subcontractor or supplier shall be notified by the Grantee of the Grantee's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

d. **Information and Reports**: The Grantee shall provide all information and reports developed as a result of or required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Grantee is in the exclusive possession of another who fails or refuses to furnish this information, the Grantee shall so certify to the Department or the FHWA, as appropriate, and shall set forth the efforts it has made to obtain this information.

e. **Sanctions for Noncompliance**: In the event of the Grantee's noncompliance with the nondiscrimination provisions of this Agreement, the Department shall impose such Agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

    1. Withholding of payments to the Grantee under the Agreement until the Grantee complies; and/or
    2. Cancellation, termination, or suspension of the Agreement in whole or in part.

f. **Incorporation of Provisions**: The Grantee shall include the requirements of paragraphs a through f in every subcontract (making clear that the requirements on the Grantee are in turn required of all subcontractors), including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Grantee shall take such action with respect to any subcontract or procurement as the Department or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Grantee becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Grantee must immediately notify the Department so that steps can be taken to protect the interests of the Department and the United States.

Appendix D: Audit Guidelines

a. The Grantee shall comply with the requirements of the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.,* and applicable U.S. DOT "Single Audit" requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. pt. 200. It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and non-profit organizations expending Federal awards.

b. Additional guidance is as follows:

1. Eligibility of costs is stressed for expenditures made within the grants. 2 C.F.R. pt. 200 Subpart E should be referenced and applied. Generally, some of the problems encountered are:
    A. Unacceptable or no cost allocation plan, usually for "indirect costs."
    B. Arbitrary allocation of costs.
    C. Failure to maintain time and attendance records.
    D. Failure to keep accurate track of employee time spent on each of several grants.
    E. Improper documentation.

2. The report should have sufficient schedules, either main or supplementary, that identify beginning balances, revenues, expenditures by line item and individual grants, and fund balances. Department-issued grants should be separated. A schedule of ineligible costs should also be included if such costs are found.

3. The report should present a schedule of indirect costs and be presented in a manner that indicates the method of developing the costs (including fringe benefits). Indirect costs should be analyzed for eligibility of costs included (interest, taxes, etc.).

4. Costs should be classified to identify expenditures by the Grantee in contrast to disbursements actually passed through to subrecipients. The scope of the audit should include expenditures made by the subrecipients and be identified in the audit report. This includes consultants, subconsultants, and any other recipient of pass through funds.

5. Generally speaking, it is left up to the auditor's professional judgment to determine materiality in selection of parameters for sample testing and recognition of errors. However, it is suggested that the size of each individual grant in the entity be considered when selecting parameters rather than total overall operation of the entity.

6. The following groups should be sent copies of the audit reports:

A. Two copies of the audit reports and two copies of the OIG Review of the Report are to be sent to:

Virginia Department of Rail and Public Transportation
Attention: Donald Karabaich, Audit Manager
600 East Main Street, Suite 2102
Richmond, VA 23219

B. Grantees expending more than $500,000 a year in Federal assistance must forward a copy of the audit to a central clearinghouse designated by OMB.

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th St.
Jefferson, IN 47132

C. If your independent annual single audit contains U.S. DOT program findings, a copy of the entire audit report must be submitted to your FHWA Regional Office. If your agency receives funds from more than one U.S. DOT agency and the FHWA is your point of contact for all DBE program issues, then you must submit the entire audit report if it contains any findings related to any U.S. DOT program.

D. If your independent annual single audit report contains no U.S. DOT program findings, a copy of only the Federal Clearinghouse transmittal sheet must be submitted to your FHWA Regional Office.

Project Agreement for Use of
Commonwealth Transportation Funds
Fiscal Year 2018
Six Year Improvement Program Approved Project
Federal Highway Administration Grant Number 5A01 (904)
Grant Number 47018-05

This Project Agreement ("Agreement"), effective November 13, 2017 by and between the Commonwealth of Virginia Department of Rail and Public Transportation ("Department") and Fairfax County ("Grantee") (collectively, the "Parties"), is for the provision of funding the Fairfax Connector Transit Stores ("Project").

WHEREAS, on June 20, 2017, the Commonwealth Transportation Board ("CTB") allocated funding for the Project; and

WHEREAS, on November 13, 2017, the Federal Highway Administration ("FHWA") approved funding for the Project; and

WHEREAS, the Department provides state matching funds to Federal funds for approved projects in the Six Year Improvement Program; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. The Work to be performed by the Grantee under the terms of this Agreement is as follows:

   a. Fairfax Connector Transit Stores.

2. The Department agrees to provide funding as detailed below:

   a. State grant funding in the amount of $112,000 to match Federal funds for the Project approved in the Fiscal Year 2018 Six Year Improvement Program. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.

3. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

ARTICLE 2. INCORPORATION OF MASTER AGREEMENT FOR USE OF COMMONWEALTH FUNDS

The Parties agree to incorporate the Master Agreement for Use of Commonwealth Transportation Funds, dated May 30, 2012, as if set out in full herein.

This space intentionally left blank

IN TESTIMONY THEREOF, the Department and the Grantee have caused this Agreement to be executed, each by their duly authorized officers, all as of the day, month, and year first written.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Director

Date Signed: _____

By: _____

Title: _____

Date Signed: _____

Appendix 1

Grantee: Fairfax County

Project: Fairfax Connector Transit Stores

FHWA Grant 5A01 (904)
UPC T207

Project Number: 47018-05
Project Start Date: November 13, 2017
Project Expiration Date: December 31, 2018

Fund Code		Item Amount
472	Grant Amount (State share of Project cost - 20%)	$112,000
401	Federal expense (share of Project cost - 80%)	$448,000
	Total Project Expense	$560,000

In no event shall this grant exceed $112,000.

Board Agenda Item
February 20, 2018

CONSIDERATION – 1

Proffer Interpretation Appeal Associated with The Reserve at Tysons Corner Related to Proffers Accepted for RZ/FDP 2003-PR-008

ISSUE:
Board consideration of an appeal of a proffer interpretation that determined Proffer 49 of RZ/FDP 2003-PR-008 remains in effect, but is not enforceable against a property not included in the subject rezoning.

TIMING:
Board deferred decision only at the October 24, 2017 Board meeting until November 21, 2017; at which time it was deferred to December 5, 2018; at which time it was deferred to January 23, 2018; at which time it was deferred to February 6, 2018; at which time it was deferred to February 20, 2018.

BACKGROUND:
On December 22, 2016, the Department of Planning and Zoning (DPZ) received a request for an interpretation of the proffers associated with RZ/FDP 2003-PR-008, a land use application that permitted the development of a residential community now referred to as “The Reserve at Tysons Corner” (hereinafter the “Reserve Property”). In this request, The Reserve at Tysons Corner Association, Inc., as the owners association, requested an interpretation regarding whether the proffers accepted in RZ/FDP 2003-PR-008 created a continuing obligation to provide offsite parking on an adjacent property (the “Meridian Property”), which was not subject to the proffers accepted with RZ/FDP 2003-PR-008. (See Zoning Determination in Attachment 1).

The Reserve Property and the Meridian Property were originally part of a single, 33.74-acre parcel zoned to the I-P District (now I-3) under RZ 75-7-004. In 2003, two concurrent applications were submitted to develop a portion of the property with residential development. One application, PCA 75-7-004-02, was submitted and approved to delete 19.04 acres from RZ 75-7-004. The other application, RZ/FDP 2003-PR-008, proposed to rezone the same 19.04 acres of land to the PDH-30 District. On March 15, 2004, the Board approved PCA 75-7-004-02 first, thereby deleting the 19.04-acre parcel, now the Reserve Property, from the original proffered conditions. On the same day, the Board then approved RZ 2008-PR-003. *See* Clerk’s March 15, 2004, Board summary, Attachment 2 (describing the approval as an

"[a]mendment of the Zoning Ordinance, *as it applies to the property which is the subject of Rezoning Application RZ 2003-PR-008*, from the I-3 and HC Districts to the PDH-30 and HC Districts, subject to the proffers dated March 14, 2004").

The Reserve Property consists of 570 homes – 478 apartments owned by Simpson Property Group, LP and 92 townhomes which are owned individually and governed by the Townhouse at the Reserve Homeowners Association, Inc. It is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. Although it still shared the same tax map number as the Meridian Property at the time of the Reserve Property rezoning (RZ/FDP 2003-PR-008), it was separated, for zoning purposes, upon the Board's approval of PCA 75-7-004-02. It is now identified as Tax Map Nos. 39-2((56)) A1, B3, 1-92, 39-2((1)) 13A5 and A6.

The Meridian Property (Tax Map Nos. 39-2((1)) 13D and 13E), is currently owned by Tysons Enterprise West, LLC, and Tysons Enterprise East, LLC, and is developed with two existing office/data center buildings and a surface parking lot.

Proffer 49, the proffer at issue in this appeal, was approved in connection with the Reserve Property rezoning (RZ/FDP 2003-PR-008). It envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

> *Prior to the approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

The "adjacent I-3 parcel" referenced in this proffer is the Meridian Property, which was not included in RZ 2003-PR-008. In fact, by referring to it as "the adjacent I-3 parcel," the proffer language makes clear that the Meridian Property was not part of the Application property subject to Proffer 49.

Zoning Determination

The Meridian Property recently obtained approval of PCA 75-7-003-3 and SE 2015-PR-021, which allow for redevelopment of the property, in part, with a full-size athletic field and parking garage. Because of the proposed redevelopment, the prior owner of the Meridian Property notified the Appellant in December of 2016 of its intent to terminate the parking agreement under the terms of a Declaration of Covenants

recorded in 2005. The Appellant submitted its proffer interpretation request to ask whether the Meridian Property is entitled to terminate the 150 offsite parking spaces in light of Proffer 49.

On May 30, 2017, the Zoning Evaluation Division (ZED) issued a determination letter in response to the Appellant's proffer interpretation request. Staff determined that, at the time of site plan approval, the Reserve Property demonstrated compliance with Proffer 49 by providing a copy of the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195, which provided that the Meridian Property owner would provide to the Reserve Property owner the right to use 150 overflow parking spaces. The determination letter stated that the accepted proffers become part of the Zoning map for the property subject to the rezoning only, in this case the Reserve Property, and are not enforceable against an off-site property, in this case the Meridian Property. In addition, while the Meridian Property was included in a concurrent, but separate application (PCA 75-7-004-02), a proffer requiring provision of this parking was not included in proffers pertaining to that land area. Staff determined that Proffer 49 remains in effect for the Reserve Property and can be removed only through a Proffered Condition Amendment (PCA) approved by the Board of Supervisors.

The subject appeal was filed with the Board of Supervisors on June 29, 2017, by Lucia Anna Trigiani, agent for the Reserve, in the name of The Reserve at Tysons Corner Association, Inc. ("Association" and "Appellant") (See Attachment 3). The justification for the filing of the appeal alleges the following:

The Appellant is an aggrieved party and thus entitled to appeal the Zoning Determination regarding the proffers relating to RZ/FDP 2003-PR-008, because:

1. The Zoning Determination renders the Reserve Property in non-compliance with Proffer 49 through no fault of the Association or any of the members or residents who reside at the Reserve Property, and with no means of recourse or redress.[1]
2. Members of the Association and residents of the Reserve Property bear significant hardship without access to the overflow parking.
3. The resulting non-compliance and lack of adequate parking have negative impacts on property values and the ability to sell property in the Reserve Property.

[1] Emphasis added by appellant.

For the reasons that follow, these allegations do not establish that the Appellant is aggrieved by the Zoning Determination.

Discussion

The Board's authority to accept proffered conditions arises from Virginia Code §§ 15.2-2296 and 15.2-2303, under the development scheme known as conditional zoning. The Virginia Code defines "conditional zoning," when part of classifying land within a locality into areas and districts by legislative action, as "the allowing of reasonable conditions governing the use *of such property*." Va. Code § 15. 2-2201 (emphasis added). Once the Board approves a rezoning subject to proffered conditions, the proffers become a part of the zoning regulations *applicable to the property in question*. Zoning Ordinance § 18-204(3). Any development of the *property in question* must then be in substantial conformance with the proffered conditions. Zoning Ordinance § 18-204(4). Once proffered and accepted as part of an amendment, such conditions shall continue in effect until a subsequent amendment changes the zoning *on the property covered by the conditions.* Va. Code § 15.2-2303(A). The only way to impose (or enforce) proffered conditions on a property not subject to the original rezoning is by applying for an amendment. Zoning Ordinance § 18-204(6). The Meridian Property was not part of RZ 2003-PR-008, nor has the Board approved a proffered condition amendment to include the Meridian Property.

An applicant attempting to appeal a proffer determination to the Board must demonstrate that it is "aggrieved" by that determination. Va. Code § 15.2-2301; *see* Zoning Ordinance § 18-204 (10). For the reasons discussed below, the Appellant has not demonstrated that it is aggrieved by the Zoning Determination.

The Appellant has available means of redress.

For the reasons discussed above, Proffer 49 only applies to the Reserve Property. It required the demonstration of the provision of at least 150 overflow off-site parking spaces on the Meridian Property, which was to be secured via a parking agreement to be recorded in the land records prior to site plan approval. This private agreement was recorded in Deed Book 16927 at Page 2195, as required, and the proffer was noted as met for the purposes of site plan approval. The County has no legal authority to enforce Proffer 49 against the Meridian Property owner, and it also cannot enforce the provisions of a private agreement to which it was not a party.

The Zoning Determination does not render the property in noncompliance with Proffer 49 "with no means of recourse or redress," however. To the contrary, it plainly states that the Appellant may seek to amend the proffered conditions to delete the overflow parking requirement (notably, no enforcement action has been taken or even threatened against the Appellant due to its noncompliance). Alternatively, the Appellant could also take private legal action against the Meridian Property owner to restore the offsite

parking spaces, if necessary, or it could seek to, renegotiate a parking agreement with the Meridian Property owner.

The Reserve Property has Adequate Parking

The Appellant asserts in its second claim that it's left with inadequate parking. The Staff Report and Addendum prepared in conjunction with RZ/FDP 2003-PR-008, however, make no reference to the need for overflow parking. Rather, those documents state that "parking will be provided via structured parking within and/or adjacent to each of the multi-family buildings as well as on each single-family attached lot with additional visitor parking on the streets. Single-family attached units which are front-loaded will have driveways a minimum of 18 feet long[2]." Additionally, Sheet 2 of 13 of the approved CDP/FDP for RZ/FDP 2003-PR-008 demonstrates how adequate parking will be provided in accordance with Article 11 of the Zoning Ordinance in effect at the time of approval and in fact, the approved site as built for both The Reserve at Tysons Corner Townhomes (2481-SAB-002-1) and Multi-Family (2481-SAB-005-2) demonstrate that an excess of parking was provided on-site (total of 1,088 provided versus 997 spaces required). This excess parking does not include the 150 off-site overflow spaces. Based on this documentation, it appears that excess parking is already provided on the Reserve Property.

Impact on Property Values is Irrelevant to Zoning Determination

Finally, the Appellant contends that its non-compliance and lack of adequate parking have negative impacts on property values and the ability to sell property in the Reserve. Fiscal impacts are not taken into consideration during the staff's review of proffer language in response to a request for a determination. For the reasons described above, the Appellant may exercise various means of recourse to come into compliance with Proffer 49. It also has excess parking spaces onsite and could seek to renegotiate a new parking agreement with the Meridian Property for additional off-site parking.

Summary

The Zoning Determination properly concluded that accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. Proffer 49 is therefore unenforceable against the Meridian Property. Accordingly, and for the reasons stated above, staff requests that the Board of Supervisors uphold staff's determinations in the May 30, 2017, letter.

[2] See Page 18 of Staff Report Applications RZ/FDP 2003-PR-008 (concurrent with application PCA 75-7-004-2) dated September 4, 2003 in Attachment 4.

Board Agenda Item
February 6, 2018

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Zoning Determination, dated May 30, 2017
Attachment 2: March 15, 2004, Clerk's Board Summary
Attachment 3: Letter dated June 28, 2017, to Clerk of the Fairfax County; Notice of Appeal of Zoning Determination for RZ/FDP 2003-PR-008 The Reserve at Tysons Corner

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Leslie Johnson, Zoning Administrator, DPZ
Tracy Strunk, Director, Zoning Evaluation Division (ZED), DPZ
Suzanne Wright, Chief, Special Projects/Applications/Management Branch, ZED, DPZ
Kelly M. Atkinson, Sr. Staff Coordinator, ZED, DPZ

ASSIGNED COUNSEL:
Laura S. Gori, Senior Assistant County Attorney

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

May 30, 2017

Lucia Anna Trigiani, Esq.
MercerTrigiani
112 South Alfred Street
Alexandria, VA 22314

Re: Interpretation for RZ/FDP 2003-PR-008; The Reserve at Tysons Corner; Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6: Parking Obligation

Dear Ms. Trigiani:

This determination is in response to your letter of December 22, 2016, requesting an interpretation of the proffers, as well as the approved development conditions and Conceptual/Final Development Plan (C/FDP), accepted and approved in conjunction with the above-referenced application. As I understand it, you are requesting an interpretation of proffer language relating to parking on an adjacent offsite parcel. Specifically, your request concerns whether the proffers accepted in RZ/FDP 2003-PR-008 create a continuing obligation to provide offsite parking on an adjacent property (aka the "Meridian Property"). This determination is based upon your letter dated December 22, 2016, and Exhibit 1, entitled "Proffers RZ 2003-PR-008" dated March 14, 2004. Copies of this letter and exhibits are attached.

The subject property is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. The property is zoned PDH-30 pursuant to the approval of RZ 2003-PR-008 by the Board of Supervisors on March 15, 2004, with the Planning Commission approving FDP 2003-PR-008 on April 7, 2004, subject to proffers and development conditions. These applications permitted development of the property with 92 single-family attached and 478 multi-family dwelling units.

Prior to the approval of RZ/FDP 2003-PR-008, the subject property was part of a larger 33.74-acre property identified as Tax Map Number 39-2 ((1)) Parcel 13. This larger property was originally zoned to the I-P District (now I-3) pursuant to the approval of RZ 75-7-004 by the Board of Supervisors on October 29, 1975, subject to proffers. In 2003, two concurrent applications were submitted by Lincoln Property Company Southwest, Inc., in order to develop a portion of this overall property with the residential development described above. PCA 75-7-004-02 was submitted and approved on the entire 33.74 acres in order to delete 19.04 acres from RZ 75-7-004. RZ/FDP 2003-PR-008 was then approved, subject to proffers, to rezone that same 19.04 acres of land to the PDH-30 District. As the property included in all these applications was under single ownership, the proffers for both applications were signed by the same owner, Campus Point Realty Corporation II. The proffer at issue, however, was approved only in connection with the rezoning

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Zoning Evaluation Division
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of the 19.04-acre parcel. Subsequent to the approval of RZ/FDP 2003-PR-008, the property subject to RZ/FDP 2003-PR-008 was subdivided from the larger property via approved site plans and record plats.

The proffer at issue with your current request is Proffer 49 of RZ 2003-PR-008, which envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

> *Prior to the approval of the final site plan on the Application Property[1], the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

It appears, through submitted plans for the subject property, that compliance with Proffer 49 was demonstrated to Fairfax County through the recordation of a parking agreement in the land records of Fairfax County. You state that you believe the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195 in the Fairfax County land records is the document meant to satisfy Proffer 49—specifically, Section 12.17 of the Declaration of Covenants, Restrictions and Easements as it relates to Overflow Parking Spaces.

The 150 overflow parking spaces were to be located offsite from the 19.04 acres zoned PDH-30, on the portion which retained its I-3 zoning - the Meridian Property (Tax Map Numbers 39-2 ((1)) 13D and 13E), which is currently owned by Tysons Enterprise West LLC and Tyson Enterprise East LLC, and is developed with two existing office/data center buildings and surface parking. In accordance with PCA 75-7-003-3 and SE 2015-PR-021, the Meridian Property will be redeveloped, in part, with a full-size athletic field and parking garage. You now state that the Reserve at Tysons Corner Association Board has been notified that the prior owner of the Meridian Property seeks to terminate the parking agreement with the Association.

In accordance with Section 18-201 of the Zoning Ordinance ("Ordinance"), Board of Supervisors approval of a rezoning application constitutes a permanent (unless further amended) amendment to the Zoning Map. Further, per Section 18-204, any proffered conditions submitted as part of the rezoning application and accepted by the Board of Supervisors become "part of the zoning regulations applicable to the subject property in question, unless subsequently changed by an amendment to the Zoning Map." Therefore, an approved rezoning and accepted proffers become a part of the Zoning map only for the subject property included in the application, in this case the 19.04 acres described in the application for RZ/FDP 2003-PR-008. Proffer 49 was a commitment

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[1] Proffer #1 associated with RZ 2003-PR-008 states that *"Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) prepared by VIKA Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004..."* As shown on Sheet 2 of the CDP/FDP, the portion of the property rezoned to the PDH-30 District per RZ 2003-PR-008 contains 19.04 acres, which is the Application Property referenced in Proffer 49. Please refer to Appendix 1 depicting the 19.04 acres subject to RZ 2003-PR-008, which is from the Staff Report published as part of this rezoning application.

that required the demonstration of the provision of at least 150 overflow parking spaces on the offsite Meridian Property, which was to be secured via a parking agreement to be recorded in the land records. As noted above, this agreement was recorded in Deed Book 16927 at Page 2195 prior to the approval of the site plan, as required.

Proffer 49 specifically required that the overflow parking spaces on an offsite parcel were to be implemented by a private agreement. As noted above, accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. By referring to the Meridian Property as the "adjacent I-3 parcel," the proffer language makes clear that that property was not part of the Application property subject to the proffer.

Based on the foregoing, it is my determination that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008. Although Proffer 49 remains in effect, a proffer violation cannot be enforced on Meridian because the proffer does not apply to them. The proffer can be removed only through a Proffered Condition Amendment (PCA) application approved by the Board of Supervisors. Information on how to apply for a PCA can be found on our website at: http://www.fairfaxcounty.gov/dpz/zoning/applications/.

The determination has been made in my capacity as duly authorized agent of the Zoning Administrator and address only those issues discussed herein and not any separately recorded private agreements. If you have any questions regarding this interpretation, please feel free to contact Kelly M. Atkinson at (703) 324-1290.

Sincerely,

Tracy D. Strunk, AICP, Director
Zoning Evaluation Division, DPZ

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Attachments: A/S

Cc: Linda Smyth, Supervisor, Providence District
Phillip Niedzielski-Eichner, Planning Commissioner, Providence District
Laura Gori, Esq., Assistant County Attorney, Office of the County Attorney
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ellie Codding, Acting Director, Code Development and Compliance Division, LDS
Ken Williams, Manager, Site and Technical Services, LDS
Michael Davis, Section Chief for Site Analysis, DOT
Suzanne Wright, Chief, Special Projects/Applications Management Branch, ZED, DPZ
Tysons Enterprise West, LLC, Owner, Tax Map 39-2 ((1)) 13D
Tyson Enterprise East, LLC, Owner, Tax Map 39-2 ((1)) 13E
File: RZ 2003-PR-008, PCA 75-7-004-03 and SE 2015-PR-021, PI 17 01 001, Imaging

MERCERTRIGIANI

Lucia Anna Trigiani
Pia.Trigiani@MercerTrigiani.com

Direct Dial: 703-837-5008
Direct Fax: 703-837-5018

December 22, 2016

OVERNIGHT MAIL

Barbara C. Berlin
Director of the Zoning Evaluation
Division Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

RE: Proffer RZ 2003-PR-008 dated March 14, 2004
Zoning Interpretation Request

Dear Ms. Berlin:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"). The Association Board of Directors ("Association Board") has requested our assistance in submitting this interpretation request to you for consideration and response.

Background

The Association is a Virginia nonstock corporation responsible for the operation and administration of property located in Fairfax County, Virginia known as The Reserve at Tysons Corner ("Reserve Property").

The Reserve Property is subject to a Declaration of Covenants, Conditions, Restrictions and Reservations of Easements recorded on March 24, 2006 in Deed Book 18311 at Page 1041 among the Fairfax County land records ("Land Records") and amended by the First Amendment to Declaration of Covenants, Restrictions and Reservation of Easements recorded on August 27, 2008 in Deed Book 20085 at Page 425 among the Land Records (as amended, the "Master Declaration"). A copy of the Declaration is enclosed behind **Exhibit 1**.

The Reserve Property is also subject to Declaration of Covenants, Restrictions and Easements ("SAIC Declaration") which was recorded on January 28, 2005 in Deed Book 16927 at Page 2195 by Campus Point Realty Corporation ("Campus"), which presumably owned the Reserve Property at that time – prior to creation of the Association. The Reserve Property is referred to as *Parcel 1* in the SAIC Declaration. A copy of the SAIC Declaration is enclosed behind **Exhibit 2**.

The SAIC Declaration also encumbers property located immediately north of the Reserve Property (on the north side of Science Applications Court) – referred to as *Parcel 2* in the SAIC Declaration ("Meridian Property"), which is owned or was recently owned by the Meridian

Group or its affiliates. The Meridian Property is in the process of being redeveloped into a project we believe is referred to as *Tysons Technology Center*. The Meridian Property, or a portion thereof, is currently under contract or has sold to another party as of the date of this letter. To our knowledge, the Meridian Property, as subdivided, consists of property identified as Tax Map Numbers 039-01-0013D and 039-2-01-0013E.

We also believe that the Meridian Property is subject to development conditions imposed by Fairfax County pursuant to Proffers RZ 2003-PR-008 dated March 14, 2004 ("Conditions") – referred to as the *Application Property* therein. A copy of the Conditions is enclosed behind **Exhibit 3**. Number 49 of the Conditions provides:

> *Prior to approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking arrangement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the 1-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 p.m.) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

The foregoing condition requires the owner of the Meridian Property to make available to residents of the Reserve Property a minimum of 150 "overflow" parking spaces on the Meridian Property. We are unaware of this condition being subsequently amended. The condition is ***unqualified*** in terms of its permanency.

Section 12.17 of the SAIC Declaration contemplates the overflow parking requirement, presumably in response to Number 49 of the Conditions. Section 12.17 provides:

> *The Parcel 2 Owner shall provide to the Parcel 1 Owner, for the benefit of the residents of Parcel 1, the right to use a minimum of 150 parking spaces on Parcel 2 during non-business hours on weekdays (i.e. after 6:00 p.m.) and on weekends ("Overflow Parking"). Prior to the sale or rental of the first housing units on Parcel 1, the Parcel 1 Owner or the Master Association shall establish, subject to the reasonable approval of the Parcel 2 Owner, reasonable rules and regulations for the use of the Overflow Parking. The Master Association (or, before there is a Master Association, the Parcel 1 Owner) shall enforce such rules and regulations. If the Parcel 1 Owner of the Master Association, as applicable, fails to establish and/or enforce such rules and regulations, in addition to any other remedies that may be available to it, the Parcel 2 Owner shall have the right to terminate the Parcel 1 Owner's right to use the Overflow Parking by sending a notice to the Parcel 1 Owner and, if the Parcel 2 Owner so elects, recording the same in the land records.*

However, unlike Condition 49, the language in Section 12.17 is ***qualified*** in that it provides that the Parcel 2 Owner (the owner of the Meridian Property) can *unilaterally* terminate the overflow parking arrangement if rules and regulations are not promulgated within a certain time frame.[1]

Less than two weeks ago, in conjunction with the sale of the Meridian Property, Meridian presented the Association Board with a copy of a Parking Agreement for execution contemplating reduced parking (under the 150 required parking spaces) during construction on the Meridian Property, as well as a right of the owner of the Meridian Property to unilaterally terminate the Parking Agreement (and the right of the Association to park on the Meridian Property) with 30 days' prior written notice.

Because the Association will not execute the Parking Agreement in substantially the form presented to the Association Board, counsel for Meridian yesterday advised that Meridian will now terminate the right of the Association residents to use the overflow parking on the Meridian Property pursuant to the termination language contained in 12.17 of the SAIC Declaration. The Board anticipates this letter will be received shortly.

We believe that termination of the right of Reserve Property residents to overflow parking on the Meridian Property is in direct contravention of the requirement that Meridian make at least 150 parking spaces available to such residents pursuant to Number 49 of the Conditions, which although establishes limitations on such parking, does not contemplate termination.

Inquiry

With the foregoing context, the Association Board respectfully requests the following question be answered:

> *Is the owner of the Meridian Property entitled to terminate the right of individuals residing on the Reserve Property to 150 overflow parking spaces on the Meridian Property under Number 49 of the Conditions?*

In conjunction with this question, the Association Board requests, pursuant to the Freedom of Information Act, copies of all documents in Fairfax County's possession pertinent to these inquiries which are not included with this correspondence. Please advise whether there is a cost associated with providing copies of these documents.

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[1] The Master Declaration also makes reference to this overflow parking, although it is not so qualified. Specifically, Article XIV, Section 8 provides: *The Property is benefitted by the right to the use of the "Overflow Parking" as described in Section 12.17 of the SAIC Declaration. It is expressly agreed that the Association is empowered to act on behalf of all Lot Owners with respect to the use and maintenance of the Overflow Parking and any dealings in connection therewith the owner of the land on which such Overflow Parking is located. The Association shall have the right to promulgate from time to time and enforce reasonable, non-discriminatory rules and regulations with respect to the use of such Overflow Parking by the Lot Owners and Residents.*

Should you have any questions, please contact me directly. Your consideration of this matter is greatly appreciated.

Sincerely,

Lucia Anna Trigiani

LAT/jlr
Enclosures - Exhibits 1, 2, 3 and 4 and Application Fee
cc: Supervisor Linda Smyth
The Reserve at Tysons Corner Association, Inc. Board of Directors
#131072

LINCOLN PROPERTY COMPANY SOUTHWEST INC.

PROFFERS

RZ 2003-PR-008

March 14, 2004

Pursuant to Section 15.2-2303(a), Code of Virginia, 1950 as amended, and subject to the Board of Supervisors approving a rezoning to the PDH-30 District for property identified as Tax Map 39-2 ((1)) part 13 (hereinafter referred to as the "Application Property"), Lincoln Property Company Southwest, Inc., the Applicant in RZ 2003-PR-008 proffers for the owners, themselves, and their successors and assigns the following conditions. In the event that this Application is approved, any previous proffers for the Application Property are hereby deemed null and void and hereafter shall have no effect on the Application Property.

Development Plan

1. Development of the Application Property shall be in substantial conformance with the Conceptual Plan/Final Development Plan (CDP/FDP) prepared by VIKA Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004, which CDP/FDP proposes a maximum of 570 dwelling units (including ADUs), with a maximum of 92 single family attached dwellings and 478 multi-family dwelling units. With the development of 570 dwelling units, there will be a minimum of 30 affordable dwelling units provided, based on compliance with Section 2-800 of the Zoning Ordinance. . If fewer number of market rate units are built, a proportionately fewer number of ADUs will be provided. The Generalized Development Plan for companion application PCA 75-7-004-2 is shown on Sheets 4 and 5.

   Secondary uses shall be limited to unmanned bank teller machines, swimming pool and associated facilities, fitness centers, basketball half-court/racquetball court/sports court, business/telecommuting centers, video/entertainment centers, leasing offices, recreational/community rooms, outdoor recreational uses, and other accessory uses typically provided in multi-family communities.

2. Notwithstanding that the CDP/FDP is presented on thirteen (13) sheets and said CDP/FDP is the subject of Proffer 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 2 and 3, relative to the points of access, the maximum number and type of dwelling units, the amount of open space, the general location and arrangement of buildings and parking, and the peripheral setbacks. The Applicant or successors have the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all of or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDP and proffers.

3. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the CDP/FDP may be permitted as determined by the Zoning Administrator. The

EXHIBIT 2 tabbies

VEQIA00168

Applicant or successors shall have the flexibility to modify the layouts shown on Sheets 2 and 3 of the CDP/FDP without requiring approval of an amended CDP/FDP provided such changes are in substantial conformance with the CDP/FDP as determined by the Department of Planning and Zoning ("DPZ") and do not increase the number of dwelling units, decrease the amount of open space, or decrease the setback from the peripheries.

4. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, including road dedications, park dedications and school dedications, or as may be required by Fairfax County or Virginia Department of Transportation ("VDOT") at the time of site plan approval.

Owner Associations

5. Prior to the issuance of the first Residential Use Permit ("RUP") on the Application Property, the Applicant shall establish an Umbrella Owners Association ("UOA") in accordance with Virginia law. Individual homeowner associations and/or condominium owners associations ("HOA/COAs") shall be formed for various areas of the Application Property in accordance with Virginia law. Each HOA/COA and rental component shall be a member of the UOA with voting rights based on the number of dwelling units within each. The respective UOA and HOA/COA documents shall specify the maintenance obligations as may be outlined in these proffers and as may be agreed upon between the HOA/COAs and rental components.

Transportation

6. At the time of site plan approval, or upon demand by Fairfax County, whichever shall occur first, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Application Property's Gallows Road frontage measuring a minimum of seventy-four (74) feet from the existing centerline as shown on Sheet 3 of the CDP/FDP.

   Townhouse units fronting on Gallows Road shall be set back a minimum of 15 feet from the dedicated right-of way. Initial purchasers of the townhouses along Gallows Road shall be advised in writing prior to entering into a contract of sale that Gallows Road is planned to be widened in the future.

7. At the time of site plan approval, the Applicant shall escrow the cost of constructing a future right-turn deceleration lane along the Gallows Road frontage of the Application Property, in an amount to be determined by Department of Public Works and Environmental Services ("DPWES"). The escrow shall include the cost of relocating, if determined necessary, the underground utilities existing at the time of rezoning approval which include a fiber optic line and water easement. This new turn lane is anticipated to

be needed at such time as the existing right-turn deceleration lane becomes a future through lane on Gallows Road.

8. The Applicant shall construct extensions of the existing left turn lanes on northbound Gallows Road at the Merry Oaks Lane intersection and southbound Gallows Road at Science Applications Court within the existing right-of-way as may be approved by DPWES and VDOT. Such extensions, if permitted, shall be completed prior to the issuance of the 100th Residential Use Permit (RUP) for the Application Property.

9. Science Applications Court shall remain a private street. Commensurate with development of the Application Property, the Applicant shall construct improvements to Science Applications Court on a new alignment as shown on the CDP/FDP. The Science Applications Court approach to Gallows Road shall accommodate two lanes entering and three lanes exiting the Application Property.

10. Prior to site plan approval, the Applicant shall perform a warrant analysis to determine if a traffic signal is warranted at the intersection of Gallows Road and Madrillon Road. If the study shows a signal is warranted now or will be warranted with the build-out of the Application Property, the Applicant shall escrow the sum of $25,000 with DPWES at the time of first site plan approval towards the design and installation of said traffic signal at the intersection of Gallows Road and Madrillon Road. If the signal has not been installed within five (5) years of the date of the rezoning approval, the escrowed amount shall be redirected to the Providence District Trails Fund.

11. The Applicant shall provide one (1) bus shelter along its Gallows road frontage with specific location determined by WMATA. The bus shelter shall be the typical open type and the installation shall be limited to the concrete pad, the shelter itself and a trash can. No bus turn outs or special lanes shall be provided by the Applicant. If, by the time of final bond release, WMATA has not determined the exact location of the bus shelter, the Applicant shall escrow the amount of $20,000 with DPWES for the installation of a bus shelter by others in the future. Once installed, the bus shelter and trash can shall be maintained by the Application Property's UOA. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA shall be responsible for the maintenance of the bus shelter. The UOA/HOA/COA documents shall specify that the UOA is responsible for the maintenance of the bus shelter.

    At the time of final site plan approval, the Applicant shall escrow the amount of $20,000 with DPWES for the installation of a bus shelter by others along the southbound frontage of Gallows Road in the vicinity of the Merry Oaks Lane intersection, with the specific location determined by WMATA. If, by the time of final bond release, WMATA has not determined the exact location of the bus shelter, the $20,000 escrow shall be redirected to DPWES for funding of another shelter elsewhere in the Dunn Loring/Tysons Corner area.

12. At the time of site plan approval, the Applicant shall dedicate in fee simple to the Board of Supervisors right-of-way along the Application Property's I-495 frontage measuring 25

feet from the existing right-of-way as shown on Sheet 3 of the CDP/FDP. The Applicant shall provide ancillary utility and grading easements to a width determined by VDOT provided VDOT reconstructs any permanent improvements and landscaping disturbed with use of the easement. Subject to approval of a licensing agreement with Fairfax County, the Applicant shall maintain and have the usage of the dedicated area for open space until such time as construction of the I-495 improvements commence.

13. The use of mass transit, ride-sharing and other transportation strategies shall be utilized to reduce single occupancy vehicular (SOV) traffic from the Application Property during peak hours by a minimum of 20 percent of the trips generated according to the Institute of Transportation Engineers (ITE) Trip Generation Manual, 6th Edition. The transportation demand management ("TDM") plan shall consist of at least two Level 3 TDM elements as outlined in Attachment A and as defined by Fairfax County Department of Transportation ("FCDOT") for residential communities, in order to achieve the equivalent Level 4 (Platinum) program status. Tenants and purchasers shall be advised of this transportation strategy development proffer.

The Applicant shall designate an individual(s) to act as the Transportation Coordinator(s) whose responsibility shall be to implement the TDMs in coordination with the FCDOT. The transportation strategies management position may be a part of other duties assigned to the individual(s). The transportation management strategies shall be implemented after issuance of the 200th RUP for the Application Property. Strategies shall include the following:

A. Providing amenities for bicycle storage;
B. Providing a telecommuting center for all residents' use with the potential for upgrading to T-1 or similar secure lines;
C. Providing internet connections in all dwelling units to facilitate working at home;
D. Providing a concierge service/central area where residents can arrange certain services such as dry cleaning/pharmacy/grocery deliveries;
E. Sidewalk system designed to encourage/facilitate pedestrian circulation; and
F. Participation in a shuttle service as outlined in Proffer 14.

Strategies may include the following:

A. Participation in the Fairfax County Ride Share Program;
B. Dissemination of Ridesharing information in residential lease and purchase packages;
C. Making ridesharing display maps and forms available to in each multi-family building;
D. Providing Metro checks with rental contracts;
E. Instituting a "Preferred Employer" program for SAIC offering reduced application fees, reduced deposits, and other incentives to encourage SAIC employees to live on the Application Property;

F. Implementing a comprehensive Ozone Action Days Program;
G. Developing a web page for residents of the Application Property describing and updating information on TDM strategies and services; and
H. Any other strategies found to be effective in reducing the number of single-occupancy vehicle trips, mutually agreed upon by the Applicant and FCDOT.

The Transportation Coordinator may work with adjacent homeowner associations to develop and share carpool, vanpool and other ride sharing information.

The Applicant shall notify FCDOT of the date that the TDM strategies are implemented. One year after the TDM strategies are implemented the Applicant shall conduct a survey of residents, visitors and employees to determine the transportation characteristics of building tenants and employees. This survey will form the basis of the on-going transportation management program.

Annually thereafter, the Transportation Coordinator shall conduct a multi-modal transportation split survey of the residents to demonstrate whether the goal of reducing SOV trips by 20 percent has been met during peak hours. The Transportation Coordinator shall prepare an annual report, in coordination with, and for review and approval of the FCDOT, which shall include the results of the survey and assess the success of the TDM strategies in reaching the stated goal and recommend adjustments in TDM strategies.

If the annual multi-modal transportation split surveys indicate that a reduction of SOV trips by 20 percent has not occurred, $40.00 per occupied dwelling unit shall be contributed annually to a TDM fund for the Application Property until such time as the reduction has occurred. The TDM fund shall be used by the Transportation Coordinator to implement existing or new strategies to reduce SOV trips during peak hours. The terms of this proffer with regard to contributing to a TDM fund shall expire fifteen (15) years after the last RUP is issued.

14. The Applicant shall provide a shuttle bus/van service from the Application Property to the Dunn Loring Metro Station and other office campuses within Tysons Corner. The Applicant may provide this shuttle service in concert with an existing shuttle service provided by the adjacent I-3 property and may share in the cost of operation. The shuttle service shall be provided to meet peak hour demand and shall, at a minimum, operate on weekdays (except for federal holidays) for three hours during the morning peak and three hours during the evening peak. The shuttle service shall commence prior to the occupancy of the 200th RUP on the Application Property and shall operate for at least three years following the issuance of the last RUP. Cost of the shuttle service shall be borne by the UOA. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA will fund the cost of operating the shuttle. The UOA/HOA/COA documents shall expressly state that the UOA shall be responsible for operation of the shuttle. If it is determined by the Applicant that demand for the shuttle service does not warrant continuation, the Applicant may elect to cease operation.

However, the Applicant shall provide ninety (90) days advance written notification to residents of the Application Property and FCDOT of the planned cessation of shuttle service. In addition, if FCDOT determines that the shuttle service interferes with the public bus service and notifies Applicant of same, the Applicant shall cease operation of the shuttle service upon ninety (90) days advance written notification to residents.

15. All private streets shall be constructed with materials and depth of pavement consistent with public street standards in accordance with the Public Facilities Manual, as determined by DPWES. The Applicant and subsequent UOA/HOA/COAs shall be responsible for the maintenance of all private streets. Initial purchasers shall be advised in writing prior to entering into a contract of sale that the UOA/HOA/COAs will be responsible for the maintenance of the private streets. The UOA/HOA/COA documents shall expressly state that the individual HOA/COA or rental component shall be responsible for the maintenance of the private streets serving that entity's development area.

16. The Applicant shall make a cash contributution to a fund administered by the FCDOT to be used toward Tysons Corner Area transportation improvements. The amount of the contribution shall be in keeping with the policy and formula adopted by the Board of Supervisors at the time of the approval of the rezoning (anticipated to be $734.00 per dwelling). Using the rezoning approval date as the base date, this cash contribution shall be adjusted accordingly to the construction cost index as published in the *Engineering News Record*. The contribution shall be paid in two equal (2) installments; the first installment to be paid at the issuance of the first RUP; the remaining installment shall be paid twelve (12) months later, but no later than final bond release.

17. The Applicant shall install appropriate warning signage and/or markers on the east side of Gallows Road as determined by VDOT, advising motorists of the curve in Gallows Road immediately north of Science Applications Court. If by the time of final bond release for the Application Property, VDOT has not determined what signers or markers would be appropriate, the Applicant's obligation under this proffer shall be null and void.

18. To increase pedestrian safety crossing Gallows Road at Science Applications Court, the Applicant shall make the following improvements subject to VDOT approval:

    A. Widen the existing concrete median located on the northern Gallows Road approach to a width of six (6) feet to provide for a pedestrian refuge. This shall be accomplished by shifting the Gallows Road curbing along the Application Property's frontage.

    B. Re-paint the pedestrian crosswalk.

    C. Install a new pedestrian signal that counts down the time available to cross the road.

    D. Work with VDOT to ensure adequate crossing time.

E. Install "no turn on red while pedestrians are present" signage on the Gallows Road northern approach and on Merry Oak Lane's eastbound approach to the intersection.

19. The Applicant shall construct a secondary emergency only access point onto Gallows Road as shown on the CDP/FDP, commensurate with development of the townhouse section. This access shall be constructed of grasscrete, ritter rings or other similar materials and shall be chained at the property line so that it is used only in emergency situations.

Architectural/Landscaping Details

20. The architectural design of the multi-family buildings and townhomes shall be in substantial conformance with the general character of the elevations shown on Sheet 13. The Applicant reserves the right to refine the elevations as a result of final architectural design, so long as the character and quality of design remains consistent with those shown. The townhouses shall be a maximum of three stories above grade with an additional optional loft incorporated into the roof structure (maximum building height of 45 feet). Building materials may include one or more of the following: brick, stone, pre-cast concrete, siding, stucco (excluding dryvit or other similar synthetic stucco material) and glass. Building facades will be predominantly masonry. The façade of the parking structure associated with Building 2 shall be predominantly either masonry or pre-cast concrete.

A copy of the architectural plans shall be submitted to the Providence District Planning Commissioner for review and comment prior to final site plan approval. At the time of each submission of the final site plan to the County, a copy of the submission shall be provided to the Providence District Planning Commissioner for review and comment.

21. A landscape plan shall be submitted as part of the first and all subsequent submissions of the site plan and shall be coordinated with and approved by the Urban Forester. This plan shall be in substantial conformance with the landscape concepts plan as to quantity and quality of plantings, and in general conformance with the location of plantings as shown on Sheets 6. The Applicant shall work with the Urban Forester to select plant species that in addition to meeting other landscaping requirements such as durability, availability and aesthetics, also aid in the maintenance of air quality. Location of plantings may be modified based on utility location, sight distance easements, and final engineering details as approved by the Urban Forester, but shall be consistent in the number and type of plantings.

22. The design details shown on Sheets 6, 8, 9 and 10 submitted with the CDP/FDP illustrate the design intent and overall community organization of the proposed development. Landscaping and on-site amenities shall be substantially consistent in terms of character and quantity with the illustrations and details presented on these sheets. Specific features

such as exact locations of plantings, pedestrian lighting, sidewalks to individual units, etc. are subject to modification with final engineering and architectural design. Landscaping and on-site amenities shall include:

a. A landscaped entry feature to be provided on site to include an entrance monument and/or signage, ornamental trees and shrubs;

b. Installation of streetscape elements and plantings along the Application Property's Gallows Road frontage as shown on Sheets 6 and 10 of the CDP/FDP. A planting strip a minimum of six (6) feet in width shall be provided between the future curb of Gallows Road anticipated with construction of an additional lane and the proposed asphalt trail. Street trees on the east side of the trail shall be planted at twice the density as street trees in the planting strip west of the trail, as shown on Sheet 10 of the CDP/FDP. Street trees shall be a minimum of three-inch caliper at the time of planting. Trees located within VDOT rights-of-way are subject to VDOT approval.

c. Installation of streetscape elements and plantings along the south side of Science Application Court as shown on Sheet 9 of the CDP/FDP.

d. A large community green in the eastern portion of the Property as shown on Sheet 8 of the CDP/FDP. This passive recreational area shall include pedestrian pathways, specialized landscaping, seating areas, and pedestrian lighting and shall be available for use by all residents of the Application Property.

e. Landscaped courtyards within the multi family Buildings 2 and 3 as shown on Sheet 6 and detailed on Sheet 8 of the CDP/FDP. These courtyards shall incorporate a courtyard walk, special paving areas with seating or picnic areas, a mixture of deciduous, evergreen and ornamental plantings, and a lawn panel. Each courtyard may vary in design detail and amenities.

Sidewalk/Trails

23. The Applicant shall provide sidewalks on both sides of Science Applications Court and throughout the Application Property linking buildings as shown on Sheet 6 of the CDP/FDP. Such construction shall occur commensurate with the development of each section of the Application Property. In addition, the Applicant shall construct a minimum five (5) foot wide asphalt trail around the stormwater management pond and between the I-495 frontage and the proposed parking garage as shown on the CDP/FDP. Trail construction shall occur concurrently with the construction of the stormwater management ponds.

24. The Applicant shall construct an eight (8) foot wide asphalt trail within the dedicated right-of way along the Gallows Road frontage as shown on Sheets 6 and 10 of the CDP/FDP.

Environment

25. All outdoor lighting fixtures shall be in accordance with the Performance Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance. Fixtures used to illuminate residential streets, parking areas and walkways shall not exceed twenty (20) feet in height, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Application Property. All upper level parking deck lighting fixtures shall not exceed the height of the parapet wall. Lighting on the lower level of parking decks shall be installed between the ceiling beams to reduce glare.

    To prevent parking deck lighting impacts on Tysons Executive Village, the southern façade of the parking deck located adjacent to I-495 shall be solid including a solid garage door or panel door which will not allow light to pass through.

26. Signage on the Application Property shall be provided in accordance with Article 12 of the Zoning Ordinance. If lighted, signage shall be internally lighted or directed downward.

27. Unless modified by DPWES, the Applicant shall provide stormwater detention and Best Management Practices as required by the Public Facilities Manual (PFM) and as depicted on the CDP/FDP in up to three enhanced extended detention facilities. Plantings shall be provided within these ponds to the extent permitted by the PFM. The design of the southern pond will require a modification of the PFM to allow the installation of a dam cut-off wall. The ponds shall be maintained by the UOA, in association with the owners of the commercial structures governed by PCA 75-7-004-2.

28. Within 90 days of the Board's approval of the rezoning of the Application Property, the Applicant shall submit a written comparative analysis to the Tysons Executive Village ("TEV") Homeowners Association Board of Directors [Tax Map 39-2 ((48))], DPWES, and the Providence District Supervisor analyzing the effects of existing and future development on the existing wet pond in the TEV subdivision for the entire watershed of the pond and comparing the advantages and disadvantages of converting it to a dry pond or maintaining it as a wet pond. The TEV HOA shall be given the opportunity to review the analysis and provide a written determination to the Applicant and Providence District Supervisor as to its decision to maintain or convert the pond. As a result of that determination and after review of that analysis by DPWES, the Applicant shall undertake the following actions:

    a. If TEV elects to maintain their stormwater management facility as a wet pond, the Applicant shall remove accumulated sediment from the pond and restore the pond

it to its originally designed storage capacity at no cost to TEV. Such improvement shall be made concurrent with initiation of clearing and grading on the Application Property subject to TEV providing any necessary permission and/or easements at no cost to the Applicant. The Applicant shall perform a bathometric survey of the TEV pond following completion of the pond improvements and shall perform a second bathometric survey following completion of construction on the Application Property. Should these surveys show an unacceptable level of sedimentation has occurred, as determined by DPWES, the Applicant shall restore the pond to its approved storage volume prior to final bond release on the Application Property.

The Applicant shall then enter into an agreement with TEV agreeing to pay its proportionate share of all future pond maintenance costs (as defined in said agreement). Said agreement shall be recorded in the land records.

b. If TEV elects to convert their wet pond to a dry pond, the Applicant shall revise the TEV site plan accordingly and shall make the necessary improvements at no cost to TEV subject to TEV's written authority to do so and subject to DPWES approval. Landscaping in the pond shall be provided by Applicant as permitted by the Urban Forester and DPWES. In order to convert the pond it is understood that it may be necessary to provide Best Management Practices (BMPs) for TEV on the Application Property. Conversion of the pond shall occur concurrent with clearing and grading activities on the Application Property provided 1) the TEV site plan revision has been approved; and 2) TEV provides any necessary permission and/or easements at no cost to the Applicant. If the TEV site plan revision is not approved and/or necessary easements not provided prior to clearing and grading activities on the Application Property, the Applicant shall delay conversion of the pond until necessary approvals and easements are obtained but shall be allowed to proceed with clearing, grading and construction on the Application Property. Once the pond has been converted to a dry pond, TEV shall petition Fairfax County to accept maintenance of the pond. The Applicant shall be responsible for any additional improvements needed to ensure County acceptance.

c. The Applicant shall bond these public improvements in keeping with standard County policies.

If TEV does not provide a written determination to the Applicant and Providence District Supervisor within 60 days of its receipt of the Applicant's written comparative analysis, the Applicant shall implement improvements specified in Paragraph "a" above.

29. In an effort to mitigate existing drainage problems within the adjacent Courts of Tysons ("COT") community, the Applicant shall:

a. Design and install a storm drain system to intercept stormwater from Gallows Road currently being piped along the COT northern boundary line. The new system shall redirect this storm drainage through the Application Property as generally shown on the CDP/FDP.

b. Provide an underground TV inspection of the condition of the existing storm drain from Gallows Road to the proposed intercepts and correct any breaks, malfunctions, or sedimentation found, as determined necessary and approved by DPWES. Implementation of this proffer is dependent on the COT granting any necessary easements or letters of permission at no cost to the Applicant.

c. The Applicant shall bond these public improvements in keeping with standard County policies.

30. A tree preservation plan shall be submitted as part of the site plan in conformance with the tree save areas shown on the CDP/FDP. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and reviewed and approved by the Urban Forestry Division. The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches in diameter and greater within fifteen (15) feet of either side of the limits of clearing and grading. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture.

All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing using four foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading as shown on the CDP/FDP. All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. Three (3) days prior to the commencement of any clearing, grading, or demolition activities, the Urban Forestry Division shall be notified and given the opportunity to inspect the site to assure that all tree protection devices have been correctly installed.

The Applicant shall strictly conform to the limits of clearing and grading as shown on Sheet 3 of the CDP/FDP.

The limits of clearing and grading shall be marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the limits of clearing and grading shall be walked with an Urban Forestry Division representative to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading. Representatives of the COT and TEV HOAs shall be invited to participate in walking the

limits of clearing and grading adjacent to their communities with the Applicant and the Urban Forester. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will also be identified at this time and removed as part of the clearing operation.

Any trees identified to be preserved adjacent to the COT, Courthouse Station and TEV property lines, which fail to survive within two years following construction activity shall be replaced by the Applicant with species as determined appropriate by the Urban Forester, in consultation with designated representatives of the COT HOA, Courthouse Station HOA, and TEV HOA and the UOA for the Application Property. To supplement the normal conservation escrow required, the Applicant shall post an additional $10,000 in the conservation escrow at the time of site plan approval to ensure replacement of construction damaged trees.

31. A fence a minimum of six feet in height shall be provided between the southernmost stormwater management pond on the Application Property and the adjacent TEV, Courthouse Station, and COT subdivisions as depicted on the CDP/FDP. The fence shall be constructed with masonry piers and wooden inserts. The fence shall be field located, with review by the Urban Forester, to ensure minimal disturbance to existing vegetation. Deciduous and evergreen trees shall be installed between the wall/fence and adjacent subdivisions to supplement existing vegetation to be preserved, as determined by the Urban Forester. Any trees identified to be preserved which fail to survive a two year period following construction shall be replaced by the Applicant with species determined appropriate by the Urban Forester, in consultation with designated representatives of the COT HOA, Courthouse Station HOA, and TEV HOA and the UOA for the Application Property.

Installing the above-referenced fence will result in a double set of fencing along the COT eastern boundary. If, in the future, both the COT HOA and the UOA for the Application Property jointly decide to eliminate the second fence located inside the Application Property, nothing in this proffer should prevent removal of that fence. In the event the removal of such second fence is jointly decided, a shared fence maintenance agreement for the eastern boundary of COT shall be executed prior to any removal.

32. Within the tree save area shown on the Application Property immediately north of the COT and around the south end of the Kidwell Drive cul-de-sac, the Applicant shall provide supplemental evergreen and deciduous trees as determined by the Urban Forester in consultation with the COT HOA and Heritage Point HOA in an effort to create an effective year round screen. Care shall be taken to retain healthy quality vegetation to the maximum extent possible, while augmenting the screening opportunities.

33. All units constructed on the Application Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES for either electric or gas energy homes, as applicable.

34. Polysonics Corp. has prepared a Traffic Noise Analysis of the Application Property dated August 2003. This report provides an analysis of noise impacts associated with I-495 and Gallows Road. Based on the findings of that report, the Applicant shall provide the following noise attenuation measures:

a. In order to reduce interior noise associated with Interstate 495 to a level of approximately 45 dBA Ldn, the garage associated with Building 3 shall be utilized as a noise attenuation barrier as shown on the CDP/FDP.

b. In order to reduce interior noise to a level of approximately 45 dBA Ldn, for units which are projected to be impacted by highway noise from I-495 having levels projected to be greater than 70 dBA Ldn after the garage is in place, located on the eastern façade of Building 2 and the northern and southern facades of Building 3, these units shall be constructed with the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 45. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

c. In order to reduce interior noise to a level of approximately 45 dBA Ldn for units which are projected to be impacted by roadway noise from Gallows Road having levels projected to be between 65 and 70 dBA Ldn, located on the western façade of Building 1 and the townhouse units facing Gallows Road, these units shall be constructed with the following acoustical measures:

Exterior walls should have a laboratory sound transmission class (STC) rating of at least 39.Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

d. Prior to the issuance of building permits, alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with the Department of Planning and Zoning.

e. Due to the placement of structures on the site, additional exterior noise mitigation is not necessary for most of the outdoor recreational uses on the site. The jogging trail with exercise stations located adjacent to I-495 will be impacted by noise but mitigation is not provided.

35. If required by DPWES, a geotechnical engineering study shall be submitted to DPWES for review and approval prior to final site plan approval, and recommendations generated by this study shall be implemented as required by DPWES.

36. Prior to the issuance of a demolition permit or land disturbance permit, a rodent abatement plan shall be submitted to Fairfax County Health Department that will outline the steps that will be taken to prevent the spread of rodents from the construction site to the surrounding community and sewers. The Applicant shall implement the rodent abatement plan.

Miscellaneous

37. The Applicant shall contribute the amount of $150,000 to Kilmer Intermediate School for the purchase of wireless computers or other technology based programs at the discretion of the principal. The Applicant shall provide documentation that this contribution has been made. Such contribution shall occur prior to the issuance of the first RUP for the Application Property

38. The Applicant shall contribute the amount of $465,000 to the Board of Supervisors for the construction of capital improvements to schools in the vicinity of the Application Property. The contribution shall be paid in two (2) installments; the first installment of $232,500 to be paid prior to issuance of the 100th RUP and the second installment of $232,500 shall be paid prior to the issuance of the 300th RUP.

39. The Applicant shall comply with the Affordable Dwelling Unit (ADU) Program as set forth in Section 2-801 of the Zoning Ordinance unless modified by the ADU Advisory Board. The Applicant reserves the right to provide ADUs for all of the Application Property within the multi-family buildings. Two of the required ADUs (one one-bedroom unit and one two-bedroom unit) shall be designed and constructed to be fully handicapped accessible. Three of the required ADUs shall be designed and constructed as handicapped adaptable units and shall be made fully handicapped accessible if demand dictates.

40. No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 of Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant' direction to assist in the initial sale or rental of residential units on the Application Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Application Property to adhere to this proffer.

41. The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance by contributing $955 per dwelling unit for developed recreational facilities. The Applicant shall receive credit for the on-site recreational facilities which shall include, but not be limited to a swimming pool; a community center with exercise facilities; a tot lot; an indoor basketball half-court/racquetball court/sport court (either within one of the residential buildings or in a separate structure as shown on the CDP/FDP); and a jogging trail with exercise stations. Any additional money remaining which is not spent for on-site facilities shall be contributed to the Fairfax County Park Authority.

42. Prior to the issuance of the first RUP on the Application Property, the Applicant shall contribute the amount of $150,000.00 to the Fairfax County Board of Supervisors for the acquisition of park land or improvement of park facilities in the Dunn Loring/Tysons Corner area.

43. A covenant shall be recorded which provides that townhouse garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles) and that parking shall not be permitted in driveways that are less than 18 feet in length. This covenant shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and shall run to the benefit of the UOA/HOA/COA and the Fairfax County Board of Supervisors. Initial purchasers shall be advised in writing of the use restrictions prior to entering into a contract of sale and said restrictions shall be contained in the HOA/COA documents.

44. All front loaded townhouse driveways on the Application Property shall be a minimum of eighteen (18) feet in length from the garage door to the sidewalk.

45. A joint maintenance agreement between the UOA and the owners of the commercial structures governed by PCA 75-7-004-2 shall be provided for the maintenance of Science Application Court, pedestrian trails, and the stormwater management facilities serving the Application Property and the property subject to PCA 75-7-004-2. Purchasers shall be advised in writing prior to entering into a contract of sale that the UOA will share in the cost of such maintenance. The UOA documents shall expressly state that the UOA shall be responsible for shared maintenance of these facilities.

46. Property owners of two adjacent lots in TEV identified as Tax Map 39-2 ((48)) 9 and 10 have been utilizing portions of the Application Property as extensions of their rear yards. In order to allow this use to continue, the Applicant shall convey in fee simple the Outlot A-1 shown on the CDP/FDP to the owner of Lot10 and Outlot A-2 as shown on the CDP/FDP to the owner of Lot 9. Conveyance shall occur prior to bonding of the site plan for the Application Property. The Deeds of Conveyance shall include restrictive covenants which provide, among other things, that (1) density from the out lots shall be reserved in perpetuity for the benefit of the remainder of the Application Property; (2) no structures shall be constructed on the out lots, rather the out lots shall be left as open space with existing trees preserved to the maximum extent feasible; and (3) any future rezoning, proffered condition amendment, final development plan amendment, or site

plan approvals for the remainder of the Application Property shall not require the inclusion of the out lots or the joinder or consent of the owners of the out lots so long as the rezoning, proffered condition amendment, final development plan amendment or site plan does not include the area of the out lots.

47. In order to provide a tot lot for the COT Homeowners Association [Tax Map 39-2 ((27))], the Applicant shall convey in fee simple Outlot A-3 as shown on the CDP/FDP to the COT. Prior to the conveyance, the Applicant shall:

a. Install a tot lot on the outlot based on a determination as to the type of equipment COT desires. Such equipment cost shall not exceed $20,000. Care shall be taken to minimize disturbance to existing quality vegetation. The final location of the tot lot shall be determined by the Urban Forester;

b. Construct a pedestrian connection between the existing COT property and the tot lot as generally shown on the CDP/FDP; and

c. Install a fence around the perimeter of Outlot A-3 and remove sections of the existing fence between COT and Outlot A-3 to allow the pedestrian connection.

d. Bond these improvements in keeping with standard County policies.

Such improvements shall be made subject to COT providing any necessary permission and/or easements at no cost to the Applicant, and COT providing timely input into the type of tot lot equipment and fencing desired. In the event COT has not provided information with regard to equipment selection and fencing in a timely manner prior to the Applicant applying for its 100th RUP, the Applicant may elect to contribute $20,000 to the COT along with the fenced outlot conveyance and thereby be relieved of any further obligation to install the tot lot and pedestrian connection.

Conveyance of Outlot A-3 shall occur prior to issuance of the 100th RUP for the Application Property. The Deed of Conveyance shall include restrictive covenants which provide, among other things, that (1) density from the outlot shall be reserved in perpetuity for the benefit of the remainder of the Application Property; (2) no structures other than the tot lot shall be constructed on the outlot, (3) existing trees shall be preserved to the maximum extent feasible; and (4) any future rezoning, proffered condition amendment, final development plan amendment, or site plan approvals for the remainder of the Application Property shall not require the inclusion of the outlot or the joinder or consent of the owner of the outlot so long as the rezoning, proffered condition amendment, final development plan amendment or site plan does not include the area of the outlot.

48. Prior to the issuance of the first RUP on the Application Property, the Applicant shall either:

a. Contribute the sum of $25,000 to the COT Homeowners Association for the maintenance and future replacement of the fence installed by the COT along its common boundary with the Application Property. The Applicant shall provide documentation to DPWES that this contribution has been made; or

b. Enter into a fence maintenance agreement with the COT Homeowners Association. Said agreement shall specify that the COT and the Applicant, its successors or assigns shall share equally in the cost of future maintenance and/or replacement of the existing wooden fence along the Courts of Tysons northern boundary. The COT fence along its eastern boundary and the future fence around the tot lot described in Proffer 45 shall be the responsibility of the COT Homeowners Association. This agreement shall be recorded among the land records of Fairfax County. In the event an agreement to the satisfaction of both the parties has not been reached by the time the Applicant has applied for its first RUP, the Applicant shall contribute the sum of $25,000 to the COT Homeowners Association for the maintenance and future replacement of the fence and shall be released of its obligation to enter into a joint fence agreement.

The COT Homeowners Association shall be given the opportunity to inform the Applicant in writing of which of the two alternatives they prefer. If COT fails to provide a written determination to the Applicant within 60 days of its receipt of the Applicant's request for a determination, the Applicant shall implement the alternative in Paragraph "a" above.

49. Prior to approval of the final site plan on the Application Property, the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.

50. Construction activity shall be permitted Mondays through Fridays from 7:00 a.m. to 7:00 p.m., Saturdays from 8:00 a.m. to 6:00 p.m. No construction activity shall be permitted on Sundays, Thanksgiving Day, Christmas Day and New Years Day. These construction hours shall be posted on the Application Property prior to any land disturbing activities. The Applicant shall include a construction hour notice in its contract with its general construction contractor.

51. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.

52. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

53. The individual sections within the Application Property may be subject to Proffered Condition Amendments and Final Development Plan amendments without joinder and/or consent of the other property owner of the other sections/buildings.

[SIGNATURES BEGIN ON NEXT PAGE]

PROFFERS
RZ 2003-PR-008

APPLICANT/CONTRACT PURCHASER
OF TAX MAP 39-2 ((1)) 13 pt.

LINCOLN PROPERTY COMPANY
SOUTHWEST, INC.

By: Richard N. Rose
Its: Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

TITLE OWNER OF TAX MAP 39-2 ((1)) 13

CAMPUS POINT REALTY CORPORATION II

By: Frederick R. Hazard
Its: President

[SIGNATURES END]

BK 16927 2196

1 of 5

Tax Parcel ID No. 039-2-01-0013

DECLARATION OF CONDITIONS, RESTRICTIONS, AND EASEMENTS

THIS DECLARATION OF CONDITIONS, RESTRICTIONS, AND EASEMENTS (hereinafter "Declaration"), is made this 4th day of January, 2005 (the "Effective Date"), by CAMPUS POINT REALTY CORPORATION, a California corporation (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant owns fee simple title to those certain tracts of land located in Fairfax County, Virginia, described on (i) Exhibit A-1 attached hereto and made a part hereof ("Parcel 1") and (ii) Exhibit A-2 attached hereto and made a part hereof ("Parcel 2"); and

WHEREAS, Declarant intends to convey Parcel 1 to a third party; and

WHEREAS, Declarant desires to create and establish (i) certain conditions and restrictions relating to construction on Parcel 1, (ii) certain easements for the benefit of Parcels 1 and 2 for (a) access, ingress, egress and regress, and (b) storm water management and (iii) rights with respect to signage.

NOW THEREFORE, in consideration of Ten Dollars ($10.00), the covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant agrees, covenants, and declares as follows:

EXHIBIT 3

ARTICLE I

GENERAL

Section 1.1 Definitions. The following words, when used in this Declaration, shall have the following meanings:

"Access Easement" shall have the meaning set forth in Section 3.1(a).

"Access Easement Area" shall mean those certain portions of Parcel 2 that are more particularly described in Exhibit B attached hereto and made a part hereof.

"Access Expenses" shall mean the reasonable costs and expenses of maintaining, repairing, and operating the Current Access Area and/or Access Easement Area. Access Expenses shall not include any amounts which would otherwise be included in Access Expenses which are paid to any Affiliate (as defined below) of the Parcel 1 Owner (as defined below) to the extent the costs of such services exceed the amount which would have been paid in the absence of such relationship for similar services of comparable level, quality and frequency rendered by persons of similar skill, competence and experience.

"Access Improvements" shall mean asphalt or concrete pavement, curbs, landscaping, directional signage, striping, lighting, utilities and other similar improvements constructed or installed in the Access Easement Area from time to time.

"Access Monument Sign" shall have the meaning set forth in Article VI.

"Affiliate" shall mean any person or entity controlling, controlled by, or under common control with, another person or entity. "Control" as used herein means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled person or entity (the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, at least fifty-one percent (51%) of the voting interest in, any person or entity shall be presumed to constitute such control).

"Business Days" shall mean Mondays through Fridays other than those days on which national banks are not open for business in the Commonwealth of Virginia.

"Current Access Area" shall mean the area on Parcel 1 and Parcel 2 identified on Exhibit E hereto which, as of the Effective Date, serves, and until such time as the Access Improvements are completed will serve, as the access to and from Gallows Road for Parcels 1 and 2.

"Current Access Improvements" shall mean the pavement, curbs, landscaping, directional signage, striping, lighting, utilities and other similar improvements existing in the Current Access Area as of the date hereof or constructed or installed from time to time.

"First Class Standards" shall mean a quality that is equal to or in excess of the quality of similar facilities, services or improvements provided to or for the benefit of Class A office and/or luxury residential projects located in Fairfax County, Virginia.

"Governmental Authorities" shall mean the United States, the state, county, city and political subdivision in which the Parcels (as defined below) are located or which exercise jurisdiction over the Parcels or the Improvements (as defined below), and any agency, department, commission, board, bureau or instrumentality of any of them which exercises jurisdiction over the Parcels or Improvements, including, without limitation, the Virginia Department of Transportation.

"Improvement" or "Improvements" shall mean the buildings, structures, driveways, sidewalks and other improvements located on the Parcels from time to time.

"Initial Access Improvements" shall mean the Access Improvements to be constructed in the Access Easement Area in accordance with the Initial Development Plan and Section 3.2 hereof.

"Initial Development" shall mean the initial construction on Parcel 1 of Improvements that do not exist on Parcel 1 as of the Effective Date.

"Interest Rate" shall mean the lesser of (i) the rate per annum equal to the interest rate published from time to time as the prime rate in the Money Rates column of the Wall Street Journal (Eastern edition) (said rate to change on the first day of each calendar month) plus 300 basis points, or (ii) the then applicable maximum interest rate permitted to be charged by the laws of the Commonwealth of Virginia.

"Legal Requirements" shall mean any applicable law, statute, ordinance, order, rule, regulation, decree or requirement of a Governmental Authority and any other applicable public or private covenant, condition, restriction or other title matter affecting the Parcels as of the Effective Date.

"Mortgage" shall mean a lien, mortgage, deed of trust, deed to secure debt or other similar instruments securing the repayment of a debt to a bona fide third party (which is not an Affiliate of the borrower) and encumbering all or any portion of a Parcel or any interest (including any ground leasehold interest) therein; provided, however, that such term shall not include judgment or mechanic liens.

"Mortgagee" shall mean the mortgagee or beneficiary of a first lien Mortgage.

"Normal Business Hours" shall mean 7:00 a.m. to 7:00 p.m. on Business Days.

"Owner" shall mean the Person (as defined below) which is from time to time the record owner of fee simple title to any Parcel or any portion thereof, or the record lessee under any ground lease; provided, however, that such term shall not include any trustee under any Mortgage or any Mortgagee who may hold a lien against any such Parcel or leasehold interest under a ground lease pursuant to a Mortgage unless and until such party shall acquire record fee simple title or record leasehold title to any such Parcel through foreclosure, deed in lieu of foreclosure, or otherwise. A reference herein to "Owners" shall mean all Owners.

"Parcels" shall mean, collectively, Parcel 1 and Parcel 2.

"Parcel 1 Owner" shall mean the Owner or Owners of Parcel 1 or any portion thereof, from time to time and as applicable.

"Parcel 2 Owner" shall mean the Owner or Owners of Parcel 2 or any portion thereof, from time to time and as applicable.

"Permittees" shall mean any Owner, and its tenants, licensees, invitees, subtenants or authorized occupants of any portion of a Parcel and/or the Improvements located thereon and the respective officers, directors, employees, agents, partners, contractors, subcontractors, customers, visitors, invitees, guests, licensees and concessionaires of any such Person.

"Person" or "Persons" shall mean individuals, partnerships, associations, corporations and any other forms of organization, or one or more of them, as the context may require.

"Substantial Completion of the Improvements" shall mean the completion of the applicable Improvement except for details of construction, decoration or mechanical adjustment that, in the aggregate, are minor in character and do not, either by their nature or because of the repair or completion work necessary, materially interfere with the intended use or enjoyment of the applicable Improvement, such that it would be reasonable under the circumstances for such Improvement to be made available for its intended use and completion of any such details would not unreasonably interfere with such use in due course after such Substantial Completion thereof. To "Substantially Complete" shall mean to bring the applicable Improvement to Substantial Completion.

"Taking" shall mean any taking or condemnation for public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof.

Section 1.2 Property Subject to this Declaration. Each Parcel or portion thereof and any right, title or interest therein shall be owned, held, leased, sold and/or conveyed by the existing Owners, and any subsequent Owner of all or any part thereof, subject to this Declaration and the covenants, conditions, restrictions, easements, charges and liens (except as set forth in Section 8.4 below) set forth herein; provided, however, that after Substantial Completion of the Improvements contemplated in the Initial Development Plan (as hereinafter defined), the following provisions of this Declaration shall no longer be applicable and no Parcel or any Owner thereof shall be subject to such provisions: (a) Article II; (b) Section 3.2(a); and (c) Section 11.5. Notwithstanding the foregoing, as to each of the outlot parcels described in Exhibit F attached hereto (each an "Outlot Parcel"), when such Outlot Parcel is conveyed to the owner of the property adjacent to said Outlot Parcel pursuant to the "Lincoln Property Company Southwest Inc. Proffers (R2 2003-PR-008)" dated March 11, 2004 applicable to Parcel 1 (and, in particular, proffers numbered 46 and 47), then such Outlet Parcel shall automatically be released from this Declaration.

Section 1.3 Applicability to Parcel 2. Nothing in this Declaration shall be construed to require any demolition, alteration, construction or reconstruction of any Improvement, any landscaping or grading, or any thing whatsoever on Parcel 2 except the work to be done by the Parcel 1 Owner pursuant to Article III hereof or to empower the Parcel 1

Owner or any other party to require any such demolition, alteration, construction or reconstruction, or to restrict or prohibit the Parcel 2 Owner or the owner of any Improvement on Parcel 2 from demolishing, altering, rebuilding, restoring, repairing or reconstructing such Improvement following any casualty (whether partial or total) or from doing any other thing with Parcel 2 or the Improvements thereon.

ARTICLE II

CONSTRUCTION CONDITIONS AND RESTRICTIONS

Section 2.1 Conditions and Restrictions on Construction. Any and all construction activities on Parcel 1 and in the Access Easement Area shall be subject to the following conditions and restrictions:

(a) Diligent Completion of Construction. Subject to the last sentence of this Section 2.1(a), once commenced, demolition, alteration or construction of any Improvements on Parcel 1 or in the Access Easement Area, including, without limitation, demolition, alteration or construction connected with the Initial Development, shall be diligently pursued to completion as quickly as is commercially reasonable, subject to *force majeure*, so that it is not left in a partly finished condition any longer than is required by prudent construction practices. Notwithstanding anything to the contrary herein, the Initial Development may be constructed in phases, provided that once a phase is commenced, the Parcel 1 Owner of the phase under construction shall, subject to *force majeure*, pursue the construction of any Improvements commenced in such phase to final completion in accordance with the previous sentence or demolish said partially constructed improvements and promptly return the area substantially to the condition it was in prior to commencement of construction of said phase.

(b) Unobstructed and Safe Use of Access Easement. Throughout any period of construction on Parcel 1, the Parcel 1 Owner shall:

(i) subject to Section 3.3(c), not permit obstruction of the Parcel 2 Owner's use of the Access Easement or the Current Access Area as applicable; and

(ii) during hours of construction activity, post a traffic guard or guards on and/or in the vicinity of the Current Access Area and/or Access Easement Area as applicable in order to ensure the safety of all those using the Access Easement and, in all events, at least one such guard shall be posted during Normal Business Hours, when necessary or as determined by the Parcel 2 Owner, at the intersection of the Access Easement Area or the Current Access Area, as applicable, and Gallows Road.

(c) Vehicular Traffic. To the extent permitted by Legal Requirements, all vehicular traffic related to construction activities undertaken on Parcel 1 shall be diverted from the Access Easement Area or the Current Access Area, as applicable, onto an alternate path, road or other route on Parcel 1 as close to the Gallows Road end of the Access Easement Area or the Current Access Area, as applicable, as commercially reasonable so as to minimize the portion of the Access Easement Area and the Current Access Area, as applicable, that such vehicular traffic

utilizes. The Parcel 1 Owner shall implement reasonable speed limits for such vehicular traffic so as to minimize the disturbance of dust and/or other airborne particles and to protect individuals and property from harm related to such vehicular traffic.

(d) Construction Parking. All vehicles utilized for or otherwise related to construction activities (including, without limitation, construction machinery and vehicles utilized by contractors, subcontractors and their employees and agents) shall be parked in a designated area on a portion of Parcel 1, and as far removed as feasible from Parcel 2.

(e) Minimization of Noxious Substances. During construction, the Parcel 1 Owner, shall minimize noise, odor and dust and/or other airborne particles, debris or any other thing that potentially may materially adversely affect Parcel 2, the Parcel 2 Owner or its Permittees.

(f) Utilities. The Parcel 1 Owner shall use all reasonable efforts not to interfere with the service of any utility, telecommunications services or systems or storm management systems that benefits Parcel 2 and, in all events, shall comply with the provisions of Article IV if any such interference is unavoidable.

(g) Correction or Mitigation of Adverse Effects. The Parcel 1 Owner at no cost or expense to the Parcel 2 Owner, shall use commercially reasonable efforts to mitigate to the extent possible and commercially reasonable any and all potentially material adverse effects on Parcel 2, the Parcel 2 Owner or its Permittees arising from or connected with construction activities on Parcel 1 and shall promptly remedy any material adverse effects on Parcel 2, the Parcel 2 Owner or its Permittees, as applicable, resulting from or in connection with such activities.

Section 2.2 Delivery of Plan Prior to Construction. On or before sixty (60) days prior to the commencement of any construction activities on its Parcel, the Parcel 1 Owner shall submit to the Parcel 2 Owner for its review and approval a detailed construction plan identifying how such Owner intends to comply with the restrictions set forth in Section 2.1 during such construction activities ("Plan"). The Parcel 2 Owner shall approve or disapprove such Plan within ten (10) business days after receipt thereof. In the event that the Parcel 2 Owner disapproves the Plan, which disapproval shall set forth in reasonable detail the reasons therefor, the other Owner shall revise the same within ten (10) days after receipt of the Parcel 2 Owner's disapproval of the Plan. Within ten (10) business days after receipt of the revised Plan, the Parcel 2 Owner shall approve or disapprove the same. In addition to its obligations under Section 2.1, the Parcel 1 Owner shall comply with the Plan as approved by the Parcel 2 Owner when conducting its construction activities on Parcel 1 and shall not commence such construction until the Parcel 2 Owner has approved the Plan. Prior to making any material change to the Plan, the Parcel 1 Owner shall submit such proposed changes to Parcel 2 Owner for its review and approval. If the Parcel 1 Owner constructs any Improvements in phases, it shall submit its Plan for each phase to the Parcel 2 Owner for its review and approval, unless such Plan has been previously approved by the Parcel 2 Owner.

Section 2.3 Delivery of Initial Development Plan Prior to Construction. Prior to execution of this Declaration, Parcel 1 Owner submitted to Parcel 2 Owner, and Parcel 2

Owner has approved, the Conceptual/Final Development Plan dated March 11, 2004 (the "Initial Development Plan"). Prior to making any material change to the Initial Development Plan, the Parcel 1 Owner shall submit such proposed changes to the Parcel 2 Owner for its review and approval. The Parcel 2 Owner shall approve or disapprove any material changes to the Initial Development Plan within ten (10) days after receipt thereof. In the event that the Parcel 2 Owner disapproves any material changes to the Initial Development Plan, which disapproval shall set forth in reasonable detail the reasons therefor, the Parcel 1 Owner shall revise the same within ten (10) business days after receipt of the Parcel 2 Owner's disapproval of the Initial Development Plan. Within ten (10) business days after receipt of the revised Initial Development Plan, the Parcel 2 Owner shall approve or disapprove the same. In addition to its obligations under Section 2.1, the Parcel 1 Owner shall construct the Initial Development in accordance with the Initial Development Plan as approved by the Parcel 2 Owner.

ARTICLE III

ACCESS EASEMENT

Section 3.1 (a) Declaration of Access Easement. Subject to the provisions of this Declaration, Declarant hereby establishes and creates for the benefit of the Parcel 1 Owner and the Parcel 2 Owner and as an appurtenance to Parcel 1 and Parcel 2 a non-exclusive, perpetual easement over, upon, across and through the Access Easement Area (the "Access Easement") (i) for the purposes of pedestrian and vehicular ingress and egress between Gallows Road and the applicable Parcel, and (ii) for the purpose of constructing, operating, repairing, maintaining and (to the extent permitted herein) altering the Access Improvements.

(b) Declaration of Temporary Access. Until the Parcel 1 Owner has completed and opened the Initial Access Improvements for vehicular and pedestrian use in accordance herewith, the Declarant hereby establishes and creates for the benefit of the Parcel 1 Owner and the Parcel 2 Owner, and as an appurtenance to each of their Parcels, a non-exclusive easement over, upon, across and through the Current Access Area for the purpose of pedestrian and vehicular ingress and egress between the applicable Parcel and Gallows Road. Upon the termination of said temporary easement in accordance herewith, the temporary access easement established by that certain plat recorded at Deed Book 4800, Page 549 also shall be automatically terminated. If necessary, the Owners of the applicable Parcels shall record such documents as are reasonably necessary to confirm the termination or vacation of said temporary easement. The Parcel 1 Owner shall repair and maintain the Current Access Improvements until the Access Improvements are completed but shall not modify the Current Access Improvements or install new improvements within the Current Access Area without the prior consent of the Parcel 2 Owner, provided that such consent shall not be required to the extent any such modification of the Current Access Improvements or the installation of any new Improvements in the Current Access Area is contemplated in the Initial Development Plan.

Section 3.2 Construction, Operation, Maintenance and Alteration of Access Improvements.

(a) Construction of the Initial Access Improvements will result in a loss of parking spaces on Parcel 2. Therefore, in connection with the construction of the Initial Access Improvements, the Parcel 1 Owner shall, at its sole cost and expense, and in a good and workmanlike manner and in accordance with Sections 2.1, construct for the benefit of the Parcel 2 Owner a sufficient number of parking spaces in the locations identified on Exhibit D-1 ("Relocated Parking") hereto to cause the number of parking spaces available on Parcel 2 to be the same following construction of the Initial Access Improvements as existed on Parcel 2 on the date hereof ("Existing Parking"). The Parcel 1 Owner shall construct the Relocated Parking in accordance with plans and specifications to be reasonably approved by the Parcel 2 Owner which plans and specification shall, at a minimum, conform with the Fairfax County Public Facility Manual except that the Relocated Parking shall be constructed with a 11/4 inch surface course, 3 inch base course and 8 inch compacted 21A subbase stone. In the event that the Parcel 1 Owner does not complete construction of the Relocated Parking before any of the Existing Parking becomes unuseable, the Parcel 1 Owner shall provide the Parcel 2 Owner with temporary parking spaces so that at all times the Parcel 2 Owner shall have access to and use of the same number of parking spaces it has as of the date hereof. Such temporary spaces shall be in the locations identified on Exhibit D-2 hereto, or in such other locations mutually acceptable to the Parcel 2 Owner and Parcel 1 Owner.

(b) In connection with the construction of the Initial Development, the Parcel 1 Owner shall, at its sole cost and expense, in a good and workmanlike manner (i) construct the Initial Access Improvements in accordance with (x) the requirements of Virginia Department of Transportation and the Fairfax County Public Facilities Manual as if such road was a public road provided that if there are any inconsistencies between the two, the more stringent standard shall apply and (y) plans and specifications approved by the Parcel 2 Owner in accordance with this Section 3.2(b) and (ii) install landscaping on the Access Easement Area and in that portion of Current Access Area that is not part of the Access Easement Area, based on plans and specifications reasonably acceptable to the Parcel 2 Owner which landscaping shall be deemed an Access Improvement. Prior to undertaking the construction of the Initial Access Improvements in accordance with the previous sentence, the Parcel 1 Owner shall submit to the Parcel 2 Owner, for its approval, the plans and specifications for such work and shall not commence such work until the Parcel 2 Owner has approved the same in accordance with the schedule set forth in Section 2.2. The Parcel 1 Owner shall Substantially Complete the installation of the Initial Access Improvements within eight (8) months after the commencement of construction of such improvements; provided, however, the Parcel 1 Owner shall not be obligated to lay the topcoat until twenty-four (24) months after commencement of construction of said improvements; and provided further that both time periods set forth in this sentence shall be extended day for day for each day of delay resulting from *force majeure*. If, at any time after construction activities related to the Initial Development commence, such construction activities cease for a period of more than ninety (90) days, including, without limitation, as a result of the completion of any phase of the Initial Development and a delay in the commencement of the next phase, the Parcel 1 Owner shall repair and restore, at the Parcel 1 Owner's sole cost and expense, the Access Easement Area, including, without limitation, any Access Improvements thereon, within thirty (30) days thereafter and otherwise in accordance with this Section 3.2. Thereafter when construction of the Initial Development resumes, upon Substantial Completion of any such work or any further interruption for more than ninety (90) days, the Parcel 1 Owner,

at its sole cost and expense, shall again repave the Access Easement Area and, to the extent necessary, replace or repair the landscaping thereon, all subject to the provisions of this Section 3.2(b).

(c) The Parcel 1 Owner shall be obligated, for so long as the easement created pursuant to Section 3.1 exists, to repair and maintain the Current Access Easement and/or Access Easement Area, as applicable, in safe, clean, attractive and well-maintained condition and in accordance with First Class Standards, such maintenance to be done promptly and regularly and to include, but not be limited to, the following:

(i) Maintenance, repair and replacement of all paved surfaces, in a level, smooth, evenly covered and visually consistent condition;

(ii) Maintenance, repair and replacement of all curbs, curb cuts, gutters, walkways and retaining walls;

(iii) Maintenance, repair and replacement of all directional signs, markers (including, without limitation, any Access Monument Signs) and artificial lighting facilities (including, without limitation, the replacement of fixtures and bulbs);

(iv) Regular removal of all litter, trash, debris, waste, filth and refuse, including, without limitation, thorough sweeping of the Access Easement Area in order to keep the same in a clean and orderly condition at all times;

(v) Maintenance of all landscaping in a healthy, well-watered, well-pruned, mowed and attractive condition; and

(vi) Compliance with all Legal Requirements, including, without limitation, those related to health and safety, and all requests by Governmental Authorities made in accordance with Legal Requirements, including, without limitation, the Virginia Department of Transportation, provided that the Parcel 1 Owner shall notify the Parcel 2 Owner of any request by a Governmental Authority prior to undertaking such compliance (except in emergencies).

(d) The Parcel 1 Owner shall have the right, from time to time, to make changes in the Access Improvements and in the design (but not the location) thereof, subject to the prior written consent of the Parcel 2 Owner in accordance with the time periods set forth in Section 2.2, provided, however, (i) no such consent shall be required for any changes required by Legal Requirements or a Governmental Authority (unless various options are available, and then only as to which option is selected), (ii) any such changes must comply with Legal Requirements and be consistent with First Class Standards, and (iii) the Parcel 1 Owner shall use commercially reasonable efforts to ensure that throughout the time such changes are being made all parties entitled to use the Access Easement Area shall have continuous and reasonably unfettered access to the Access Easement Area and that such construction shall be completed in accordance with the provisions of Section 2.1.

(e) Notwithstanding anything to the contrary contained herein, each Owner shall have the right to construct, at its sole cost and expense, access points and curb cuts on the Access Easement Area and/or to connect driveways, sidewalks, parking areas and other Improvements on such Owner's Parcel to the Access Easement Area without the other Owners' consent but with prior notice, so long as the orderly flow of vehicular and pedestrian traffic is not materially and adversely affected thereby, all work is done in accordance with all Legal Requirements and the Owners continue to have continuous and reasonably unfettered access to the Access Easement while such work is being conducted.

(f) The cost of the activities in subsection (c) shall be an Access Expense subject to Sections 3.5 and 3.6 below; provided, however, the cost of any capital improvements (other than costs incurred pursuant to Section 3.2(c)(ii) to the extent any such costs are deemed to be capital improvements), shall be solely the responsibility of the Parcel 1 Owner and not an Access Expense unless (x) (i) such cost is required to comply with a Legal Requirement or the request of a Governmental Authority and (ii) is not incurred as a result of or in connection with construction or any other activity on Parcel 1 or (y) such cost is pre-approved by the Parcel 2 Owner and the Parcel 2 Owner agrees when it provides such pre-approval to share the cost of such work. In all events and notwithstanding the foregoing, the Parcel 1 Owner shall be solely responsible for the costs and expenses of the Initial Access Improvements, including the Relocated Parking.

Section 3.3 No Walls, Fences or Barriers and Temporary Closure.

(a) No buildings, walls, fences or barriers of any sort or kind shall be constructed or erected on any Parcel by any Owner which would prohibit or materially impair the use or exercise of the Access Easement or, until the opening of the Initial Access Improvements for vehicular and pedestrian ingress and egress, of the Current Access Area.

(b) The Access Easement or a portion thereof may be dedicated to the public, provided that the Parcel 1 Owner and/or Parcel 2 Owner, as applicable, shall obtain the prior written consent of the other Owner prior to permitting any such dedication and further provided that the Parcel 2 Owner shall not bear any costs or expenses associated with such dedication. To the extent that all or any portion of the Access Easement is so dedicated, then the Parcel 1 Owner shall be relieved of its obligations to maintain the portion of the Access Easement that has been dedicated.

(c) The Parcel 1 and/or Parcel 2 Owner shall have the right to temporarily close a portion of the Access Easement Area or the Current Access Area for such reasonable periods of time as may be reasonably necessary for cleaning, repair, alteration, improvement or maintenance or as required for emergencies. Notwithstanding the foregoing, (i) before closing off any part of the Access Easement Area or Current Access Area as provided above (except for emergencies), the applicable Owner shall give at least ten (10) days' prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the applicable easement occurs, (ii) any such closure shall be limited to the minimum period and minimum amount of

closure reasonably necessary to achieve the applicable purpose and, to the extent reasonably feasible (except during emergencies), one drive lane shall be kept open for vehicular traffic, (iii) a safety guard or guards shall be placed on the Access Easement Area or Current Access Area, as applicable in order to facilitate the safe flow of traffic during any such closure and (iv) to the extent reasonably feasible (except for emergencies) any such closure shall not occur during Normal Business Hours.

Section 3.4 Hours of Operation. Subject to Section 3.3(c), the Current Access Area and, once constructed, the Access Improvements shall be open twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year, provided, that Parcel 2 Owner or Parcel 1 Owner, as applicable, shall temporarily close off the Access Easement Area or Current Access Area, as applicable, or a portion thereof for such reasonable periods of time as may be legally necessary to prevent the acquisition or creation of any prescriptive right by any Person or the public. Notwithstanding the foregoing, (i) before closing off any part of the Access Easement Area as provided above, the applicable Owner shall give at least ten (10) days' prior written notice to the other Owner of its intention to do so and shall coordinate its closing with the activities of the other Owner so that no unreasonable interference with the operation of the Access Easement occurs, (ii) any such closure shall be limited to the minimum period and minimum amount of closure reasonably necessary to prevent the acquisition or creation of any prescriptive right by any Person and, to the extent reasonably feasible, one drive lane shall be kept open for vehicular traffic, and (iii) to the extent reasonably feasible any such closure shall not occur during Normal Business Hours.

Section 3.5 Sharing of Access Expenses. Each Owner shall share in the Access Expenses based on the following: the Parcel 1 Owner shall pay 58.4% and the Parcel 2 Owner shall pay 41.6% of such Access Expenses.

Section 3.6 Calculation and Payment of Access Expenses.

(a) The Parcel 1 Owner shall keep accurate and complete books and records of all receipts and disbursements related to the operation, improvement, repair and maintenance of the Access Easement Area. Such books and records shall be available for inspection and copying by the other Owners during Normal Business Hours, and upon not less than five (5) days' prior written notice to the Parcel 1 Owner and shall be subject to any third party audit and/or inspection required by the other Owner, provided that no more than one (1) such audit and/or inspection shall be conducted during any calendar year. The Parcel 2 Owner shall continue to be obligated to make payments of its proportionate share of the Access Expenses required hereunder without offset or deduction notwithstanding the ongoing conduct of any such audit or inspection. The cost of any such third party audit or inspection shall be paid by the Owner requesting said audit; provided that if such audit reveals that the aggregate Access Expenses in a calendar year have been overstated by more than three percent (3%), the Parcel 1 Owner shall pay the cost of such audit.

(b) The Parcel 2 Owner shall reimburse the Parcel 1 Owner for its share of any Access Expenses pursuant to Section 3.5, within thirty (30) days after receipt of an invoice for the subject expense, provided that the Parcel 1 Owner shall provide sufficient documentation

regarding any such expense to allow confirmation that such expense is an Access Expense and was incurred in accordance with the provisions of the Declaration. Any invoice not paid when due shall bear interest at the Interest Rate from the due date until paid.

Section 3.7 Name of Access Easement Area. Until such time as neither Science Applications International Corporation nor any of its Affiliates owns any of the Parcels or a portion thereof, the name of the street located on the Current Access Area or Access Easement Area, as applicable, shall be "Science Applications Court." Declarant expressly states that it is not assigning to the Parcel 1 Owner or any other party any legal rights that Declarant or its Affiliates may have to the use of the trade name "SAIC" or "Science Applications" or any terms or phrases incorporating the foregoing except to use the term Science Applications Court as part of its address. Notwithstanding anything to the contrary herein, in the event that the Parcel 2 Owner desires that the name of the street change from "Science Applications Court", the Parcel 1 Owner shall cooperate in such name change at no cost or expense to the Parcel 1 Owner.

ARTICLE IV

NON-INTERFERENCE WITH UTILITIES

Each Owner shall use all reasonable efforts not to interfere in any way with the service of any utility, telecommunication service or system (telephone, computer or other) or storm water drainage or detention system (including, without limitation, the telephone and data cables identified on Exhibit G hereto) that benefits any other Parcel without the prior written consent of the Owner of the affected Parcel. If such interference cannot be avoided, (i) the Owner who is responsible for such interference shall deliver prior written notice to the other Owner of the likelihood of such interference as long in advance as possible and, in all events, at least thirty (30) days prior to such work (except during emergencies), and shall coordinate such interference with the activities of the Owner of the affected Parcel so that no unreasonable interference occurs, (ii) any interference shall be limited to the minimum period and minimum extent reasonably possible, and (iii) to the extent reasonably feasible, any such interference shall not occur during Normal Business Hours (except during emergencies). At the request of any Owner, each Owner shall execute and record easements to allow the use of the telephone, data and other telecommunication cables referenced in this Article IV all in accordance with this Article IV.

ARTICLE V

STORM WATER EASEMENT; NEW STORM WATER FACILITIES

Section 5.1 Storm Water Easement For the Benefit of Parcel 2. There is hereby reserved in, over and across Parcel 1 for the benefit of Parcel 2:

(a) A non-exclusive, perpetual easement for storm water detention and drainage across that portion of Parcel 1 described in Exhibit C-1 attached hereto and made a part

hereof ("Storm Water Easement Area"), including, without limitation, the right to install and repair underground pipes and tie into and utilize the sanitary and storm water sewers in or on the Storm Water Easement Area and downstream thereof, in accordance with Legal Requirements, provided that the Parcel 2 Owner shall promptly repair and restore the landscaping and any other Improvements on the Storm Water Easement Area or elsewhere on Parcel 1 that are damaged in connection with the Parcel 2 Owner's use of the easement granted herein. The Parcel 1 Owner shall be obligated to maintain the Storm Water Easement Area and any improvements for storm water detention and drainage located on Parcel 1 in compliance with all Legal Requirements. The Parcel 1 Owner shall have the right, at it sole cost and expense, to relocate the Storm Water Easement Area if such relocation is desirable in connection with any changes in the development of Parcel 1 so long as such relocation does not materially adversely affect storm drainage from Parcel 2.

(b) A non-exclusive, perpetual easement to compensatory storm water management capacity and Best Management Practices (BMPs) applicable in Fairfax County, Virginia as of the Effective Date sufficient to support Parcel 2 with (i) the Improvements located on Parcel 2 as of the Effective Date, (ii) any additional parking constructed thereon necessary to accommodate the parking requirements imposed by Legal Requirements for the Improvements located on Parcel 2 as of the Effective Date, and (iii) the Initial Access Improvements, on, over, across and under Parcel 1 and to the detention pond identified on Exhibit C-2 hereto, at no expense to the Parcel 2 Owner, provided that Parcel 2 Owner shall promptly repair and restore the landscaping and any other Improvements in such area or elsewhere on Parcel 1 that are damaged in connection with the Parcel 2 Owner's use of the easement granted herein, except to the extent resulting from the Initial Access Improvements which shall be shared by the parties as an Access Expense.

(c) The Parcel 1 Owner shall maintain the storm water detention and drainage systems provided for in subsections (a) and (b), provided that the Parcel 1 and 2 Owners shall share any cost or expense for such maintenance, including any cost and expense connected with compliance with a Legal Requirement, in proportion to the drainage flow into such detention system from each Parcel (excluding the flow from the Access Easement Area, if any) as determined by VIKA or another engineer mutually agreed upon by the Parcel 1 and Parcel 2 Owners, except that (i) the Parcel 2 Owner shall not be required to share in any fee, fine or levy resulting from the Parcel 1 Owner's failure to timely comply with any Legal Requirement or any costs resulting from or arising in connection with the development of Parcel 1, and (ii) the Parcel 1 Owner shall not be responsible for, or required to share in, any cost, expense, fee, fine or levy resulting from or arising in connection with the development of Parcel 2 (or any subsequent changes thereto) or any changes in Legal Requirements affecting Parcel 2 and not similarly affecting Parcel 1 (except to the extent relating to the Access Easement Area).

Section 5.2 Expansion or Installation of Storm Water Facilities.

In connection with the Initial Development or any subsequent development on Parcel 1, the Parcel 1 Owner, at its sole cost and expense and in accordance with Legal Requirements, shall (i) expand the existing detention pond in the Storm Water Easement Area and/ or (ii) install a new storm water management facility such that the then-existing facilities

will continue to be sufficient to support Parcel 2 as required pursuant to Section 5.1. However, if any changes to Parcel 2 or the Improvements located thereon require the installation of additional facilities or the modification of then-existing facilities, then the Parcel 2 Owner shall be responsible for the cost and expense therefor; provided, however, that in no event shall the Parcel 1 Owner be obligated to expand or otherwise modify the Storm Water Easement Area in a manner that would reduce the amount of Parcel 1 that can be developed in accordance with the Initial Development Plan.

ARTICLE VI

MONUMENT SIGNAGE

Each Owner shall have the right, but not the obligation, to install one (1) monument sign ("Access Monument Sign"), at such Owner's sole cost and expense, in the area identified in Exhibit B in a specific location selected by such Owner in its reasonable discretion, provided that the Owners shall agree in advance on the size of any Access Monument Sign and the nature and size of the lettering and graphics thereon. Notwithstanding the previous sentence, the Parcel 2 Owner's sign may include the "SAIC" logo with blue lettering.

ARTICLE VII

MAINTENANCE AND OPERATION OF PARCELS

Subject to the Parcel 1 and Parcel 2 Owner's obligations pursuant to Section 3.2 and in addition to all other requirements set forth herein, each of the Parcel 1 and Parcel 2 Owners shall use reasonable efforts to maintain its Parcel at all times, including without limitation during construction activities thereon, in accordance with First Class Standards, including without limitation by keeping its Parcel clean and as free of debris as is reasonably possible.

ARTICLE VIII

REMEDIES

Section 8.1 Legal and Equitable Relief. The covenants, conditions, restrictions, reservations, easements and rights herein contained shall run with the land and shall be binding upon and inure to the benefit of each Owner, its respective successors and assigns, and all other persons, parties or entities claiming by, through or under any of the foregoing. In the event any Owner ("Defaulting Party") defaults in any of its obligations hereunder or in the event of any violation or threatened violation of this Declaration by a Defaulting Party or such Defaulting Party's Permittees and such Defaulting Party fails to cure such default or stop such

violation or threatened violation within thirty (30) days after written notice from another Owner (the "Affected Party"), or if such default is not capable of being cured within such thirty (30)-day period, such Defaulting Party has not commenced the cure within such thirty (30)-day period and diligently pursued the completion of such cure, the Affected Party shall have the right to (i) institute legal action against the Defaulting Party for specific performance, injunctive relief, declaratory relief, damages, or any other remedy provided by law; provided, however, neither party shall be liable for consequential or punitive damages; (ii) recover damages for any such violation or default, and/or (iii) take self-help action to the extent and only to the extent permitted under Section 8.2 below. All remedies under this Declaration or at law shall be cumulative and not inclusive. As used herein, any reference to rights or remedies "at law" or "under applicable law" shall also include any rights or remedies "in equity".

Section 8.2 Right to Cure. In the event any Owner defaults under the provisions of this Declaration and such Owner fails to cure such default within the time period provided in Section 8.1 above, the Affected Party which sent the default notice shall have the right, but not the obligation, upon the expiration of such period, to cure such default for the account of and at the expense of the Defaulting Party. Prior to taking any such action, such Affected Party shall deliver thirty (30) days' prior written notice (which notice shall be in addition to the notice required under Section 8.1 hereof) to the Defaulting Party specifying with details the nature of the actions that such Affected Party giving such notice proposes to take in order to cure the claimed default. The Defaulting Party shall reimburse the Affected Party for expenses incurred by the Affected Party in connection with its exercise of its rights pursuant to this Section 8.2 within ten (10) days after an invoice therefor accompanied by appropriate supporting documentation for such costs.

Section 8.3 Interest. If any Affected Party so performs any of the Defaulting Party's obligations hereunder or if a Defaulting Party fails to make a payment under this Declaration to an Affected Party, the full amount of the cost and expense incurred by the Affected Party or the damage so sustained or the payment not made by the Defaulting Party to the Affected Party, as the case may be, shall immediately be due and owing by the Defaulting Party to the Affected Party and the Defaulting Party shall pay to the Affected Party upon demand the full amount thereof with interest at the Interest Rate from the date of payment (or in the case of a monetary default, the date such sum was due) until such payment is actually received by the Affected Party.

Section 8.4 Lien. The Affected Party is hereby granted a lien upon the Parcel of the Defaulting Party in the amount of any such payment made by the Affected Party or amount not paid by the Defaulting Party, pursuant to Sections 8.1, 8.2 or 8.3, together with interest at the Interest Rate thereon, which amount is not paid within thirty (30) days after demand is made, and said lien may be enforced by judicial foreclosure proceedings against the Defaulting Party's Parcel in accordance with then applicable Virginia law. The Affected Party shall have the right to file with the appropriate governmental office or offices a memorandum of lien, lis pendens or other notice or notices as may be required by law to give notice of such lien and the amount thereof, said notice or notices to be filed after the expiration of said thirty (30)-day period. The lien herein granted shall be prior to and superior to any other liens or encumbrances on the Defaulting Party's Parcel, including any liens arising or attaching before,

on and/or after the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices, but excluding the lien held by a third party holder of a bona fide first lien Mortgage affecting the Defaulting Party's Parcel recorded prior to the date on which notice of such lien and the amount thereof is filed with the appropriate governmental office or offices (however, notwithstanding the foregoing, such lien created by this Article VIII shall expressly survive any foreclosure or other enforcement action taken under any such first lien Mortgage). Additionally, notwithstanding the foregoing, in no event shall the foreclosure or any other enforcement of such lien created by this Article VIII result in a termination of any lease of any portion of a Parcel or any Improvements thereon.

The holder of a Mortgage on all or any portion of a Parcel shall have the right to be subrogated to the position of the holder of any lien arising pursuant to this Article VIII affecting the property secured by its Mortgage upon payment of the amount secured by such lien.

Section 8.5 No Termination. A breach of this Declaration shall not entitle any party or person to cancel, rescind or otherwise terminate its obligations hereunder.

ARTICLE IX

MORTGAGEE PROTECTION

Each Affected Party giving a notice of default under this Declaration shall send, in accordance with Section 12.7 hereof, a copy of such notice to the Mortgagee under any Mortgage on the Parcel and/or Improvements of the Defaulting Party, provided such Mortgagee or Defaulting Party shall have previously sent such Affected Party a notice informing it of the existence of such Mortgage and the name of the person or officer and the address to which copies of the notices of defaults are to be sent, and such Mortgagee as recipient of notice pursuant to Section 12.7 below shall be permitted to cure any such default not later than sixty (60) days after a copy of the notice of default shall have been sent to such Mortgagee, provided that in the case of a default which cannot with diligence be remedied within such sixty (60)-day period, if such Mortgagee has commenced within such sixty (60)-day period and is proceeding with diligence to remedy such default, then such Mortgagee shall have such additional period as may be reasonably necessary to remedy such default with diligence and continuity, and during any such cure period the Affected Party shall forbear from exercising its remedy to enforce its lien against the Parcel of the Defaulting Party and/or Improvements thereon. Initiation of foreclosure proceedings against a Defaulting Party shall constitute "diligence" by a Mortgagee hereunder so long as such foreclosure proceedings are continuously pursued (provided that a stay issued during any bankruptcy, insolvency, or reorganization proceeding shall not be deemed to defeat continuous pursuance of such foreclosure proceedings). The foregoing requirements to give notice of default to a Mortgagee and allow such Mortgagee an opportunity to cure such default shall not preclude the exercise of any remedies by an Affected Party provided pursuant to Sections 8.2, 8.3 and 8.4 (except to the extent such Affected Party is required to forbear from exercising its lien pursuant to this Article IX). If a condominium association, a homeowners' association or another similar association has been established with respect to a Parcel or Parcels, then for purposes of this Article IX, an Affected Party giving a notice of default shall send such

notice to the applicable association (or the declarant under the applicable operating documents if such association has not yet been established) in lieu of sending such notice to the Mortgagees (a "Unit Mortgagee") of the members (a "Unit Owner") of the applicable association. The association receiving such default notice shall have the right to cure any such default and/or send a copy of such default notice to the applicable Unit Mortgagee who shall have the right to cure such default.

ARTICLE X

ASSIGNMENT, TRANSFER AND MORTGAGE, LIMITATION OF LIABILITY

Section 10.1 Owner Not Released Except as Provided Herein.

(a) If an Owner shall sell, transfer or assign all or any portion of its Parcel it shall (except as provided in this subsection (a) and, in the case of a ground lease, except as modified by Section 10.4), be released from its obligations hereunder with respect to such Parcel or portion thereof accruing from and after the date of such sale, transfer or assignment. It shall be a condition precedent to the release and discharge of any grantor or assignor Owner that the following conditions are satisfied: (a) such grantor or assignor shall give notice to the other Owners of any such sale, transfer, conveyance or assignment concurrently with the filing for record of the instrument effectuating the same (or in the case of a ground lease termination, within thirty (30) days after the termination thereof), and (b) the transferee shall execute and deliver to the other Owners a written statement in which (i) the name and address of the transferee shall be disclosed; and (ii) the transferee shall acknowledge its obligation hereunder and agreement to be bound by this Declaration and perform all such obligations applicable to it in accordance with the provisions of this Declaration. Failure to deliver any such written statement shall not affect the running of any covenants herein with the Parcels, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Declaration, but such failure shall constitute a default by the transferee hereunder. Notwithstanding anything to the contrary in this Section 10.1(a), the entity or entities to whom Declarant conveys Parcel 1 shall not have the right to sell, transfer or assign all or any portion of the Parcel without the prior written approval of Declarant until the earlier of (x) Substantial Completion of the Initial Development and (y) ten (10) years after the Effective Date; provided however, that nothing herein is intended to limit the Parcel 1 Owner's ability to transfer (I) all or any portion of the Parcel to an Affiliate, (II) if the Initial Development is completed in phases, any portion of the Parcel for which a phase has been finally completed to a third party; (III) all or any portion of the Parcel to an experienced, financially sound apartment, townhome, and/or condominium developer, having the reasonable ability to construct the improvements for its Parcel in accordance with this Declaration and applicable zoning approvals, subject to the Parcel 2 Owner's reasonable approval; or (IV) all or any portion of the Parcel to a Mortgagee (or otherwise prohibit said Mortgagee from exercising its remedies under a Mortgage including, without limitation, obtaining the Parcel through foreclosure or a deed-in-lieu). Any request submitted to the Parcel 2 Owner for approval shall be submitted with detailed information regarding the proposed purchaser or assignee and its plans for the Initial Development.

(b) If any Parcel is sold or otherwise transferred (including via a ground lease), such transfers shall be subject to this Declaration and the transferees (including the lessee under any new ground lease and the lessor under a ground lease reacquiring possession upon termination of such ground lease) shall be bound by its transferor's obligations hereunder as fully as if such transferees were originally parties hereto, and such obligations shall run with and be binding upon the Parcels and be binding upon all subsequent Owners thereof, including any claims or liens arising under this Declaration against a prior Owner of a Parcel which shall continue as to any transferee of such Parcel. Notwithstanding anything to the contrary herein, in the event that all or any portion of Parcel 1 or Parcel 2 is subject to one or more condominium regimes, any and all such condominium regimes shall be subject and subordinate to this Declaration.

(c) In the event that a Parcel is divided into one or more separate legal lots, or condominiums, each of such separate legal lots shall thereafter be considered to be a "Parcel" as defined in this Declaration and the owners of each such legal lot shall be an "Owner"; provided, however, that, with respect to a condominium, the declarant under the condominium regime and, thereafter as appropriate under the applicable condominium operating documents, the condominium association, as opposed to the individual condominium unit owners, shall be considered the "Owner" hereunder, except as otherwise provided herein. Further, in the event that the multiple owners of a Parcel are members of a homeowner's association, the declarant under the operating documents of the homeowner's association and, thereafter, as appropriate under the applicable documents, the homeowner's association itself, as opposed to the individual members, shall be considered the "Owner" hereunder, except as otherwise provided herein and provided further that the association has the right and authority pursuant to the association's governing documents to undertake such obligations and to assess it members therefor without the approval of the members. In the event that a portion (but not all) of Parcel 1 or an interest therein is conveyed or otherwise transferred such that there is more than one Owner of the land that constituted Parcel 1 as of the Effective Date, then the Owners of such Parcel shall designate one of them who shall have authority to act on behalf of such Owners vis-à-vis the Owner of Parcel 2 and they shall notify the Parcel 2 Owner of said designee. Notwithstanding the foregoing, nothing herein shall affect any of the remedies available to the Parcel 2 Owner pursuant to Article VIII, including, without limitation, the right of self-help and the right to place a lien on the property of any Owner, including any owner of a condominium unit or member of a homeowner's association, pursuant to Section 8.4. No Owner of a legal lot(s) shall be obligated or liable for the acts or omissions of an Owner of another legal lot(s), and the obligations and liabilities of each Owner shall not be joint and several. Each Owner agrees that any claim or right (including lien rights) it may have against another Owner pursuant to this Declaration shall be made or asserted against the applicable Owner(s) and the applicable Parcel(s) whose actions or omissions are at issue. Notwithstanding anything to the contrary contained herein, in the event that the Parcel 1 Owner creates a master owner's association for Parcel 1 and such association has the obligation and authority pursuant to the association's governing documents to undertake the Initial Construction and Maintenance Obligations and has the ability to assess it members therefor without the approval of the members ("Master Association"), the Parcel 2 Owner shall assert any claims or right that the Parcel 2 Owner may have arising from or relating to the Initial Construction and Maintenance Obligations against the Master Association. Until a Master Association satisfying the requirements of the previous sentence is created, the Owners of

Parcel 1 shall be jointly and severally liable for the Initial Construction and Maintenance Obligations. As used herein, "Initial Construction and Maintenance Obligations" shall mean only the obligations of the Parcel 1 Owner pursuant to Article 3, the expansion of the existing storm water detention pond pursuant to Section 5.2, and the obligation of the Parcel 1 Owner to maintain the Current Access Area, Access Easement Area and Storm Water Easement Area as set forth in this Declaration.

Section 10.2 Possessory Party Remains Responsible. Notwithstanding anything to the contrary herein contained, if any Owner shall (i) convey all or any portion of its Parcel in connection with a sale and leaseback or lease and sublease back, and it shall simultaneously become vested with a leasehold estate or similar possessory interest in its Parcel by virtue of a lease made by the grantee or lessee, as the case may be, or (ii) shall convey all or any portion of its Parcel or its interest therein by way of a Mortgage and retain its possessory interest in its Parcel, then, in neither of such events shall the assignee of this Declaration under such sale and leaseback or lease and sublease back, or the Mortgagee or beneficiary under any such Mortgage, be deemed to be an Owner with respect to such Parcel or portion thereof or to have assumed or be bound by any of such Owner's obligations hereunder for so long as such Owner shall retain such possessory interest, and such obligations and the status as an Owner hereunder with respect to such Parcel or portion thereof shall continue to remain solely those of such Owner so long as such Owner retains such possessory interest, and performance by such Owner of any act required to be performed under this Declaration by it or fulfillment of any condition of this Declaration by such Owner shall be deemed the performance of such act or the fulfillment of such condition and shall be acceptable to the Owners with the same force and effect as if performed or fulfilled by such assignee, lessor, subsequent Owner or Mortgagee or beneficiary.

Section 10.3 Rights of Parties. Notwithstanding anything to the contrary contained in this Declaration, each Owner may mortgage its Parcel or its interest therein and/or sell and leaseback or lease and sublease back its Parcel or its interest therein, and, in connection with any such transaction, assign its interest in this Declaration. If any such Mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if any Owner shall have entered into a sale and leaseback or a lease and sublease back transaction involving its Parcel and any such Owner is the lessee or sublessee thereunder and such lessee or sublessee shall be deprived of possession of such Parcel by reason of its failure to comply with the terms of such leaseback or sublease back, any person or entity who has acquired, or shall thereafter acquire, title to such Parcel or a leasehold estate therein shall hold the same subject to all other terms, provisions, covenants, conditions and restrictions contained in this Declaration.

Section 10.4 Ground Leases. If any Owner of fee simple title to a Parcel has entered into, or shall enter into, a ground lease of its entire Parcel, then the lessee under such ground lease shall be deemed to be the Owner of such Parcel and to have assumed or be bound by any and all of such Owner's obligations (including, if applicable, the obligation to serve as the Parcel 1 Owner) hereunder for so long as such lessee shall be the lessee under such ground lease, and such obligations and the status as an Owner hereunder shall continue to remain solely those of such lessee so long as such lessee shall be the lessee under such ground lease. The lessor under any such ground lease shall not be the Owner of the Parcel, and shall not have any of the rights or obligations of an Owner hereunder until such time as the ground lease terminates or

expires, provided, that such lessor shall, at no cost or expense to such lessor, cooperate in good faith with the lessee if the involvement of the lessor is reasonably necessary under the circumstances. Upon such termination or expiration of such ground lease, the lessor thereunder shall become the Owner of the Parcel subject to and bound by the terms of this Declaration.

Section 10.5 Limitation of Liability. No Owner or its partners, venturers, employees, shareholders, affiliates, officers, directors, agents, representatives, advisors, or consultants shall have any personal liability for its or their failure to perform any covenant, term or condition of this Declaration, it being expressly declared that any money judgment recovered against any Owner shall be satisfied only out of, and the sole and exclusive recourse of any Owner damaged as a result of such default shall be against, the right, title and interest of such Owner in the Parcel involved and the Improvements thereon, including the proceeds of sale received upon execution of such judgment thereon, against the right, title and interest of such Owner in the Parcel involved and the Improvements thereon and the rents or other income or revenue from such property receivable by such Owner or the consideration received by such Owner from the sale or other disposition (including a condemnation) of all or any part of such Owner's right, title and interest in the Parcel involved and Improvements thereon or the insurance proceeds received by such Owner respecting any casualty affecting the Improvements.

Section 10.6 Priority of Declaration. This Declaration and the rights, interests, liens (subject to the provisions of Section 8.4 above), and easements created hereunder shall be prior and superior to any Mortgage or other lien upon or against any Owner's Parcel other than such liens as by law have priority over the lien and operation of this Declaration.

ARTICLE XI

GENERAL INSURANCE AND CONDEMNATION PROVISION

Section 11.1 Waiver of Subrogation. EACH OWNER HEREBY WAIVES ANY AND ALL CLAIMS WHICH ARISE, OR MAY ARISE, IN ITS FAVOR AGAINST ANY OTHER OWNER, FOR ANY AND ALL LOSS OF, OR DAMAGE TO, ANY OF ITS PROPERTY, INSURABLE UNDER ALL RISK POLICIES OF INSURANCE CUSTOMARILY AVAILABLE AT THE APPLICABLE TIME.

Section 11.2 Insurance.

(a) Each Owner shall continuously maintain separate policies of commercial general liability insurance issued by and binding upon insurance companies authorized to transact business in Virginia and of good financial standing and has a Best's Rating of A or better and a Financial Size Category of X or larger, such insurance to afford minimum protection of not less than $10,000,000 in respect of bodily injury or death and/or property damage in respect of any one occurrence.

(b) Each Owner shall, on the request of another Owner, promptly furnish the requesting Owner a certificate evidencing the former Owner's compliance with the insurance

coverage requirements of this Article XI. No Owner shall be required during any given 365-day period to honor more than one such request from each other Owner, unless an Owner states its reason for believing that a policy may have been cancelled. Upon request, any Owner shall permit any other Owner or its representative at such requesting Owner's cost and expense to inspect and copy any insurance policy required under this Article XI. Such inspection shall be at the place of business of the Owner requested to produce such policy or policies during Normal Business Hours.

(c) The limits of coverage required hereunder shall be adjusted from time to time throughout the term of this Declaration by agreement of all Owners, each acting reasonably, to limits then applicable for comparable projects.

(d) Each Owner (but not the declarant or association, as applicable, under a condominium regime) shall have the right, at its option, to comply with and satisfy its obligations under this Article XI by means of any so-called blanket policy or policies of insurance covering this and other locations of such Owner, provided that such policy or policies by the terms thereof shall allocate to the liabilities to be insured hereunder an amount not less than the amount of insurance required to be carried pursuant to this Article XI and shall not diminish the obligations of the particular Owner to carry insurance, so that the proceeds from such insurance shall be an amount not less than the amount of proceeds that would be available if the Owner were insured under a policy applicable only to the applicable Parcel.

(e) If a condominium association, a homeowners' association or another similar association has been established with respect to a Parcel or Parcels, then for purposes of maintaining the insurance required under this Section 11.2, the term "Owner" shall mean the applicable association (or the declarant under the applicable operating documents if such association has not yet been established) instead of the individual members of the applicable association provided that the association has the right and authority pursuant to the association's governing documents to undertake such obligations and to assess it members therefor without the approval of the members.

Section 11.3 Indemnification by Owners. Subject to Section 11.1 hereof, each Owner shall defend, indemnify and save the other Owners harmless against and from all claims, loss, damages, costs and expenses (including, without limitation, reasonable attorney's fees) because of bodily injury or death of persons or destruction of property resulting from or arising out of such Owner's construction on and/or use, occupancy or possession of its Parcel, the Access Easement Area, the Access Easement, the Current Access Area, the Overflow Parking and/or any other Owner's Parcel, except to the extent caused by the acts or omissions of another Owner.

Section 11.4 Taking. If a Taking affecting any Parcel occurs, the following shall apply:

(a) any award of compensation or damages for a Taking of a Parcel, or any portion thereof, or the Improvements thereon, shall belong and be payable solely to the Owner

that owns the Parcel taken and no other Owner shall share in such award, except as expressly provided below;

(b) any proceeds attributable to the Access Easement Area, any Access Improvement or any Access Monument Sign shall be paid to the Parcel 1 Owner and the Parcel 1 Owner shall use such proceeds to restore the Access Improvements or Access Monument Sign as nearly as possible to its condition immediately prior to such Taking to permit the continued use thereof. To the extent the cost of restoring such Access Improvements or Access Monument Sign exceeds the amount of proceeds available therefor, (i) as to the Access Improvements, each Owner shall be responsible for such excess in the same proportion as each such Owner is obligated to pay the Access Expenses pursuant to Section 3.5 and (ii) the Owner whose Access Monument Sign was taken as to any Access Monument Sign shall be responsible for such excess; and

(c) if, as a result of a Taking, the Access Easement is extinguished or materially impaired or the Access Monument Sign may no longer be maintained, then changes shall be made to provide an access easement and/or appropriate monument signage rights comparable to the extent commercially practicable under the circumstances to the Access Easement and monument signage rights created or reserved under this Declaration.

Section 11.5 Tax Payments and Contests. Each Owner shall pay all taxes, assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excess levies, license and sales and permit fees and taxes, and other charges by public authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall be assessed, levied, charged, confirmed, imposed or applicable to a Parcel owned by such Owner or Improvements thereon. Each of the Owners may, at its expense, by appropriate proceedings, and after thirty (30) days' written notice to the other Owners, contest the validity, applicability, or amount of any such taxes and assessments applicable to its Parcel or Improvements thereon. Such contest must be made in good faith and must not allow the affected Parcel to be forfeited or placed in jeopardy of being forfeited.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Covenants Run with the Land. All of the provisions, rights, powers, easements, covenants, conditions and obligations contained in this Declaration shall be binding upon and inure to the benefit of the Owners, their respective successors and assigns. Each covenant to do or refrain from doing some act on each Parcel hereunder (a) is for the benefit of the other Parcels, (b) runs with each Parcel, and (c) shall benefit or be binding upon each successive Owner during its period of ownership of each Parcel.

Section 12.2 Recordation. This Declaration shall become effective and binding upon the Owners and their respective successors in interest upon the Effective Date and shall be promptly recorded in the real property records of Fairfax County, Virginia.

Section 12.3 Termination and Amendment.

(a) Except as otherwise specified in this Declaration (including, without limitation Section 12.17 which may be terminated by the Parcel 1 Owner alone), this Declaration may be canceled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all Owners (and their respective Mortgagees); provided, however, that with respect to any Parcel for which a condominium association, a homeowners' association or another similar association has been established, the consent of a majority of the Unit Owners of each such association (and their respective Mortgagees) shall satisfy the requirements of this Section 12.3(a).

(b) The Owners shall use reasonable efforts to cooperate to consider reasonable modifications to this Declaration at the request of another Owner, and it shall not be reasonable for an Owner to withhold its cooperation or consent to any modification that neither adversely affects in a material manner such Owner's development or use of its respective Parcel as permitted in this Declaration nor increases such owner's obligations and/or liabilities hereunder.

Section 12.4 Approvals. Whenever approval or consent is required of any Owner, unless provision is made for a specific time period, approval or consent shall be required within twenty (20) Business Days after such Owner's receipt of the written request for approval or consent and such Owner shall be deemed to have consented if such Owner does not reply within said twenty (20)-Business Day period (provided such notice conspicuously states in bold letters that failure to respond within such twenty (20)-Business Day period shall be deemed consent). Whenever time periods are specified for approval herein (other than in the previous sentence) and the applicable Owner does not respond within the stated time period, the Owner requesting a response shall, at the end of the stated time period, deliver a second request for response in which event the responding Owner shall have ten (10) Business Days from receipt of the requesting Owner's second notice to respond. The responding Owner shall be deemed to have consented if such Owner does not reply within said ten (10)-Business Day period (provided such request or notice conspicuously states in bold letters that failure to respond within such ten (10)-Business Day period shall be deemed consent). If an Owner shall disapprove any matter as to which its consent is requested hereunder, the reasons therefor shall be stated in reasonable detail in writing. The consent or approval by an Owner to or of any act or request by any Owner shall not be deemed to waive or render unnecessary consent or approval to or of any similar or subsequent acts or requests. Except as otherwise expressly provided herein, any consent or approval rights granted to an Owner pursuant to this Declaration as it relates to another Owner shall be exercised in such Owner's reasonable discretion, without undue delay or conditions.

Section 12.5 Excusable Delays. Whenever performance is required of any Owner hereunder, that Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or materials or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of an Owner (financial inability,

imprudent management or negligence excepted), the inability to obtain necessary governmental approvals, the discovery of hazardous materials or a failure of an Owner to timely act in a manner required herein, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. As used in this Declaration, an Owner's obligation to use or act with "due diligence," "diligent efforts" or words of similar meaning or import, or take any action required to "diligently complete," "diligently pursue" or words of similar meaning or import, shall be deemed satisfied if such Owner acts with or uses commercially reasonable efforts under the circumstances.

Section 12.6 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Declaration.

Section 12.7 Notice. Any notice to any Owner shall be in writing and given by delivering the same to such Owner in person, by expedited, private carrier service (such as Federal Express), or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the Owner's mailing address. Copies of certain notices are required to be sent to Mortgagees pursuant to Article IX of this Declaration. Notices shall be sent to the Declarant and the Parcel 2 Owner as follows:

Declarant/Parcel 2 Owner: Campus Point Realty Corporation
10260 Campus Point Drive
San Diego, California 92121
Attn: SAIC Corporate Real Estate

and with a copy to: Gary E. Humes
Arnold & Porter
555 Twelfth Street, N.W.
Washington, DC 20004-1206

Any Owner may change its mailing address at any time by giving written notice of such change to the other Owners in the manner provided herein at least ten (10) days' prior to the date such change is to be effective. Additionally, each Owner may designate up to two (2) additional addresses to which copies of all notices shall be sent. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected, or if mailed, on the delivery date or attempted delivery date shown on the return receipt, provided that any such notice set forth above is tendered prior to 6:00 P.M. in the time zone where the recipient of such notice is located on any Business Day (failing which such notice shall be deemed given, received, made or communicated on the next Business Day).

Section 12.8 Litigation Expenses. If any party shall bring a legal or equitable proceeding against any other party to this Declaration by reason of the breach or alleged violation of any covenant, condition, restriction, easement, term or obligation hereof, or for the

enforcement of any provision hereof or otherwise arising out of this Declaration, the prevailing party in such proceeding shall be entitled to recover from the non-prevailing party the reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by such prevailing party in connection with such proceeding, which shall be payable whether or not such action is prosecuted to judgment.

Section 12.9 Governing Law; Place of Performance. This Declaration and all rights and obligations created hereby shall be governed by the laws of the Commonwealth of Virginia, without reference to the choice of laws principles thereof.

Section 12.10 Non-Merger. The ownership, at any time during the term of this Declaration, of more than one Parcel by the same Owner shall not create a merger of title or estate, or other merger, including any merger of the dominant and servient estate with respect to easements created in this Declaration, and shall therefore not terminate any of the easements, restrictive covenants, or other terms or provisions of this Declaration.

Section 12.11 Term; Termination. The terms, covenants, provisions and conditions of this Declaration shall be effective as of the Effective Date and shall continue to be binding upon and inure to the benefit of any Owner from time to time and all persons, parties and entities claiming by, through or under any of them in perpetuity unless all persons or entities having an interest therein shall agree to terminate or otherwise modify the same.

Section 12.12 Time. Time is of the essence of this Declaration and each and every provision hereof.

Section 12.13 Estoppel Certificate. Any Owner may, at any time and from time to time, deliver written notice to any other Owner requesting such other Owner to certify in writing (a) that to the best knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Declaration, or, if in default, to describe therein the nature and amount of any and all defaults, and (b) to such other reasonable matters as the requesting Owner may request. Each Owner receiving such request shall execute and return such certificate within ten (10) Business Days following the receipt thereof. Such certificate may be relied upon by actual or prospective purchasers, investors, tenants, transferees, lenders, mortgagees, deed of trust beneficiaries and leaseback lessors.

Section 12.14 No Partnership, Joint Venture or Principal-Agent Relationship. Neither anything in this Declaration nor any acts of an Owner shall be deemed by the Owners, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Owners (except as expressly set forth herein), and no provisions of this Declaration are intended to create or constitute any person or entity a third party beneficiary hereof.

Section 12.15 Headings; Exhibits; Gender. Captions in this Declaration are for convenience of reference only, and shall not be considered in the interpretation of this Declaration. All exhibits referenced in this Declaration are incorporated in this Declaration by this reference as if fully set forth herein. Whenever required by the context, the singular shall

include the plural, the neuter gender shall include the male gender and female gender, and vice versa.

Section 12.16 Separate Parcel 1 Covenants. The initial owner of Parcel 1, after Declarant, shall have the right, from time to time and without the consent of the Parcel 2 Owner, to record separate covenants benefiting and/or burdening Parcel 1 and the owners thereof provided such covenants are and remain subordinate to this Declaration and do not impact the liabilities or obligations set forth herein.

Section 12.17 Overflow Parking Spaces. The Parcel 2 Owner shall provide to the Parcel 1 Owner, for the benefit of the residents of Parcel 1, the right to use a minimum of 150 parking spaces on Parcel 2 during non-business hours on weekdays (*i.e.* after 6:00 p.m.) and on weekends ("Overflow Parking"). Prior to the sale or rental of the first housing units on Parcel 1, the Parcel 1 Owner or the Master Association shall establish, subject to the reasonable approval of the Parcel 2 Owner, reasonable rules and regulations for the use of the Overflow Parking. The Master Association (or, before there is a Master Association, the Parcel 1 Owner) shall enforce such rules and regulations. If the Parcel 1 Owner or the Master Association, as applicable, fails to establish and/or enforce such rules and regulations, in addition to any other remedies that may be available to it, the Parcel 2 Owner shall have the right to terminate the Parcel 1 Owner's right to use the Overflow Parking by sending a notice to the Parcel 1 Owner and, if the Parcel 2 Owner so elects, recording the same in the land records.

IN WITNESS WHEREOF, the undersigned has executed and acknowledged this Declaration to be effective as of the Effective Date.

CAMPUS POINT REALTY CORPORATION,
a California corporation

By: _____
Name: FREDERICK HARARI
Title: PRESIDENT

27

BK 16927 2223

ACKNOWLEDGMENT

State of California }
County of San Diego }

On January 25, 2005, before me, Mary E. Hyder, Notary Public, personally appeared Frederick R. Hazard, personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary E Hyder
Signature of Notary

MARY E. HYDER
Commission # 1376506
Notary Public - California
San Diego County
My Comm. Expires Sep 24, 2006

28

EXHIBITS:

Exhibit A-1	Description of Parcel 1
Exhibit A-2	Description of Parcel 2
Exhibit B	Access Easement Area (and Access Monument Sign Area)
Exhibit C-1	Storm Water Easement Area
Exhibit C-2	Storm Water Detention Ponds
Exhibit D-1	Relocated Parking
Exhibit D-2	Temporary Parking
Exhibit E	Current Access Area
Exhibit F	Outlot Parcels
Exhibit G	Telephone and Data Cables

BK 16927 2225

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REVISED JANUARY 25, 2005
JANUARY 20, 2005

EXHIBIT A-1A
DESCRIPTION OF
PARCEL 1A
THE RESERVE AT TYSONS CORNER
BEING
A PORTION OF
THE PROPERTY OF
CAMPUS POINT REALTY CORPORATION,
as successor in interest to
CAMPUS POINT REALTY CORPORATION, II
DEED BOOK 11073 PAGE 890
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the southwesterly corner of Tysons Executive Village as recorded in Deed Book 9777 at Page 1353 among the aforementioned Land Records, said point also being on the northerly line of Lot 9, Courthouse Station (Deed Book 7195 Page 438); thence running with a portion of Courthouse Station

1. North 79°10'45" West, 417.85 feet to a point being the southeasterly corner of Courts of Tyson (Deed Book 6020 Page 699); thence leaving Courthouse Station and running with Courts of Tyson and continuing so as to cross and include a portion of the aforesaid property of Campus Point Realty Corp II the following eleven (11) courses and distances:
2. North 10°50'42" East, 515.46 feet to a point; thence
3. North 11°48'13" West, 264.60 feet to a point; thence
4. North 79°09'07" West, 449.29 feet to a point; thence
5. 58.12 feet along the arc of the curve to the right having a radius of 37.00 feet and a chord bearing and distance of North 34°09'07" West, 52.33 feet to a point; thence

30

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Mclean, VA Germantown, MD

6. North 10°50'53" East, 128.62 feet to a point; thence

7. North 79°09'07" West, 192.48 feet to a point; thence

8. South 64°49'49" West, 21.66 feet to a point; thence

9. South 10°50'53" West, 57.89 feet to a point; thence

10. North 79°09'07" West, 58.98 feet to a point; thence

11. South 10°50'53" West, 102.68 feet to a point; thence

12. North 79°09'07" West, 27.40 feet to a point lying on the easterly right of way line of Gallows Road – Route 650 (width varies); thence running with a portion of said easterly right of way line

13. 52.71 feet along the arc of the curve to the left having a radius of 416.60 feet and a chord bearing and distance of North 06°56'31" West, 52.68 feet to a point; thence

14. 46.73 feet along the arc of a curve to the right having a radius of 35.54 feet and a chord bearing and distance of North 27°08'36" East, 43.43 feet to a point; thence departing Gallows Road and running so as to cross and include a portion of the subject property (Deed Book 11073 Page 890) the following nine (9) courses and distances

15. South 21°00'02" West, 19.05 feet to a point; thence

16. South 62°49'39" East, 13.72 feet to a point; thence

17. North 27°10'21" East, 46.73 feet to a point; thence

18. North 64°49'49" East, 240.41 feet to a point; thence

19. 125.73 feet along the arc of a curve to the right having a radius of 200.00 feet and a chord bearing and distance of North 82°50'21" East, 123.67 feet to a point; thence

20. South 79°09'07" East, 424.76 feet to a point; thence

14. 175.26 feet along the arc of a curve to the right having a radius of 168.00 feet and a chord bearing and distance of South 49°15'56" East, 167.42 feet to a point; thence

15. South 19°22'46" East, 121.31 feet to a point; thence

16. North 73°33'08" East, 169.34 feet to a point on the westerly right-of-way line of Interstate Route 495 (variable width right-of-way); thence running with Interstate Route 495 the following three (3) courses and distances

17. South 16°26'52" East, 64.26 feet to a point of curvature; thence

18. 423.65 feet along the arc of a curve to the right having a radius of 11,609.16 feet and a chord bearing and distance of South 11°28'32" East, 423.63 feet to a point; thence leaving said Interstate Route 495 and running with the westerly line of the aforementioned Tysons Executive Village the following course and distance

19. South 10°54'22" West, 485.88 to the point of beginning containing 540,309 square feet or 12.40379 acres of land.

BK 16927 2228

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REVISED JANUARY 25, 2005
JANUARY 20, 2005

EXHIBIT A-1B
DESCRIPTION OF
PARCEL 1B
THE RESERVE AT TYSONS CORNER
BEING
A PORTION OF
THE PROPERTY OF
CAMPUS POINT REALTY CORPORATION,
as successor in interest to
CAMPUS POINT REALTY CORPORATION, II
DEED BOOK 11073 PAGE 890
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point lying on the easterly right of way line of Gallows Road – Route 650 (width varies), said point also marking the northwesterly corner of the Courts of Tysons (D.B. 6020, Pg. 699); thence leaving said northwesterly corner and running with said easterly right of way line of Gallows Road the following three (3) courses and distances

1. North 11°10'53" East, 142.86 feet to a point of curvature (non-tangent); thence

2. 43.43 feet along the arc of a curve to the left having a radius of 209.00 feet and a chord bearing and distance of North 17°08'03" East, 43.36 feet to a point of compound curvature; thence

3. 105.42 feet along the arc of a curve to the left having a radius of 416.60 feet and a chord bearing and distance of North 03°55'54" East, 105.13 feet to a point; thence leaving the aforesaid right of way line of Gallows Road and running so as to cross and include a portion of the aforesaid property of Campus Point Realty Corp II, the following eleven (11) courses and distances:

4. South 79°09'07" East, 27.40 feet to a point; thence

33

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Mclean, VA Germantown, MD

5. North 10°50'53" East, 102.68 feet to a point; thence
6. South 79°09'07" East, 58.98 feet to a point; thence
7. North 10°50'53" East, 57.89 feet to a point; thence
8. North 64°49'49" East, 21.66 feet to a point; thence
9. South 79°09'07" East, 192.48 feet to a point; thence
10. South 10°50'53" West, 128.62 feet to a point; thence
11. 58.12 feet along the arc of the curve to the left having a radius of 37.00 feet and a chord bearing and distance of South 34°09'07" East, 52.33 feet to a point; thence
12. South 79°09'07" East, 449.29 feet to a point; thence
13. South 11°48'13" East, 264.60 feet to a point; thence
14. South 10°50'42" West, 53.81 feet to a point marking the northeasterly corner of the aforesaid Courts of Tysons (D.B. 6020, Pg. 699); thence running with the northerly line of said Courts of Tysons
15. North 79°09'07" West, 877.50 feet to the point of beginning containing 289,077 square feet or 6.63629 acres of land.

BK 16927 2230

ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ GPS SERVICES

REVISED JANUARY 26, 2005
REVISED JANUARY 25, 2005
JANUARY 20, 2005

EXHIBIT A-2
DESCRIPTION OF
PARCEL 2
RESERVE AT TYSONS CORNER
BEING
A PORTION OF
THE PROPERTY OF
CAMPUS POINT REALTY CORPORATION,
as successor in interest to
CAMPUS POINT REALTY CORPORATION, II
DEED BOOK 11073 PAGE 890
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being a portion of the property described in a conveyance to Campus Point Realty Corporation, successor in interest to Campus Point Realty Corp., II as recorded in Deed Book 11073 at Page 890 all among in the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at a point on the southeasterly corner of 1951 Kidwell LP as recorded in Deed Book 9093 at Page 755 among the aforementioned Land Records, said point also being on the southerly right-of-way line of Interstate Route 495 (variable width right-of-way); thence running with Interstate Route 495 the following four (4) courses and distances

1. South 15°00'02" East, 152.09 feet to a point; thence
2. South 45°45'10" East, 458.38 feet to a point; thence
3. South 24°08'10" East, 256.84 feet to a point; thence
4. South 16°26'52" East, 344.89 feet to a point; thence leaving the aforementioned southerly right-of-way line of Interstate Route 495 and running so as to cross and include a portion of the aforementioned property of Campus Point Realty Corp. II the following nine (9) courses and distances
5. South 73°33'08" West, 169.34 feet to a point; thence
6. North 19°22'46" West, 121.31 feet to a point; thence

35

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Mclean, VA ■ Germantown, MD ■ Leesburg, VA

BK 16927 2231

7. 175.26 feet along the arc of a curve to the left having a radius of 168.00 feet and a chord bearing and distance of North 49°15'56" West, 167.42 feet to a point; thence

8. North 79°09'07" West, 424.76 feet to a point; thence

9. 125.73 feet along the arc of a curve to the left having a radius of 200.00 feet and a chord bearing and distance of South 82°50'21" West, 123.67 feet to a point; thence

10. South 64°49'49" West, 240.41 feet to a point; thence

11. South 27°10'21" West, 46.73 feet to a point; thence

12. North 62°49'39" West, 13.72 feet to a point; thence

13. North 21°00'02" East, 19.05 feet to a point; thence running with Gallows Road, State Route 650 (width varies) and continuing with Kidwell Drive, State Route 736 (width varies) the following seven (7) courses and distances

14. North 51°51'56" East, 20.02 feet to a point; thence

15. South 64°51'20" West, 19.51 feet to a point; thence

16. North 32°24'41" West, 19.61 feet to a point; thence

17. North 11°10'32" East, 133.81 feet to a point of curvature (non-tangent); thence

18. 153.62 feet along the arc of a curve to the left having a radius of 50.00 feet and a chord bearing and distance of North 20°45'35" East, 99.94 feet to a point of reverse curvature; thence

19. 21.16 feet along the arc of a curve to the right having a radius of 25.00 feet and a chord bearing and distance of North 42°56'44" West, 20.54 feet to a point; thence

20. North 11°10'32" East, 636.22 feet to a point; thence leaving Kidwell Drive – Route 736 and running with southerly line of the aforementioned 1951 Kidwell LP the following three (3) courses and distances

21. South 78°19'06" East, 102.25 feet to a point; thence

22. North 73°31'20" East, 167.84 feet to a point; thence

23. South 89°58'51" East, 123.97 to the point of beginning containing 640,580 square feet or 14.70570 acres of land.

X:\Data\6000-6999\6235\Description\Parcel 2 07-28-04.doc

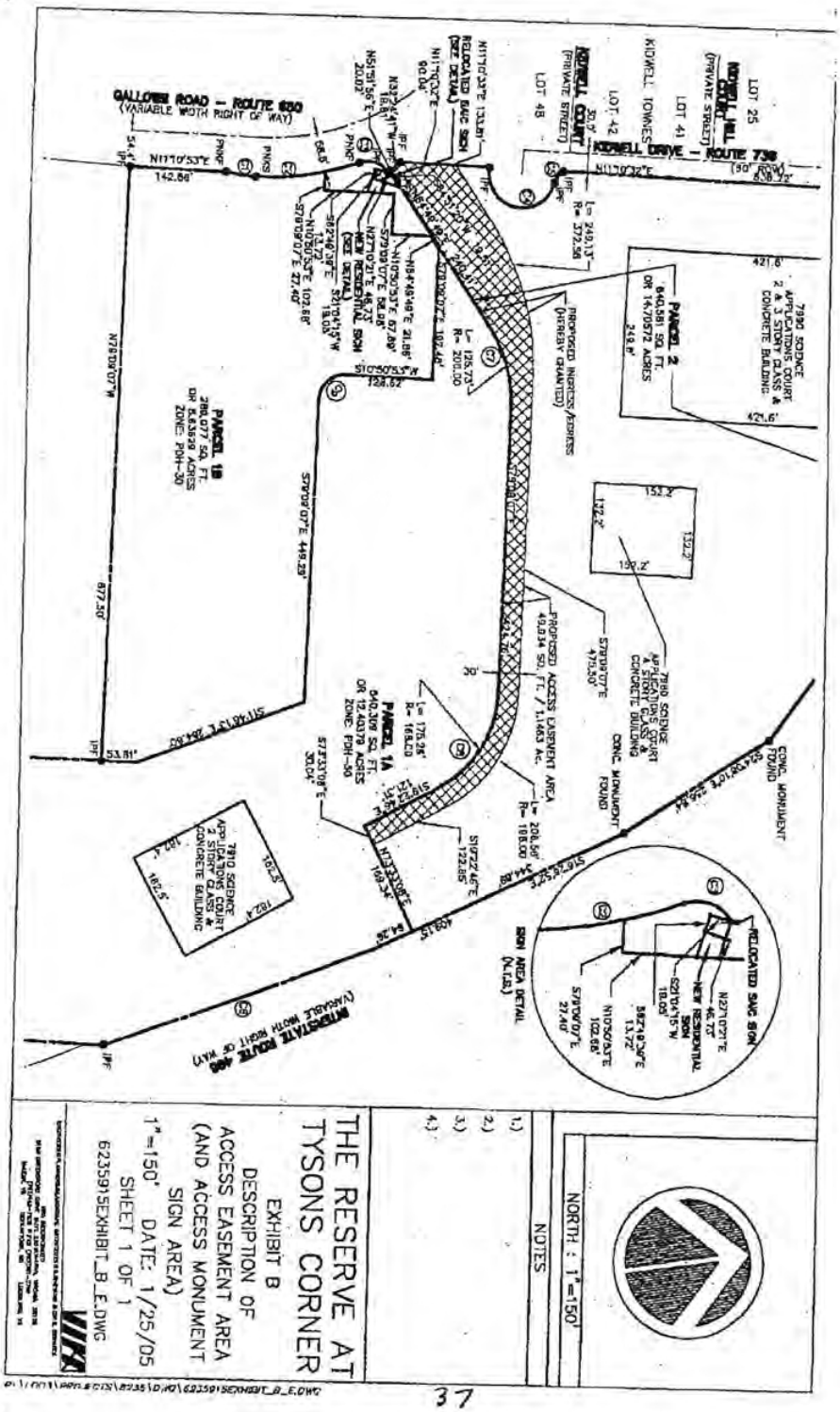
36

VIKA

Plat Attached

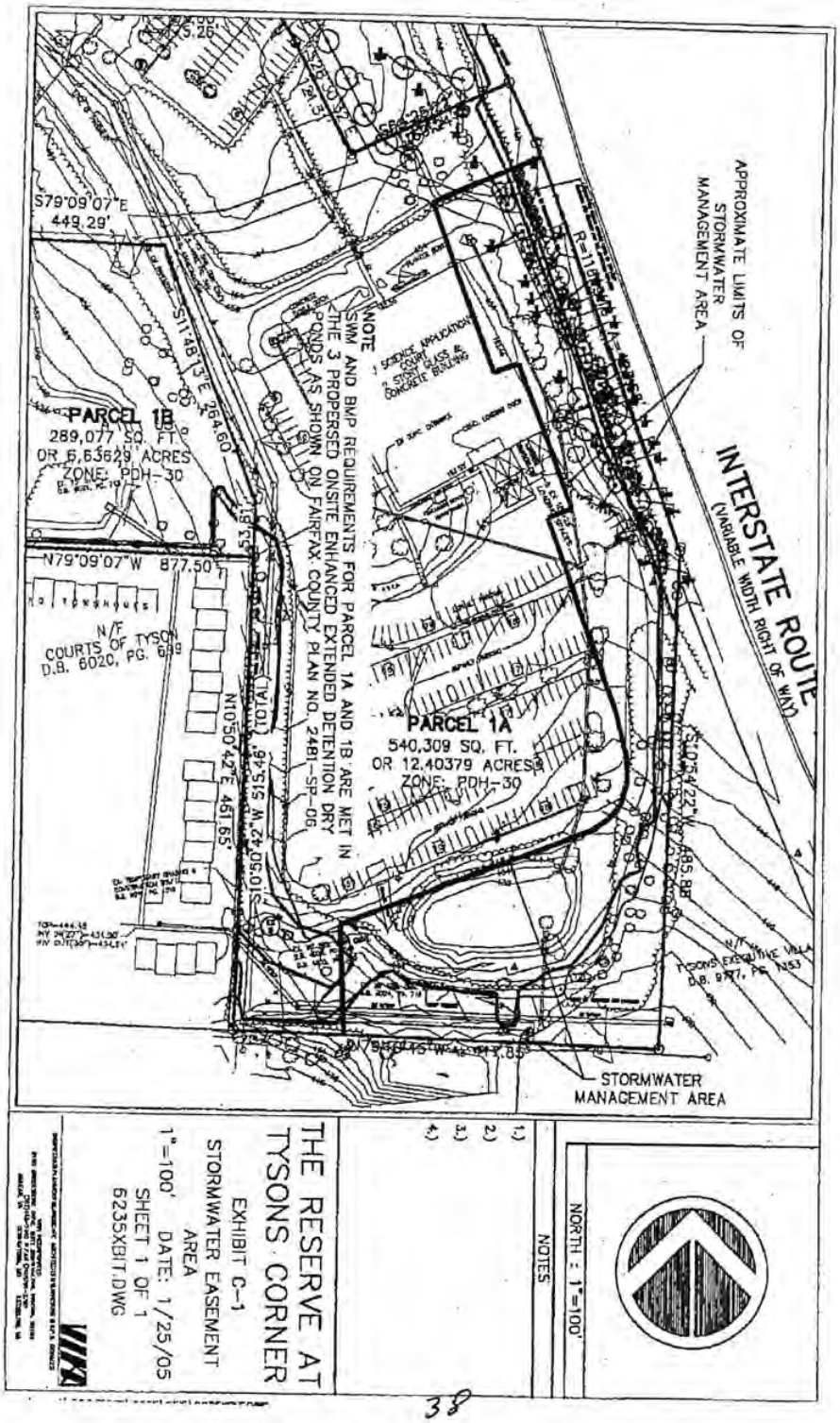
01/28/2005

BK 16927 2232

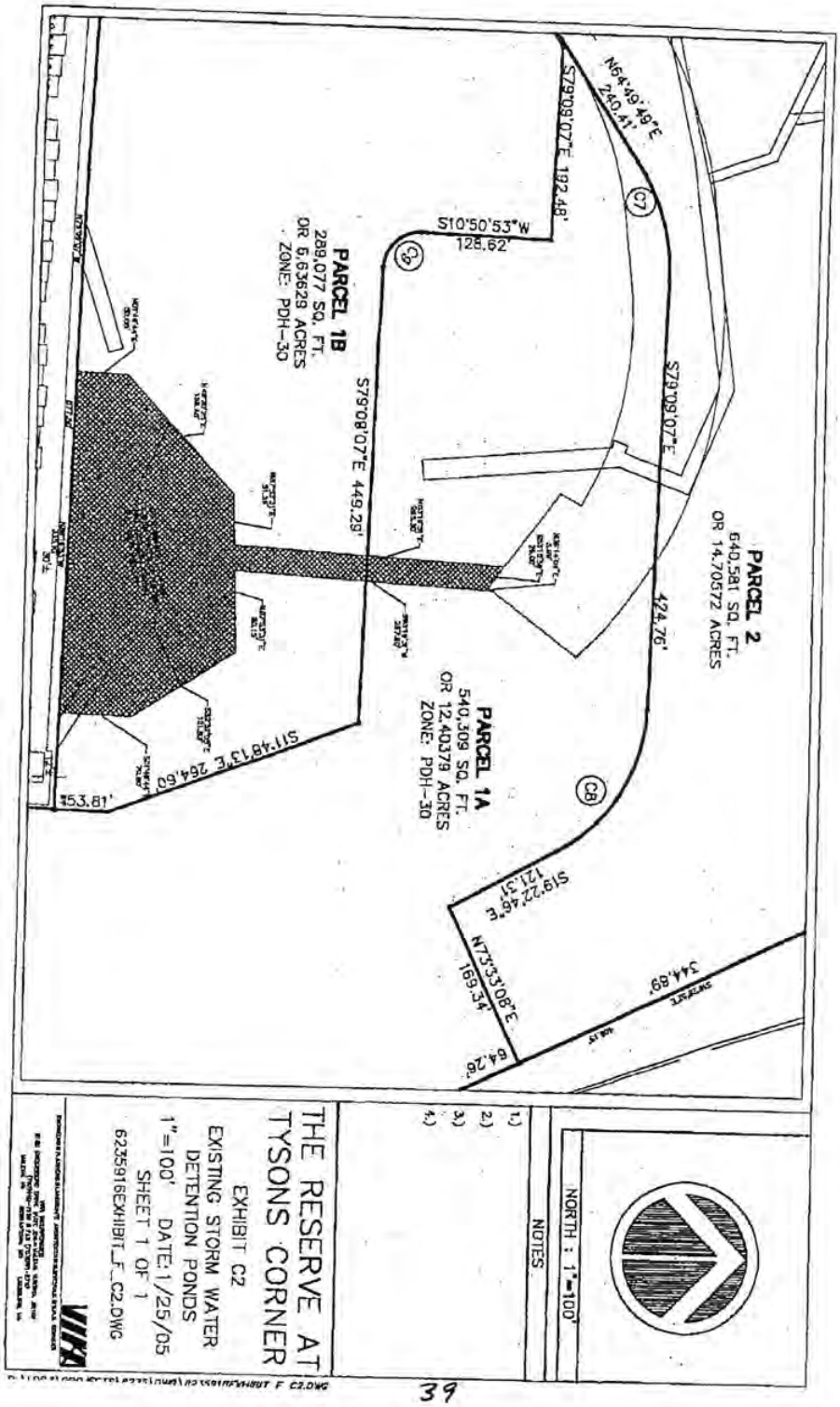


37

BK 16927 2233



BK 16927 2234



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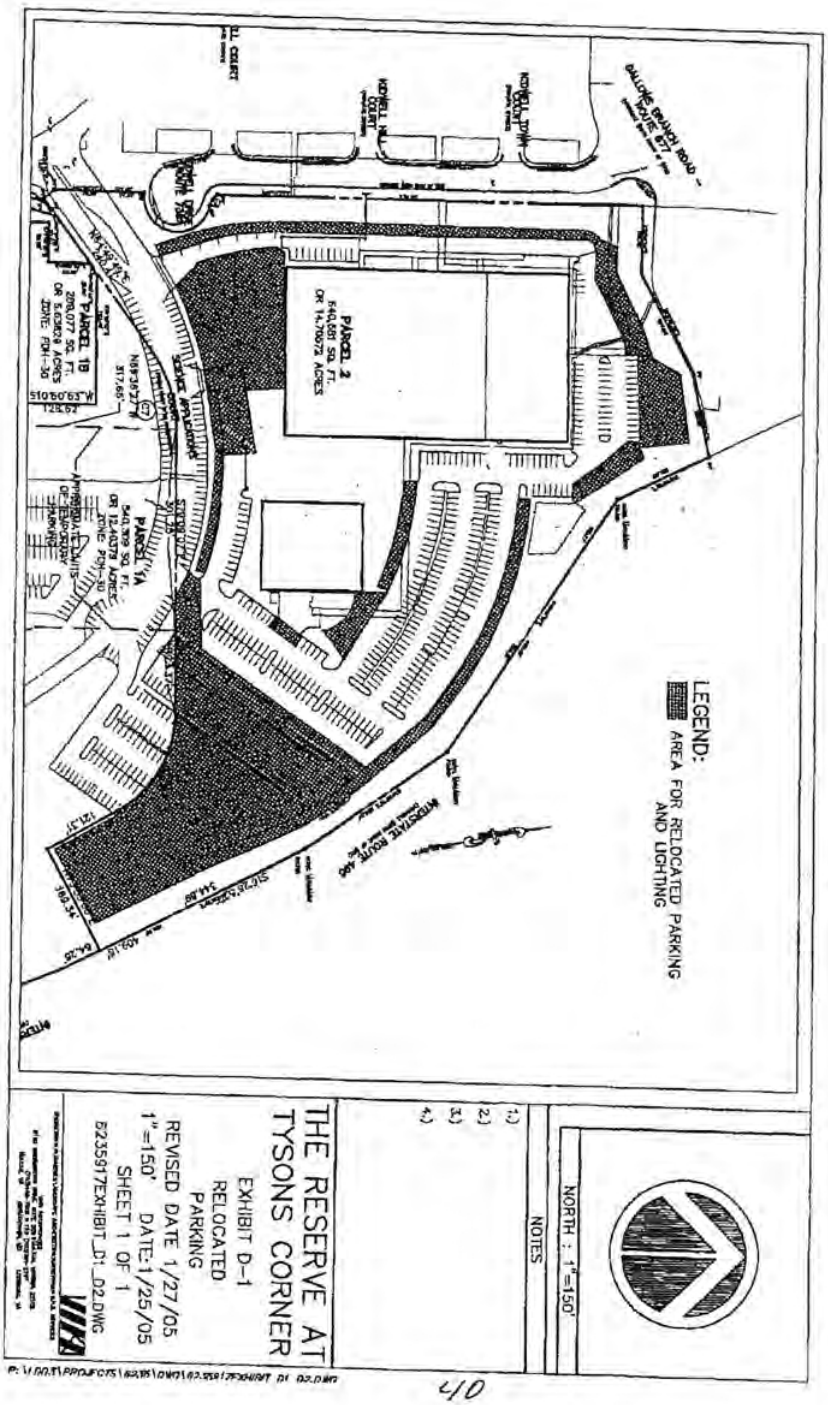
BK 16927 2235



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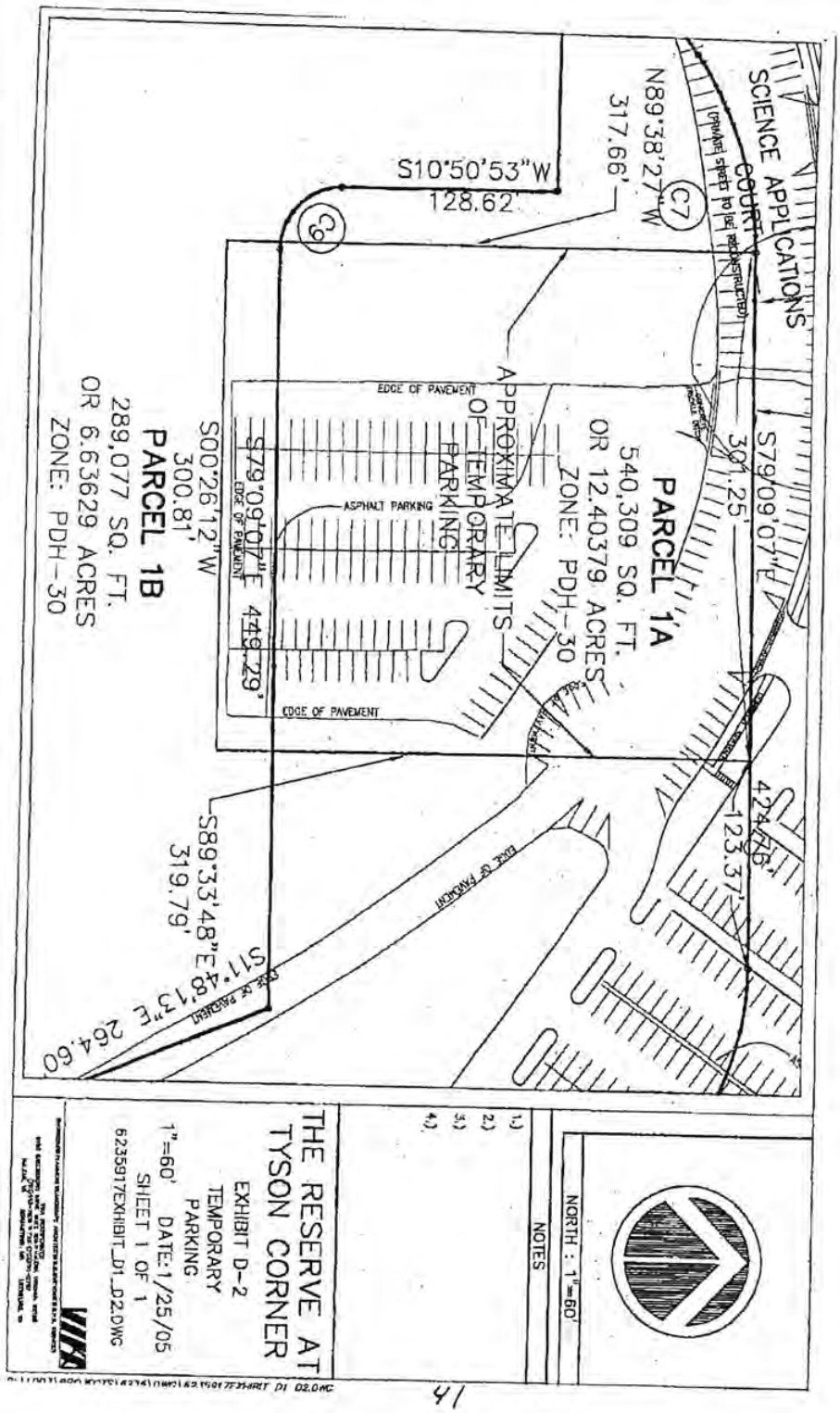
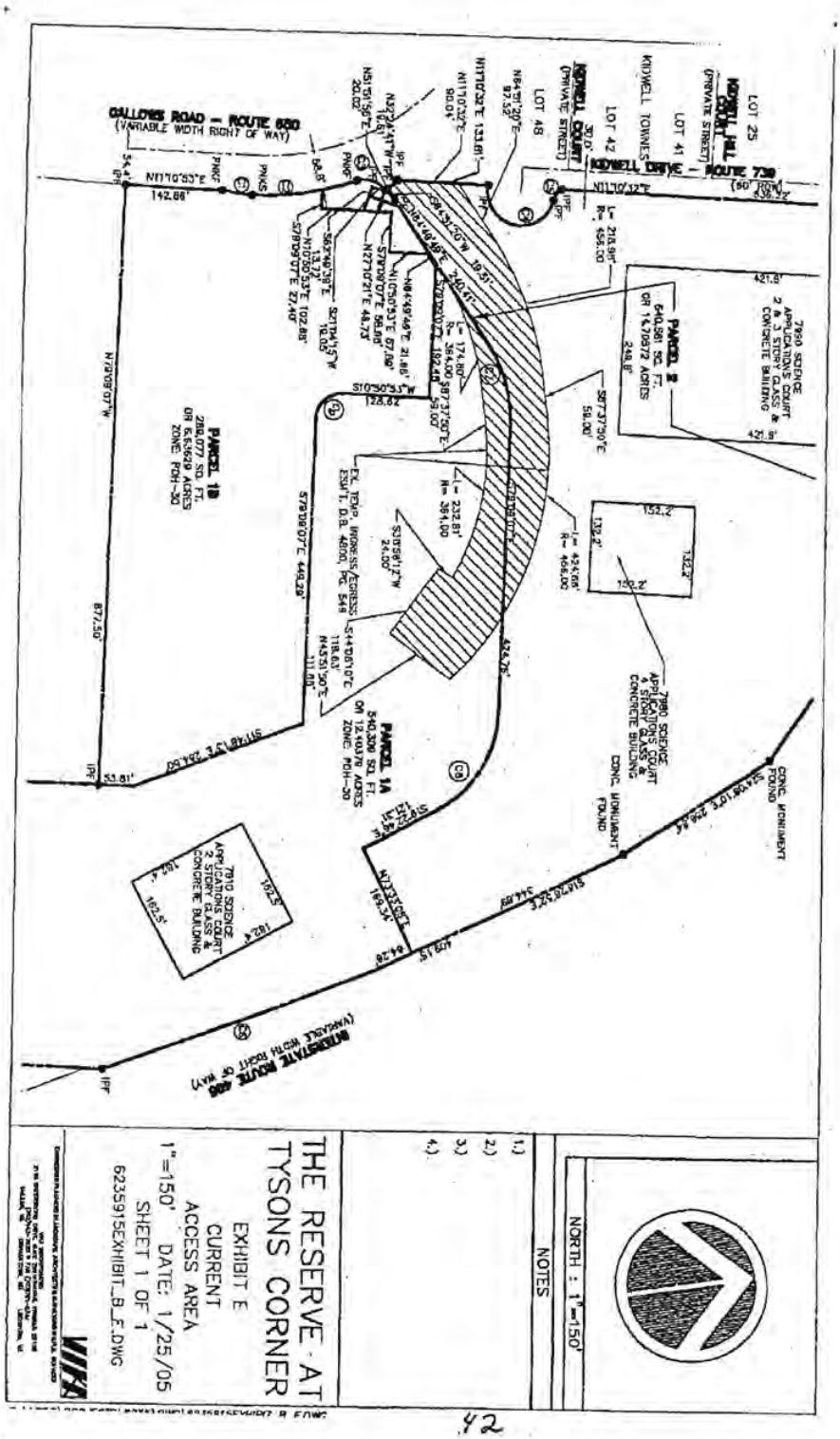

SCIENCE APPLICATIONS COURT
(PRIVATE STREET TO BE RECONSTRUCTED)
N89°38'27"W
317.66'
S10°50'53"W
128.62'
C7
C8
S79°09'07"E
301.25'
PARCEL 1A
540,309 SQ. FT.
OR 12.40379 ACRES
ZONE: PDH-30
EDGE OF PAVEMENT
APPROXIMATE LIMITS OF TEMPORARY PARKING
ASPHALT PARKING
EDGE OF PAVEMENT
S79°09'07"E 449.29'
EDGE OF PAVEMENT
S00°26'12"W
300.81'
PARCEL 1B
289,077 SQ. FT.
OR 6.63629 ACRES
ZONE: PDH-30
S89°33'48"E
319.79'
S11°48'13"E 264.60'
EDGE OF PAVEMENT
424.76'
123.37'
EDGE OF PAVEMENT
NORTH : 1"=60'
NOTES
1.)
2.)
3.)
4.)
THE RESERVE AT TYSON CORNER
EXHIBIT D-2
TEMPORARY PARKING
1"=60'
DATE:1/25/05
SHEET 1 OF 1
6235917EXHIBIT_D1_D2.DWG
VIKA

41

BK 16927 2237



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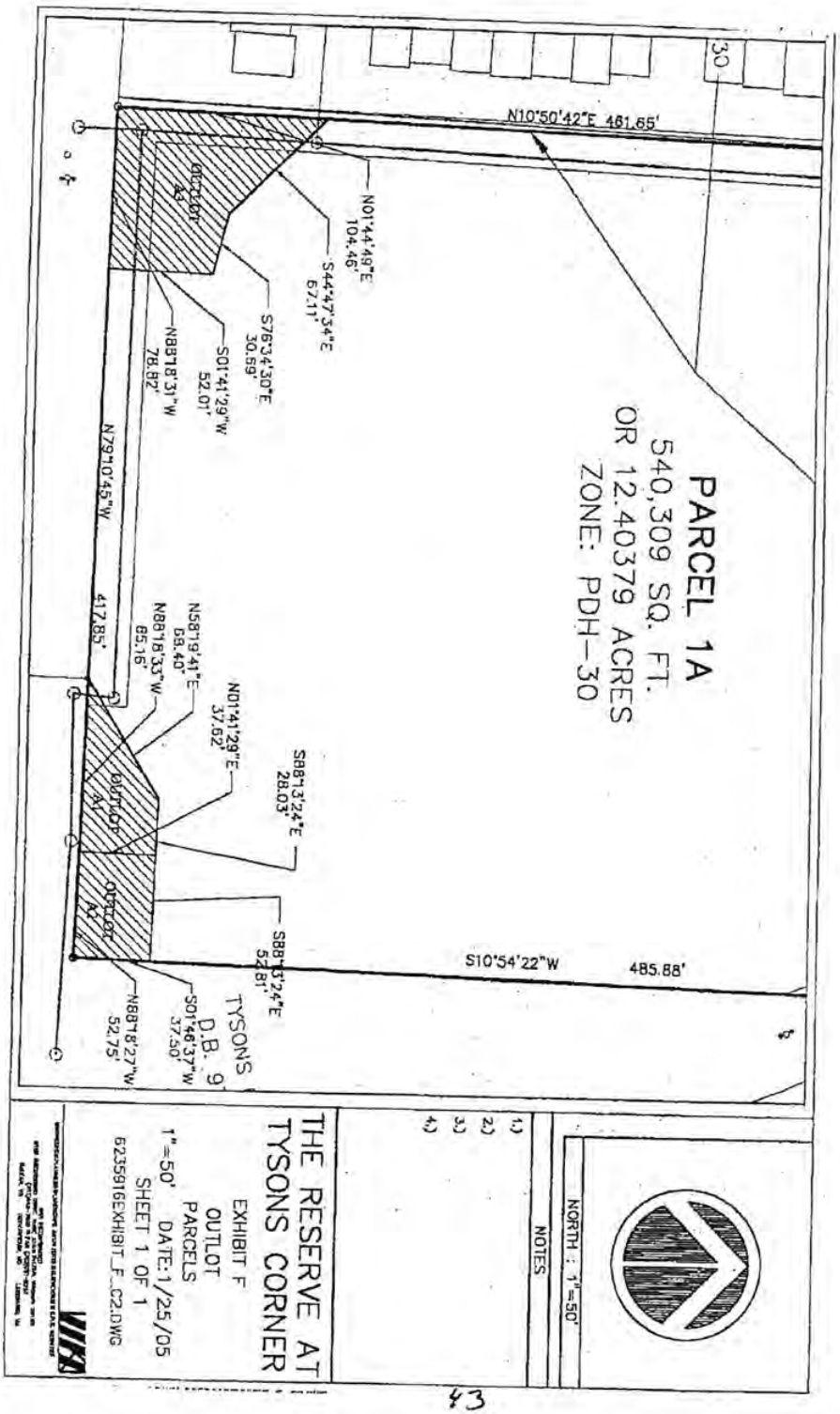
BK 16927 2238



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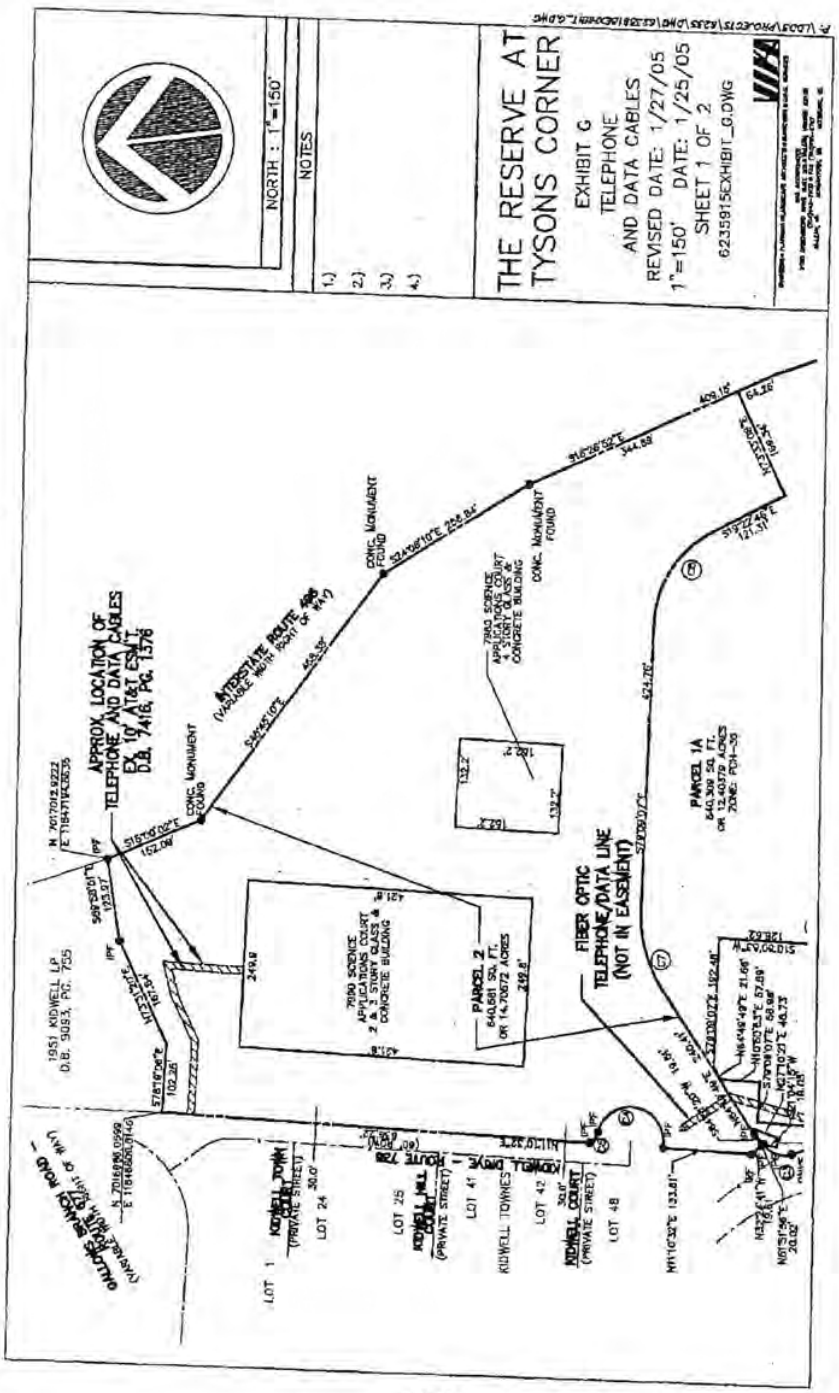
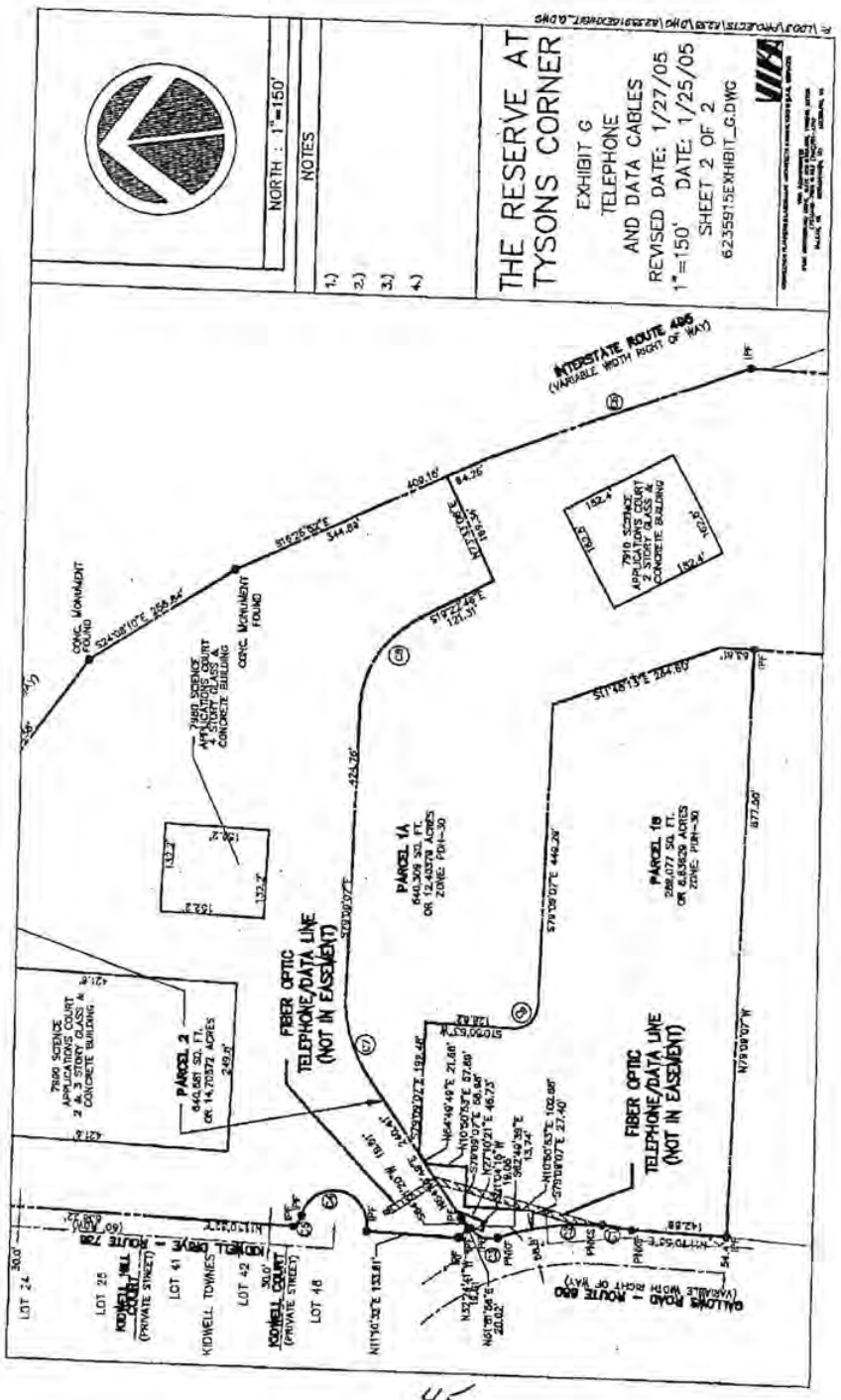


44

BK 16927 2240



45

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

May 30, 2017

Lucia Anna Trigiani, Esq.
MercerTrigiani
112 South Alfred Street
Alexandria, VA 22314

Re: Interpretation for RZ/FDP 2003-PR-008; The Reserve at Tysons Corner; Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6: Parking Obligation

Dear Ms. Trigiani:

This determination is in response to your letter of December 22, 2016, requesting an interpretation of the proffers, as well as the approved development conditions and Conceptual/Final Development Plan (C/FDP), accepted and approved in conjunction with the above-referenced application. As I understand it, you are requesting an interpretation of proffer language relating to parking on an adjacent offsite parcel. Specifically, your request concerns whether the proffers accepted in RZ/FDP 2003-PR-008 create a continuing obligation to provide offsite parking on an adjacent property (aka the "Meridian Property"). This determination is based upon your letter dated December 22, 2016, and Exhibit 1, entitled "Proffers RZ 2003-PR-008" dated March 14, 2004. Copies of this letter and exhibits are attached.

The subject property is located on the east side of Kidwell Drive, south of Leesburg Pike, west of Interstate 495 and south of Science Applications Court. The property is zoned PDH-30 pursuant to the approval of RZ 2003-PR-008 by the Board of Supervisors on March 15, 2004, with the Planning Commission approving FDP 2003-PR-008 on April 7, 2004, subject to proffers and development conditions. These applications permitted development of the property with 92 single-family attached and 478 multi-family dwelling units.

Prior to the approval of RZ/FDP 2003-PR-008, the subject property was part of a larger 33.74-acre property identified as Tax Map Number 39-2 ((1)) Parcel 13. This larger property was originally zoned to the I-P District (now I-3) pursuant to the approval of RZ 75-7-004 by the Board of Supervisors on October 29, 1975, subject to proffers. In 2003, two concurrent applications were submitted by Lincoln Property Company Southwest, Inc., in order to develop a portion of this overall property with the residential development described above. PCA 75-7-004-02 was submitted and approved on the entire 33.74 acres in order to delete 19.04 acres from RZ 75-7-004. RZ/FDP 2003-PR-008 was then approved, subject to proffers, to rezone that same 19.04 acres of land to the PDH-30 District. As the property included in all these applications was under single ownership, the proffers for both applications were signed by the same owner, Campus Point Realty Corporation II. The proffer at issue, however, was approved only in connection with the rezoning

of the 19.04-acre parcel. Subsequent to the approval of RZ/FDP 2003-PR-008, the property subject to RZ/FDP 2003-PR-008 was subdivided from the larger property via approved site plans and record plats.

The proffer at issue with your current request is Proffer 49 of RZ 2003-PR-008, which envisioned the provision of 150 overflow parking spaces on the Meridian Property. Proffer 49 states:

> *Prior to the approval of the final site plan on the Application Property[1], the Applicant shall provide evidence that a parking agreement is in place with the owners of the adjacent I-3 parcel identified as Tax Map 39-2 ((1)) part 13, permitting overflow parking from the Application Property to utilize parking facilities on the I-3 parcel. A minimum of 150 overflow parking spaces shall be available to all residents of the Application Property during non-business hours on weekdays (after 6:00 pm) and on weekends. This parking agreement shall be recorded in the land records of Fairfax County.*

It appears, through submitted plans for the subject property, that compliance with Proffer 49 was demonstrated to Fairfax County through the recordation of a parking agreement in the land records of Fairfax County. You state that you believe the Declaration of Covenants, Restrictions and Easements recorded on January 28, 2005 in Deed Book 16927 at Page 2195 in the Fairfax County land records is the document meant to satisfy Proffer 49—specifically, Section 12.17 of the Declaration of Covenants, Restrictions and Easements as it relates to Overflow Parking Spaces.

The 150 overflow parking spaces were to be located offsite from the 19.04 acres zoned PDH-30, on the portion which retained its I-3 zoning - the Meridian Property (Tax Map Numbers 39-2 ((1)) 13D and 13E), which is currently owned by Tysons Enterprise West LLC and Tyson Enterprise East LLC, and is developed with two existing office/data center buildings and surface parking. In accordance with PCA 75-7-003-3 and SE 2015-PR-021, the Meridian Property will be redeveloped, in part, with a full-size athletic field and parking garage. You now state that the Reserve at Tysons Corner Association Board has been notified that the prior owner of the Meridian Property seeks to terminate the parking agreement with the Association.

In accordance with Section 18-201 of the Zoning Ordinance ("Ordinance"), Board of Supervisors approval of a rezoning application constitutes a permanent (unless further amended) amendment to the Zoning Map. Further, per Section 18-204, any proffered conditions submitted as part of the rezoning application and accepted by the Board of Supervisors become "part of the zoning regulations applicable to the subject property in question, unless subsequently changed by an amendment to the Zoning Map." Therefore, an approved rezoning and accepted proffers become a part of the Zoning map only for the subject property included in the application, in this case the 19.04 acres described in the application for RZ/FDP 2003-PR-008. Proffer 49 was a commitment

---

[1] Proffer #1 associated with RZ 2003-PR-008 states that *"Development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plan (CDP/FDP) prepared by VIKA Incorporated, consisting of thirteen (13) sheets dated January 17, 2003 as revised through March 11, 2004..."* As shown on Sheet 2 of the CDP/FDP, the portion of the property rezoned to the PDH-30 District per RZ 2003-PR-008 contains 19.04 acres, which is the Application Property referenced in Proffer 49. Please refer to Appendix 1 depicting the 19.04 acres subject to RZ 2003-PR-008, which is from the Staff Report published as part of this rezoning application.

that required the demonstration of the provision of at least 150 overflow parking spaces on the offsite Meridian Property, which was to be secured via a parking agreement to be recorded in the land records. As noted above, this agreement was recorded in Deed Book 16927 at Page 2195 prior to the approval of the site plan, as required.

Proffer 49 specifically required that the overflow parking spaces on an offsite parcel were to be implemented by a private agreement. As noted above, accepted proffers become part of the Zoning map for the property subject to the rezoning only and are not enforceable against an offsite property. By referring to the Meridian Property as the "adjacent I-3 parcel," the proffer language makes clear that that property was not part of the Application property subject to the proffer.

Based on the foregoing, it is my determination that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008. Although Proffer 49 remains in effect, a proffer violation cannot be enforced on Meridian because the proffer does not apply to them. The proffer can be removed only through a Proffered Condition Amendment (PCA) application approved by the Board of Supervisors. Information on how to apply for a PCA can be found on our website at: http://www.fairfaxcounty.gov/dpz/zoning/applications/.

The determination has been made in my capacity as duly authorized agent of the Zoning Administrator and address only those issues discussed herein and not any separately recorded private agreements. If you have any questions regarding this interpretation, please feel free to contact Kelly M. Atkinson at (703) 324-1290.

Sincerely,

Tracy D. Strunk, AICP, Director
Zoning Evaluation Division, DPZ

N:\Interpretations\Reserve At Tysons Corner RZ 2003-PR-008\2017-02-22 Proffer Interpretation Response - Reserve At Tysons Corner RZ 2003-PR-008.Doc

Attachments: A/S

Cc: Linda Smyth, Supervisor, Providence District
Phillip Niedzielski-Eichner, Planning Commissioner, Providence District
Laura Gori, Esq., Assistant County Attorney, Office of the County Attorney
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ellie Codding, Acting Director, Code Development and Compliance Division, LDS
Ken Williams, Manager, Site and Technical Services, LDS
Michael Davis, Section Chief for Site Analysis, DOT
Suzanne Wright, Chief, Special Projects/Applications Management Branch, ZED, DPZ
Tysons Enterprise West, LLC, Owner, Tax Map 39-2 ((1)) 13D
Tyson Enterprise East, LLC, Owner, Tax Map 39-2 ((1)) 13E
File: RZ 2003-PR-008, PCA 75-7-004-03 and SE 2015-PR-021, PI 17 01 001, Imaging

Attachment 1

MERCERTRIGIANI

Lucia Anna Trigiani
Pia.Trigiani@MercerTrigiani.com

Direct Dial: 703-837-5008
Direct Fax: 703-837-5018

February 17, 2017

VIA OVERNIGHT MAIL

Suzanne Wright, Branch Chief
Zoning Evaluation Division, Fairfax County
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035-55055

Re: Proffer RZ 2003-PR-008 dated March 14, 2004--
Zoning Interpretation Request – Response Letter

Dear Ms. Wright:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"), the entity responsible for the operation and administration of The Reserve at Tysons residential community located in Fairfax County, Virginia ("The Reserve Property").

As you are aware, we submitted a Zoning Interpretation Request to Barbara Berlin on December 22, 2016 on behalf of the Association relating to overflow parking requirements contemplated in Proffer RZ 2003-PR-008 dated March 14, 2004 ("Conditions"). A copy of that letter is enclosed. *Capitalized terms in this letter which are not defined have the meanings contained in our December 22nd letter.*

Since that time, we understand that Brian Winterhalter at Cooley, counsel for Tysons Enterprise East, LLC and Tysons Enterprise West, LLC ("Tysons Enterprise") – the owner of the adjacent Meridian Property, and David Gill at McGuire Woods, counsel for The Boro I Developer, L.P. and The Boro I-C Developer L.L.C. ("Boro Developer") – the developer of the Meridian Property, have submitted letters to you addressing the Association's request for a proffer interpretation.

In their letters, Mr. Winterhalter and Mr. Gill assert, among other things, that Fairfax County lacks authority to issue a proffer interpretation binding the Meridian Property because the Conditions were associated with the redevelopment of The Reserve Property and only bind the property which is part of The Reserve. Messrs. Winterhalter and Gill also maintain that the Meridian Property is subject to its own set of proffers, which supersede any and all prior proffers to which the Meridian Property may have been previously subject.

In response to the arguments presented by Messrs. Winterhalter and Gill, we offer the following:

- **Authority**. The Director of the Zoning Evaluation ("Division") has absolute statutory authority pursuant to the Zoning Ordinance to provide interpretations *of the Zoning Ordinance*, which **includes** Fairfax County accepted conditions for a property. In this instance, the

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EXHIBIT
tabbies 5

Association has the right to request an interpretation of the Conditions and the Division has authority to interpret the Conditions, *without reservation.*

- **Standard of Review.** In interpreting the Conditions, the Division must rely on the ***precise*** wording of the pertinent proffer – in this case, Proffer 49, and *must consider the record of the application.* In other words, the purpose of the proffer must be considered, taking into account *all relevant details related to the application* and the basis underlying the proffer with those details in mind.

- **Record of the Application.** Lincoln Property Company Southwest, Inc. ("Lincoln Property") applied for rezoning of The Reserve Property – as contract purchaser of The Reserve Property, and in conjunction with the rezoning, the Conditions were established. **Both** Lincoln Property and Campus Point Realty Corporation II ("Campus Point") - the owner of both the Reserve Property ***and the Meridian Property*** at that time, executed the Conditions.

Also, while the Conditions were established in conjunction with Lincoln Property's application for the rezoning of The Reserve property – the contract purchaser at the time ("Applicant"), a concurrent application was submitted to amend the development plan which encompassed *both* The Reserve Property and the Meridian Property. As a result of that concurrent application, it appears that the Meridian Property acquired additional FAR to accommodate future expansion. In other words, the Meridian Property benefitted in the rezoning of The Reserve Property. The zoning and rezoning of the two properties was and continues to be intertwined.

- **SAIC Declaration.** Purportedly, to satisfy Proffer 49, the predecessor-in-title to ***both*** ***The Reserve Property and Meridian Property*** – Campus Point, recorded the SAIC Declaration among the Land Records encumbering The Reserve Property and the Meridian Property. Section 12.17 of the SAIC Declaration recites the language in Proffer 49, with one exception – Section 12.17 incorporates a right for the owner of the Meridian Property to terminate the overflow parking rights unilaterally.

While Mr. Gill maintains that the SAIC Declaration cannot be considered by the Division because it is a private contract between the parties, the SAIC Declaration is purportedly the *very instrument which was intended to satisfy the Proffer 49*, and is, consequently, pertinent to the proffer inquiry. The termination language is unquestionably in direct contravention to Proffer 49, and therefore, is null and void. The remainder of the SAIC Declaration – *including the remainder of Section 12.17 which requires overflow parking in accordance with Proffer 49*, survives pursuant to the severability clause in Section 12.6 of the SAIC Declaration, and encumbers both The Reserve Property and the Meridian Property.

- **Adverse Impact on Zoning Compliance.** The improper *unilateral* termination by Tysons Enterprise of the unqualified proffered right for The Reserve residents to utilize overflow parking on the Meridian Property would render the Meridian Property to be in noncompliance with Proffer 49, through no fault of, action by or omission of the Association or its members.

We believe it is worth noting the Association has consistently been told and has been receptive to working with all shareholders to address parking. Even after submitting the interpretation request, we sent a letter to William Rothschild, also counsel for Tysons Enterprise (perhaps in conjunction with the purchase of the Meridian Property), advising that our client is willing to engage in a dialogue regarding these matters and to accommodate Tysons Enterprise to the extent possible and permissible. While Mr. Rothschild did telephone us acknowledging receipt of our letter in mid-January, we have had no one representing Tysons Enterprise reach out to us since then in an effort to develop a working plan. We find this regrettable.

For the foregoing reasons, we respectfully request that the Division proceed with its determination, and interpret the matter in favor of the Association and the many individuals who reside in The Reserve Community, permitting them to continue to utilize at least 150 parking overflow spaces on the Meridian Property as Proffer 49 contemplates and the SAIC Declaration mandates.

To issue an unfavorable determination to our client - especially in light of the proposed construction of a ballfield, the operation of which will undoubtedly result in increased competition for street parking, will profoundly and negatively impact hundreds of residents in The Reserve, many of whom have been supportive of the ballfield, divesting them of their property rights and potentially impacting their property values.

If you have any questions, please contact Janie Rhoads or me directly. Your consideration of this matter is greatly appreciated.

Very truly yours,

Lucia Anna Trigiani

LAT/jlr
Enclosure
cc: Supervisor Linda Smyth
Barbara C. Berlin, Director Evaluation Division Department of Planning and Zoning
Members, Board of Directors, The Reserve at Tysons Corner Association, Inc.
Janie L. Rhoads, Attorney at Law
#133278

Mr. Marshall had filed the necessary notices showing that at least 25 adjacent and/or interested parties had been notified of the date and hour of this public hearing and he proceeded to present his case.

Following the public hearing, Kristen Abrahamson, Branch Chief, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff and Planning Commission recommendations.

Chairman Connolly relinquished the Chair to Vice-Chairman Bulova and moved:

- Amendment of the Zoning Ordinance, as it applies to the property which is the subject of Rezoning Application RZ 2003-SP-044, from the R-1 District to the R-3 District, subject to the proffers dated February 10, 2004.
- Modification of the requirement for a sidewalk along Silverbrook Road to permit an eight-foot wide asphalt trail.

Vice-Chairman Bulova seconded the motion and it carried by a vote of seven, Supervisor DuBois, Supervisor Gross, Supervisor Hudgins, Supervisor Kauffman, Supervisor Smyth, Chairman Connolly, and Vice-Chairman Bulova voting "AYE," Supervisor Frey and Supervisor Hyland being out of the room, Supervisor McConnell being absent.

Vice-Chairman Bulova returned the gavel to Chairman Connolly.

ADDITIONAL BOARD MATTER

62. **DISCLOSURE BY CHAIRMAN CONNOLLY REGARDING REZONING APPLICATION RZ 2003-PR-008 AND PROFFERED CONDITION AMENDMENT APPLICATION PCA 75-7-004-2 (PROVIDENCE DISTRICT)** (4:33 p.m.)

Chairman Connolly relinquished the Chair to Vice-Chairman Bulova and said that the next two applications on the agenda involve property owned by Campus Point Realty Corporation II, a closely related business affiliate of his employer, Science Applications International Corporation. He said that because consideration of the applications will constitute a transaction having application solely to a property or business in which he has a personal interest, he will disqualify himself and shall not vote or in any manner act on behalf of the Board in this transaction, including participation in these hearings.

(NOTE: Later in the meeting, the Board held this public hearing. See Clerk's Summary Item CL#63.)

AGENDA ITEMS

63. **4 P.M. – PH ON REZONING APPLICATION RZ 2003-PR-008 AND PROFFERED CONDITION AMENDMENT APPLICATION PCA 75-7-004-2 (LINCOLN PROPERTY COMPANY, INCORPORATED) (PROVIDENCE DISTRICT)** (4:34 p.m.)

(O) (NOTE: Earlier in the meeting, Chairman Connolly recused himself from this case. See Clerk's Summary Item CL#62.)

The applications are located on the east side of Gallows Road and on the north and south sides of Science Applications Court, Tax Map 39-2 ((1)) 13 pt.

Ms. Elizabeth Baker reaffirmed the validity of the affidavit for the record.

Ms. Baker had filed the necessary notices showing that at least 25 adjacent and/or interested parties had been notified of the date and hour of this public hearing and she proceeded to present her case.

Following the public hearing, which included testimony by seven speakers, Cathy Belgin, Senior Staff Coordinator, Zoning Evaluation Division, Department of Planning and Zoning, presented the staff and Planning Commission recommendations.

Discussion ensued with input from Barbara A. Byron, Director, Zoning Evaluation Division, Department of Planning and Zoning.

Supervisor Smyth moved approval of Proffered Condition Amendment Application PCA 75-7-004-2, subject to the proffers dated March 11, 2004. Supervisor Kauffman seconded the motion and it carried by a vote of seven, Supervisor Hyland and Chairman Connolly being out of the room, Supervisor McConnell being absent.

Supervisor Smyth further moved:

- Amendment of the Zoning Ordinance, as it applies to the property which is the subject of Rezoning Application RZ 2003-PR-008, from the I-3 and HC Districts to the PDH-30 and HC Districts, subject to the proffers dated March 14, 2004.

- Modification of the transitional screening requirement along the southeastern and southern boundaries where the multi-family units abuts the Courts of Tysons and Tysons Executive Village communities in favor of that shown on the CDP/FDP.

- Waiver of the barrier requirement along the southeastern and southern boundaries where the multi-family housing abuts the Courts of Tysons and Tysons Executive Village communities in favor of that shown on the CDP/FDP.

- Modification of the non-core streetscape design along Gallows Road for the Tysons Urban Center in favor of that shown on the CDP/FDP.

- Waiver of the 200 square foot privacy yard requirement for single family attached homes.

- Modification of the loading space requirement for multi-family dwellings in favor of one loading space provided for each of the buildings (two total spaces).

- Waiver of the 600-foot maximum private street length requirement.

Supervisor Kauffman seconded the motion and it carried by a vote of seven, Supervisor DuBois, Supervisor Frey, Supervisor Gross, Supervisor Hudgins, Supervisor Kauffman, Supervisor Smyth, and Vice-Chairman Bulova voting "AYE," Supervisor Hyland and Chairman Connolly being out of the room, Supervisor McConnell being absent.

ADDITIONAL BOARD MATTER

64. **AGENDA FOR BUDGET WORKSHOP** (5:42 p.m.)

Vice-Chairman Bulova distributed the agenda for the Budget Workshop scheduled for March 22, 2004.

Lucia Anna Trigiani
Pia.Trigiani@MercerTrigiani.com

MERCERTRIGIANI

Direct Dial (703) 837-5008
Direct Fax: (703) 837-5018

June 28, 2017

VIA HAND DELIVERY

Clerk, Board of Zoning Appeals
Zoning Evaluation Division
Department of Planning and Zoning
12055 Government Center Parkway, 801
Fairfax, Virginia 22035

Re: The Reserve at Tysons Corner Association, Inc. --
Notice of Appeal – Zoning Determination for RZ/FDP 2003-PR-008
The Reserve at Tysons Corner
Tax Map Numbers 39-2 ((56)) A1, B3, 1-92, 39-2 ((1)) 13A5 and A6

Dear Clerk of the Board of Zoning Appeals:

This firm represents The Reserve at Tysons Corner Association, Inc. ("Association"), the Virginia nonstock corporation entity which is responsible for the operation and administration of The Reserve at Tysons community in Fairfax, Virginia.

The Reserve at Tysons community consists of 570 homes – 478 apartments owned by Simpson Property Group, LP and 92 townhomes which are owned individually and are governed by the Townhouse at the Reserve Homeowners Association, Inc. ("Townhouse Association").

Pursuant to Section 18-300 et seq. of the Fairfax County Zoning Ordinance ("Ordinance"), this letter serves as our Notice of Appeal to the Zoning Determination rendered in response to our Zoning Interpretation request submitted on December 22, 2016 ("Interpretation Request"). A copy of the Interpretation Request is enclosed as **Exhibit 1**. ***Capitalized terms used in this letter have the meanings set forth in in the Interpretation Request.***

The Interpretation Request requested an interpretation of Proffer 49 of the Conditions. A copy of the Conditions is enclosed as **Exhibit 2**. A copy of the SAIC Declaration is enclosed as **Exhibit 3**. In summary, on behalf of the Association, we requested whether the owner of the Meridian Property is entitled to *unilaterally* terminate the rights of individuals residing on the Reserve Property to the minimum of 150 overflow parking spaces required to be located on the Meridian Property for the use of Reserve Property residents pursuant to Proffer 49 of the Conditions, which is *unqualified* in light of its permanency.

On May 30, 2017 – ***six months after the Zoning Interpretation was submitted***, Tracy D. Strunk, AICP, Director of the Zoning Evaluation Division of the Department of Planning and Zoning for Fairfax County, Virginia issued a Zoning Determination on behalf of the Zoning Administrator and in response to our Interpretation Request. A copy of the Zoning Determination is enclosed as **Exhibit 4**. In short, the Zoning Determination holds that Proffer 49 remains in effect for the 19.04 acres included in RZ 2003-PR-008 – which comprises The Reserve Property, but is not enforceable against Meridian.

Pursuant to Section 18-301 of the Ordinance, any person aggrieved by any decision of the Zoning Administrator relating to a proffered condition may appeal to the Board of Supervisors as provided in Paragraph 10 of Section 18-204 of the Ordinance. Paragraph 10 of Section 18-204 of the Ordinance provides that such appeal shall specify the grounds on which the party is aggrieved and the basis for the appeal.

The Association is aggrieved by the Zoning Determination because, *among other things*:

- The Zoning Determination renders the Reserve Property in non-compliance with Proffer 49 of the Conditions – through no fault of the Association or any of the members or residents who reside at the Reserve Property, *and with no means of recourse or redress*.

- Members of the Association and residents in the community bear significant hardship without access to the overflow parking spaces which are clearly contemplated in and unequivocally required by the Conditions to be located on the Meridian Property.

- The resulting zoning non-compliance and lack of adequate parking have a negative impact on property values and the ability to sell property located in the Reserve at Tysons community.

This forced non-compliance and the significant hardships imposed on Association members and Reserve Property residents are the direct result of the Zoning Determination which holds that the proffers remain in effect, but are unenforceable. ***This determination is irreconcilable and inconsistent***. The Zoning Interpretation has a negative impact on property values and the sale of property in The Reserve at Tysons community. The foregoing matters serve as the primary basis of this Notice of Appeal, as do the arguments raised in our Interpretation Request and letter to Suzanne Wright dated February 17, 2017 ("Response Letter"), a copy of which is enclosed as **Exhibit 5**.

Pursuant to Section 18-106 of the Ordinance, we have provided a copy of this Notice of Appeal and enclosures and a check in the amount of $600.00 to the Zoning Administrator. Please contact my colleague, Janie Rhoads, or me with questions or if additional information is needed. We look forward to hearing from you.

Very truly yours,

Lucia Anna Trigiani

LAT/mch
cc: Zoning Administrator
Members, Board of Directors
Janie L. Rhoads, Attorney at Law
Enclosures: Interpretation Request (**Exhibit 1**); Conditions (**Exhibit 2**); SAIC Declaration (**Exhibit 3**); Zoning Determination (**Exhibit 4**); Response Letter (**Exhibit 5**)

#138498

Board Agenda Item
February 20, 2018

INFORMATION - 1

Economic Success Strategic Plan Performance Measures & Indicators, Actions Tracker, and Fall 2017 Update

In 2015, the Fairfax County Board of Supervisors (Board) adopted "The Strategic Plan to Facilitate the Economic Success of Fairfax County" (Plan). The Plan envisions an economically strong and sustainable Fairfax County and focuses on four fundamental themes: People, Places, Employment, and Governance. Each of the four themes contains a vision of what we aspire to and the related fundamental strategies. Since its adoption, County staff, in partnership with community stakeholders, has been working on the implementation of the actions prescribed within the plan's six goals:

1. Further Diversify Our Economy
2. Create Places Where People Want To Be
3. Improve the Speed, Consistency, and Predictability of the Development Review Process
4. Invest in Natural and Physical infrastructure
5. Achieve Economic Success Through Education and Social Equity
6. Increase Agility of County Government

Today, staff is presenting the annual update of this plan, which includes the Fall 2017 Update https://www.fairfaxcounty.gov/economic-success/sites/economic-success/files/assets/documents/pdf/economic-success-fall-2017-report.pdf, the Actions Tracker, and the Economic Success Indicators and Performance Measures (https://www.fairfaxcounty.gov/economic-success/indicators-performance-measures).

Fall 2017 Update and Actions Tracker
The Fall Update and Actions Tracker were presented to the Economic Advisory Commission (EAC) on October 31, 2017. The Indicators and Performance Measures were first presented to the Economic Advisory Commission Implementation Committee (EAC-IC) on December 8, 2017, and later to the EAC on January 16, 2018. All are available to the public and can be accessed on the County website through the Economic Success Plan webpage.

Like the Fall 2016 Update, the Fall 2017 Update has a variety of stories and highlights that demonstrate the fundamental themes and strategies of the Plan in action. In addition, this year staff created an Actions Tracker (page 37) which provides an update on all 125 actions detailed in the Plan, and provides a progress description for each.

Board Agenda Item
February 20, 2018

Economic Success Indicators and Performance Measures
The development of indicators and performance measures for the Plan began in 2016. Throughout 2016, the County worked with Virginia Tech's School of Public and International Affairs (SPIA) to develop a set of meaningful indicators through extensive engagement with a range of internal and external stakeholders. The result of the planning effort produced the Plan's 35 indicators of success that were approved by the EAC-IC in the spring of 2017.

Staff from the Office of the County Executive, in coordination with Department of Information Technology, Department of Management and Budget, Department of Planning and Zoning, Department of Tax Administration, Fairfax County Park Authority, Health Department, Land Development Services, Neighborhood and Community Services, Office of Public Private Partnerships, and Office of Public Affairs worked together to create the visual representation of the measures. The team compiled the data through a combination of publicly available sources, internal data and maps, and created an interactive, dynamic online platform for staff, the Board, and partner stakeholders to reference for progress and direction.

FISCAL IMPACT:
None

ENCLOSED DOCUMENT:
Attachment 1: Economic Success Strategic Plan Fall 2017 Update – available online at: https://www.fairfaxcounty.gov/economic-success/sites/economic-success/files/assets/documents/pdf/economic-success-fall-2017-report.pdf
Attachment 2: Economic Success Strategic Plan Indicators and Performance Measures Online Platform – available online at: https://www.fairfaxcounty.gov/economic-success/indicators-performance-measures

STAFF:
Robert A. Stalzer, Deputy County Executive
Eta Davis, Economic Initiatives Coordinator, Office of the County Executive

Board Agenda Item
February 20, 2018

INFORMATION - 2

Recognition of Comprehensive Annual Financial Reports and the Annual Budget by the Government Finance Officers Association; Performance Measurement Program by the International City/County Managers Association

The Government Finance Officers Association of the U.S. and Canada (GFOA) has again recognized the superior quality of financial information Fairfax County makes available to the public. The County's Comprehensive Financial Report (CAFR), the Integrated Sewer System's CAFR, the CAFRs for all three Fairfax County retirements systems and the County's Annual Budget all received the GFOA's highest forms of recognition.

The County's CAFR was awarded the Certificate of Achievement for Excellence in Financial Reporting for the thirty-ninth year and the Integrated Sewer System received this certificate for the fourteenth consecutive year. The Certificate of Achievement for Excellence in Financial Reporting was also awarded to all three Fairfax County retirement systems (the Employees', Police Officers and Uniformed Retirement Systems) by GFOA for their respective CAFRs. This marks the seventh consecutive year that all three systems have received this award since first applying for consideration. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. An impartial panel determined that the CAFRs demonstrated a constructive "spirit of full disclosure" to clearly communicate their financial stories and motivate potential users to read the CAFRs. All awards were based on the CAFRs for the fiscal year ended June 30, 2016.

This is the thirty-third consecutive year that Fairfax County has received GFOA's Distinguished Budget Presentation Award. In November 2017, GFOA notified the County that the FY 2018 Budget met the criteria for this award, which is the highest form of recognition in governmental budgeting and reflects the commitment of the governing body and staff in meeting the highest principles of public budgeting. Under the GFOA Distinguished Budget Presentation Awards program, a budget is peer reviewed and judged as a policy document, as a financial plan, as an operations guide and as a communications device and must proficient in all four categories in order to receive the award.

In August of 2017, the International City/County Management Association (ICMA) announced it had awarded its Certificate of Excellence to Fairfax County for the ninth consecutive year. The Certificate of Excellence is the highest level of recognition a jurisdiction can receive from ICMA's Center for Performance Measurement and the

County is one of only 25 jurisdictions across the nation to be recognized for superior efforts and results in performance measurement and management. The Certificate of Excellence pays tribute to the County's strong culture of performance measurement and the organization's dedication to identifying key outcome measures and reporting performance outcomes to the governing body, employees and the public.

The Association of Public Treasurers of the United States and Canada has awarded the County certification for its investment policy, confirming that the County meets the high public investment standards set forth by the Association. This award has been received since 1999.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
None.

STAFF:
Joseph M. Mondoro, Chief Financial Officer, Department of Management and Budget
Christopher J. Pietsch, Director, Department of Finance
Deirdre M. Finneran, Deputy Director, Department of Finance
Christina Jackson, Deputy Director, Department of Management and Budget
Richard M. Modie, Jr., Chief, Financial Reporting Division, Department of Finance
Josephine Gilbert, Investment Manager, Department of Finance

Board Agenda Item
February 20, 2018

11:00 a.m.

Matters Presented by Board Members

Board Agenda Item
February 20, 2018

11:30 a.m.

CLOSED SESSION:

(a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).

(b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).

(c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).

1. *HCP Properties Fair Oaks of Fairfax VA, LLC v. County of Fairfax, Virginia*, Case No. CL-2017-0018207 (Fx. Co. Cir. Ct.) (Springfield District)

2. *HCP Properties Arden Courts of Annandale VA, LLC v. County of Fairfax, Virginia*, Case No. CL-2017-0018202 (Fx. Co. Cir. Ct.) (Mason District)

3. *4074 HCR Properties of Alexandria VA, LLC v. County of Fairfax, Virginia*, Case No. CL-2017-0018206 (Fx. Co. Cir. Ct.) (Mount Vernon District)

4. *Laboratory Corporation of America v. County of Fairfax, Virginia*, Case No. CL-2017-0018222 (Fx. Co. Cir. Ct.)

5. *1st Lady Janitorial Services, LLC v. County of Fairfax, Virginia*, Case No. CL-2016-0000505 (Fx. Co. Cir. Ct.)

6. Washington Gas Light Company Seeks Leave to Charge Additional Rates to Customers, Case No. PUE-2016-00001 (Va. State Corp. Comm'n) (All Districts)

7. *Shirley A. Stewart v. B.A. Pitts (Fairfax Sheriff's Office), in his personal capacity; Doug Comfort (Fairfax Police), in his personal capacity; and Jason S. Manyx (U.S. Homeland Security), in his personal capacity*, Case No. 17-1862 (U.S. Ct of App. for the Fourth Cir.)

8. *Fatemeh Najafian v. The Fairfax County Government, The Fairfax County Parks Authority and Recreation Services, Marshall Cooper, Sara Girello, Fairfax County Security Department, and The Fairfax County Police Department*, Case No. CL-2017-0017847 (Fx. Co. Cir. Ct.)

9. *Louella F. Benson v. Penelope A. Gross, et al.*, Case No. CL-2018-0000333 (Fx. Co. Cir. Ct.)

10. *Matias Rodlauer by GEICO, Subrogee v. Hypolite Essorezam Padameli and Fairfax County*, Case No. GV17-025781 (Fx. Co. Gen. Dist. Ct.)

11. *Leslie B. Johnson, Fairfax County Zoning Administrator v. James A. Martin, Jr.*, Case No. CL-2018-0001121 (Fx. Co. Cir. Ct.) (Braddock District)

12. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Mishal Hamad Al-Thani*, Case No. CL-2018-0001769 (Fx. Co. Cir. Ct.) (Dranesville District)

13. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Ajay Miglani*, Case No. CL-2018-0001543 (Fx. Co. Gen. Dist. Ct.) (Mason District)

14. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Donald O. Bussard, Jr.*, Case No. CL-2009-0006891 (Fx. Co. Cir. Ct.) (Mount Vernon District)

15 *Leslie B. Johnson, Fairfax County Zoning Administrator v. MY West Spring Plaza, LLC and Yasini Empire, LLC, d/b/a Royal Banquet and Events Center Hideout*, Case No. CL-2017-0012859 (Fx. Co. Cir. Ct.) (Springfield District)

16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Loretta Deaner*, Case No. CL-2017-0009709 (Fx. Co. Cir. Ct.) (Sully District)

17. *Bruce & Tanya and Associates, Inc. v. Board of Supervisors of Fairfax County, Virginia, Fairfax County, Virginia, and Stephen Brich, as Commissioner of Highways for the Commonwealth of Virginia*, Case No. 1:17-cv-01155 (E.D. Va.) (Braddock, Lee, Mount Vernon, and Springfield Districts)

Board Agenda Item
February 20, 2018

3:30 p.m.

Decision Only on PRC-C-378 (Kensington Senior Development, LLC) to Approve the PRC Plan Associated with RZ-C-378 to Permit a Medical Care Facility, Located on Approximately 1.8 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with SE 2016-HM-024)

and

Decision Only on SE 2016-HM-024 (Kensington Senior Development, LLC) to Permit a Medical Care Facility, Located on Approximately 1.8 Acres of Land Zoned PRC (Hunter Mill District) (Concurrent with PRC-C-378)

This property is located at 11501 Sunrise Valley Drive, Reston, 20191. Tax Map 17-4 ((17)) 1C

The Board of Supervisors deferred Decision Only on this public hearing at the January 23, 2018 meeting until February 6, 2018 at 3:30 p.m.; at which time it was deferred again to February 20, 2018 at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:
On December 7, 2017, the Planning Commission voted 9-0-1 (Commissioner Cortina abstained from the vote and Commissioner Flanagan was absent from the public hearing) to recommend the following actions to the Board of Supervisors:

- Approval of PRC C-378, subject to the development conditions dated December 6, 2017;

- Approval of SE 2016-HM-024, subject to the development conditions dated December 6, 2017;

- Approval of a waiver of Paragraph 3 of Section 9-308 of the Zoning Ordinance which requires that service vehicles have access to the building on the side or rear entrance;

- Approval of a modification of Paragraph 5 of Section 9-308 of the Zoning Ordinance which requires that no building be located closer than 45 feet to any street line to permit the building to be located 25 feet from the right-of-way;

- Approval of a modification of Paragraph 13 of Section 11-203 of the Zoning Ordinance to reduce the loading spaces from two to one;

- Approval of a modification of Section 13-303 of the Zoning Ordinance which requires transitional screening to permit the landscaping shown on the SE/PRC Plat and waiver of the barrier requirements of Section 13-304 of the Zoning Ordinance;

- Approval of a waiver of Paragraph 3 of Section 17-201 of the Zoning Ordinance which requires a service drive along Sunrise Valley Drive; and

- Approval of a modification of Paragraph 2 of Section 17-201 of the Zoning Ordinance for the countywide Trails Plan to provide a sidewalk along Sunrise Valley Drive as shown on the SE/PRC plat.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Harold Ellis, Planner, DPZ

To be deferred to March 20, 2018 at 3:30 p.m.

Board Agenda Item
February 20, 2018

3:30 p.m.

Public Hearing on SE 2015-DR-027 (Mahlon A. Burnette, III and Mary H. Burnette) to Permit a Waiver of the Minimum Lot Width Requirement, Located on Approximately 4.0 Acres of Land Zoned R-E (Dranesville District)

This property is located at 631 Walker Road, Great Falls, 22066. Tax Map 7-4 ((1)) 47

This public hearing was deferred by the Board of Supervisors at the January 23, 2018 meeting to February 20, 2018 at 3:30 p.m.

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission public hearing was held on December 6, 2017, the decision was deferred to January 18, 2018, and subsequently deferred to February 8, 2018; at which time it was deferred to March 1, 2018. The Planning Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt (available after PC hearing) and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai, Planner, DPZ

Board Agenda Item
February 20, 2018

3:30 p.m.

Public Hearing on AR 2010-SP-001 (Charles R. and Katherine Armstrong) to Permit Renewal of a Previously Approved Agricultural and Forestal District, Located on Approximately 40.00 Acres of Land Zoned R-C and WS (Springfield District)

This property is located at 11921 Henderson Road, Clifton, 20124. Tax Map 95-3 ((1)) 16Z.

PLANNING COMMISSION RECOMMENDATION:
On February 1, 2018, the Planning Commission voted 11-0 (Commissioner Flanagan was absent from the meeting) to recommend that the Board of Supervisors approve AR 2010-SP-001 and amend Appendix F of the Fairfax County Code to renew the Armstrong Local Agricultural and Forestal District for an additional eight-year term, subject to the ordinance provisions dated January 17, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Kris Abrahamson, Planner, DPZ

Board Agenda Item
February 20, 2018

3:30 p.m.

Public Hearing on RZ 2010-PR-023 (The Mitre Corporation) to Rezone from PTC, C-3 and HC to PTC and HC to Permit Office Use with an Overall Floor Area Ratio of 2.19 and Approval of the Conceptual Development Plan, Located on Approximately 22.50 Acres of Land (Providence District) (Concurrent with PCA 2011-PR-011 and SE 2010-PR-034)

and

Public Hearing on PCA 2011-PR-011 (The Mitre Corporation) to Amend the Proffers for RZ 2011-PR-011 Previously Approved for Mixed-Use to Permit Deletion of Land Area, Located on Approximately 2.90 Acres of Land Zoned PTC and HC (Providence District) (Concurrent with RZ/FDP 2010-PR-023 and SE 2010-PR-034)

and

Public Hearing on SE 2010-PR-034 (The Mitre Corporation) to Permit an Increase in Floor Area Ratio in the PTC District, Located on Approximately 2.90 Acres of Land Zoned PTC and HC (Providence District) (Concurrent with RZ/FDP 2010-PR-023 and PCA 2011-PR-011)

This property is located on the Eastern terminus of Colshire Drive, West of Dartford Drive. Tax Map 30-3 ((28)) 3A1, 4A3 and 4C.

This property is located in the SouthEast quadrant of Colshire Drive the future extension of Colshire Meadow Drive. Tax Map 30-3 ((28)) 4C.

This property is located at 7596 Colshire Drive, McLean, 22102. Tax Map 30-3 ((28)) 4C.

PLANNING COMMISSION RECOMMENDATION:
On February 1, 2018, the Planning Commission voted 11-0 (Commissioner Flanagan was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 2011-PR-011;

- Approval of RZ 2010-PR-023, subject to the execution of proffers consistent with those dated January 29, 2018, with clarification of Proffer 7Bx related to Site Distances prior to the Board of Supervisors' public hearing;

- Approval of SE 2010-PR-034, subject to the development conditions dated January 16 2018;

- Approval of a modification of Section 2-506 of the Zoning Ordinance to permit parapet walls, cornices, or similar projections up to a maximum height of five feet; and

- Approval of a modification of Section 11-201 and 11-203 of the Zoning Ordinance to permit the minimum number of required loading spaces as shown on the CDP/FDP.

On February 1, 2018, the Planning Commission voted 10-0-1 (Commissioner Hart abstained from the vote and Commissioner Flanagan was absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of a modification of Section 2-505 of the Zoning Ordinance to permit structures and/or plantings on a corner and intersection, as shown on the CDP/FDP and as proffered.

In a related action, on February 1, 2018, the Planning Commission voted 11-0 (Commissioner Flanagan was absent from the meeting) to approve FDP 2010-PR-023, subject to the development conditions dated January 29, 2018, and subject to the board's approval of PCA 2011-PR-011 AND RZ 2010-PR-023.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Stephen Gardner, Planner, DPZ

Board Agenda Item
February 20, 2018

3:30 p.m.

Public Hearing on PCA 2012-MV-008 (FPRP Development Inc.) to Amend the Proffers for RZ 2012-MV-008 Previously Approved for Mixed Use to Permit Modifications of the Proffers with an Overall Floor Area Ratio of 0.15, Located on Approximately 16.04 Acres of Land Zoned PDC (Mount Vernon District)

This property is located on the West side of Silverbrook Road, South of its intersection with White Spruce Way. Tax Map 107-1 ((9)) H

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission public hearing will be held on February 15, 2018. The Planning Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt (available after PC hearing) and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bill Mayland, Planner, DPZ

Board Agenda Item
February 20, 2018

3:30 p.m.

Public Hearing on PRC 76-C-111-02 (Fairfax County School Board) to Approve the PRC Plan Associated with RZ 76-C-111 to Permit Building Additions and Site Improvements to the Existing Public School Facility, Located on Approximately 11.25 Acres of Land Zoned PRC (Hunter Mill District)

This property is located on the South side of Ridge Heights Road appoximately 1200 feet West of South Lakes Drive. Tax Map 26-2 ((18)) 8 (pt.)

PLANNING COMMISSION RECOMMENDATION:
On January 11, 2018, the Planning Commission voted 11-0 to recommend the following actions to the Board of Supervisors:

- Approval of PRC 76-C-111-02, subject to the development conditions dated January 11, 2018; and

- Approval of a modification of Section 13-303 and Section 13-304 of the Zoning Ordinance for the transitional screening and barrier requirement along the eastern property boundary, in favor of the landscape plan shown on the PRC plan and waiver of the barrier requirement along the northern property boundary.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Angelica Gonzalez, Planner, DPZ

Board Agenda Item
February 20, 2018

3:30 p.m.

Public Hearing on RZ 2016-MV-028 (L & F Workhouse, LLC) to Rezone from R-1 and WS to PDH-2 and WS to Permit Residential Development with an Overall Density of 1.99 Dwelling Units per Acre and Approval of the Conceptual Development Plan, Located on Approximately 18.56 Acres of Land (Mount Vernon District)

This property is located on the North side of Workhouse Road, East of Ox Road and Lorton Road. Tax Map 106-4 ((1)) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 55

PLANNING COMMISSION RECOMMENDATION:
On January 18, 2018, the Planning Commission voted 11-0 to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2016-MV-028 and the Conceptual Development Plan, subject to the execution of proffered conditions consistent with those dated January 16, 2018; and

- Approval of a modification of Section 11-320 of the Zoning Ordinance to permit a private street to exceed a maximum of 600 feet in length.

In a related action, on January 18, 2018, the Planning Commission voted 11-0 to approve FDP 2016-MV-028, subject to the development conditions dated January 18, 2018, and the Board of Supervisors' approval of RZ 2016-MV-028 and the associated Conceptual Development Plan.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Wanda Suder, Planner, DPZ

Board Agenda Item
February 20, 2018

4:00 p.m.

Public Hearing on Proposed Plan Amendment 2017-II-M1, Located North of Lowell Avenue, East of Emerson Avenue, and Southwest of Old Dominion Drive (Dranesville District)

ISSUE:
Plan Amendment (PA) 2017-II-M1 proposes to amend the Comprehensive Plan guidance for Tax Map Parcel 30-2((9))73 [formerly Tax Map Parcels 30-8((9))73-76 and 84-88], an approximately 1.4-acre property located at 6707 Old Dominion Drive in the McLean Community Business Center. The subject property is currently planned for office with ground floor retail uses at an intensity up to .7 floor area ratio (FAR) and is developed with an office building with ground floor retail. The amendment considers an option for mixed-use development to include office uses with ground floor retail and multifamily residential at an intensity up to 2.0 FAR with conditions.

PLANNING COMMISSION RECOMMENDATION:
On February 8, 2018, the Planning Commission voted 11-0-1 (Commissioner Tanner abstained from the vote) to recommend to the Board of Supervisors the adoption of a Planning Commission alternative to the staff's recommendation for Plan Amendment 2017-II-M1, as shown on the handout dated February 8, 2018.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:
Planning Commission public hearing – January 18, 2018
Planning Commission decision-only – February 8, 2018
Board of Supervisors' public hearing – February 20, 2018

BACKGROUND:
On July 11, 2017, the Board of Supervisors authorized Plan Amendment 2017-II-M1 for Tax Map Parcel 30-2((9))73 [formerly Tax Map Parcels 30-8((9))73-76 and 84-88] in the McLean Community Business Center to consider a Plan amendment to evaluate the addition of a multi-family building comprised of approximately 50 units on a portion of the site.

Board Agenda Item
February 20, 2018

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment I: Planning Commission Verbatim Excerpt
Attachment II: Planning Commission Handout dated February 8, 2018

The Staff Report for PA 2017-II-M1 has been previously furnished and is available online at: https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/mcleancbcsubarea12/2017-ii-m1.pdf

STAFF:
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Marianne R. Gardner, Director, Planning Division (PD), DPZ
Leanna H. O'Donnell, Branch Chief, Policy and Plan Development Branch, PD, DPZ
Katrina Z. Newtson, Planner II, Policy and Plan Development Branch, PD, DPZ

PA 2017-II-M1 – COMPREHENSIVE PLAN AMENDMENT (MCLEAN COMMUNITY BUSINESS CENTER, SUB-AREA 12) – To consider proposed revisions to the Comprehensive Plan for Fairfax County, VA, in accordance with the Code of Virginia, Title 15.2, Chapter 22. Plan Amendment 2017-II-M1 concerns approx. 1.4 acres generally located at 6707 Old Dominion Drive (Tax map # 30-2((9)) 73)) [formerly 30-2((9))73-76 and 84-88] in the Dranesville Supervisor District. The area is planned for office with ground floor retail uses at an intensity up to .7 FAR. The amendment will consider adding an option for mixed-use to include residential use (approximately 50 units) at an intensity up to 2.0 FAR. Recommendations relating to the transportation network may also be modified. PA 2017-II-M1 is concurrently under review with Rezoning application RZ 2017-DR-026. (Dranesville District)

Decision Only During Commission Matters
(Public Hearing held on February 1, 2018)

Commissioner Ulfelder: Mr. Chairman, I have another matter for decision only this evening. This evening we are scheduled to recommend action on an amendment to the Comprehensive Plan for Subarea 12 of the McLean Community Business Center, or CBC. The proposed amendment was authorized by a unanimous vote of the Board of Supervisors on July 11, 2017. Under the current Plan, an additional 14,000 square feet of office retail space could be added to the existing 30,000 square feet of office retail space currently on the site. The proposed amendment would modify the Plan language to add an option for mixed-use to include office with ground floor retail and multi-family residential uses at an intensity up to 2.0 FR - FAR. A concurrent rezoning application, RZ/FDP 2017-DR-026, Benchmark Associates, LP, for an approximately 100,000 square foot condominium building on the large surface parking lot on the rear of the site, has been filed and is under review by County staff. It is currently scheduled for a Planning Commission hearing on April 18th, 2018. The Planning Commission has received a number of e-mails from residents of McLean, residents of the adjacent multi-family residential building and owners of businesses in on – in the onsite office retail building opposing the proposed amendment. The Commission also received a resolution in support of the amendment from the McLean Citizens Association, as well as a statement of support from the McLean Planning Committee. In my view, the comments opposed to the proposed amendment tend to fall into two categories. First, those that are opposed to the construction of a tall, multi-story residential building on the site and its concern about possible impacts on the surrounding area and adjacent office retail building. And, second, those who are opposed to any consideration at this time of an out-of-turn plan amendment that would result in a change in the possible uses on the site, particularly that would change the site from being characterized as a stabilization and enhancement area to a redevelopment area for the development of a multi-family, multi-story building. As the staff report points out, the expected impact of the proposed multi-family condominium building, even at the proposed maximum fifty units, is somewhat negligible. Six potential new students and some slight increase in a.m. and p.m. vehicle trips than would occur under the current plan for the site. As it turns out, the rezoning only proposes forty-four units, thus further reducing the potential impact of the proposed multi-family residences. Many of the other objections concerning impacts - concern impacts during construction, the size, bulk and appearance of the building, appropriate open space, parking for future residents as well as retail customers and patients, access to and from the redeveloped site as well as conformance with the McLean CBC Design Standards, are all being thoroughly reviewed and considered as part of the review of the concurrent rezoning application, as they should be. As the February 7th, 2018 staff

memo, which is part of the record, points out, the Comprehensive Plan Policy Plan encourages the use of the concurrent review of plan amendments and zoning applications in right of revitalization districts such as the McLean CBC, in order to facilitate revitalization and redevelopment projects in those areas, and to be able to respond to market changes for uses in such districts. Similarly, the Comprehensive Plan for the McLean CBC specifically provides for the coordination of plan amendments and rezoning applications, if the development proposal demonstrates that it meets most of the revitalization objectives of the plan. Under the McLean CBC plan, higher intensity such as is proposed in this amendment, requires the applicant to fulfill additional criteria not currently applicable to this site, in order to receive approval of a higher density rezoning request. This includes maintaining the mix of land uses on the site, reducing surface parking, providing substantial pedestrian improvements, providing substantial landscape and streetscape amenities and placing utilities underground, and making a major effort toward achieving the revitalization objectives of the CBC plan. Reclassifying an area such as Subarea 12, which is located adjacent to an area currently classified as a redevelopment area, Subarea 11, and developed with a multi-story, multi-tenant condominium, is consistent with the expectations and need for flexibility in implementing the overall McLean CBC plan. The plan should not be seen as a set of small, inflexible subareas that dictate what can and cannot be developed in each of them. Rather, each of the subareas are part of a larger living, breathing community-serving area where individual redevelopment proposals should be carefully evaluated based on their proposed location, and whether or not they are in accord with the overall objectives and goals of the CBC plan. In this case, the proposed new plan language for Subblock A of Subarea 12, establishes clear and appropriate criteria for the possible development of multi-family residential development at an intensity up to 2.0 FAR. I, however, will include in my motion an amendment to reduce the maximum height of any residential building to ninety feet from the proposed one hundred feet. Otherwise, I believe the proposed criteria along with the additional criteria applicable to redevelopment areas in the McLean CBC, will result in a high quality project consistent with the goals and objectives of the Comprehensive Plan for the McLean CBC. The amendment, as recommended in the staff report dated December 27th, 2017, would modify the plan language for Tax Map Parcels 30-2((9))73, to add an option for mixed-use to include office with ground floor retail and multifamily residential uses at an intensity up to 2.0 FAR, with a condition that the height for any new residential building not exceed one hundred feet. The language distributed this evening with my motion dated February 8th, 2018, includes changes to the staff recommendation that reduces the maximum height to ninety feet for any new residential building. That is the only change I'm proposing in the staff proposal. My proposal - my proposed change is noted in bold italics and highlighted. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THE ADOPTION OF A PLANNING COMMISSION ALTERNATIVE TO THE STAFF'S RECOMMENDATION FOR PLAN AMENDMENT 2017-II-M1, AS SHOWN ON TONIGHT'S HANDOUT DATED FEBRUARY 8TH, 2018.

Commissioner Niedzielski-Eichner: Second.

Chairman Murphy: Seconded by Mr. Niedzielski-Eichner. Is there a discussion on the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt the Planning Commission alternative to Plan Amendment PA 2017-II-M1, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Tanner: Mr. Chairman.

Chairman Murphy: Yes.

Commissioner Tanner: Please note, I abstain from that vote.

Chairman Murphy: Yes, Mr. Tanner abstains. Thank you.

Commissioner Ulfelder: Thank you.

The motion carried by a vote of 11-0-1. Commissioner Tanner abstained from the vote.

SL

MOTION
PLANNING COMMISSION

Planning Commissioner John C. Ulfelder
Dranesville District

Plan Amendment 2017-II-M1
February 8, 2018

Motion:

The amendment, as recommended in the staff report dated December 27, 2017, would modify the Plan language for Tax Map Parcels 30-2((9)) 73 to add an option for mixed-use to include office with ground floor retail and multifamily residential uses at an intensity up to 2.0 FAR with a condition that the height for any new residential building not exceed 100 feet. The language distributed this evening with my motion dated February 8, 2018 includes changes to the staff recommendation that reduces the maximum height to 90 feet for any new residential building.

My proposed change is noted in bold italics and highlighted. Mr. Chairman, I move that the Planning Commission recommend to the Board of Supervisors the adoption of a Planning Commission Alternative to the staff recommendation for Plan Amendment 2017-II-M1, as shown on tonight's handout dated February 8, 2018.

End of Motion

PLANNING COMMISSION ALTERNATIVE
PROPOSED PLAN LANGUAGE
Plan Amendment 2017-II-M1

Text proposed to be added is shown as <u>underlined</u> and text proposed to be deleted is shown with a ~~strikethrough~~.

(Excerpt from December 27, 2017 Staff Report, page 15)

RECOMMENDATION

"McLEAN CBC SUBAREA GUIDELINES
Subarea #12: Chain Bridge Road, Old Dominion Drive, Lowell Avenue, and Emerson Avenue.

Guidelines	
Planning Objective	Create mixed-use development which contributes to a coherent core image of the CBC. Provide amenities and public spaces, consolidate properties, make traffic improvements and meet design objectives.
Land Use Objective	Minimum 30% development to be retail, of which half must be classified community and/or neighborhood serving. Restaurant and entertainment encouraged with office as residual. Retail uses at ground level. Base intensity of .35 FAR. Maximum intensity of .70 FAR with qualifying amenities in conformance with the Plan. As an option for Subblock A, a mixed-use development to include office uses with ground floor retail and multifamily residential at an intensity up to 2.0 FAR may be appropriate subject to the following conditions: • Intensities above .50 FAR are comprised predominantly of residential use; • The number of residential units is limited to a maximum of 50; • The height for any new residential building does not exceed ***90*** ~~100~~ feet; • Building facades are articulated with upper floors stepped back to promote compatibility with adjacent nearby buildings and the surrounding area; • Structured parking should be integrated into building design and architectural treatments should be used to minimize visual impacts to pedestrians and surrounding uses. Access to garages should be internal to the site, and garages should not front onto surrounding streets; • Site design ensures adequate ingress/egress to and from the site as well as internal traffic circulation; and • Adequate, useable on-site open space is provided to serve the residents, provide amenities for the community and create a cohesive design for the mix of uses in the subblock.

Board Agenda Item
February 20, 2018

4:00 p.m.

Public Hearing to Consider Parking Restrictions on Howard Avenue (Providence District)

ISSUE:
Public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish parking restrictions on Howard Avenue in the Providence District.

RECOMMENDATION:
The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix R of the Fairfax County Code, to prohibit commercial vehicles, recreational vehicles, and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), from parking on Howard Avenue, from Boone Boulevard to Old Courthouse Road from 10:00 p.m. to 7:00 a.m., seven days a week.

TIMING:
The public hearing was authorized by the Board on January 23, 2018, for February 20, 2018, at 4:00 p.m.

BACKGROUND:
Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminishes the capacity of on-street parking for other uses.

Representatives of various property owners of land along Howard Avenue contacted the Providence District office requesting a parking restriction on Howard Avenue from 10:00 p.m. to 7:00 a.m., seven days a week.

This area has been reviewed multiple times over a period of 30 days. Staff has verified that long term parking is occurring, thereby diminishing the capacity of on-street parking for other uses. Staff is recommending a parking restriction for all commercial vehicles, recreational vehicles, and trailers along Howard Avenue, from Boone Boulevard to Old Courthouse Road, from 10:00 p.m. to 7:00 a.m., seven days a week.

FISCAL IMPACT:
The cost of sign installation is estimated to be $1,000. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed amendment to Fairfax County Code, Appendix R (General Parking Restrictions)
Attachment II: Area Map of Proposed Parking Restriction

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

Attachment I

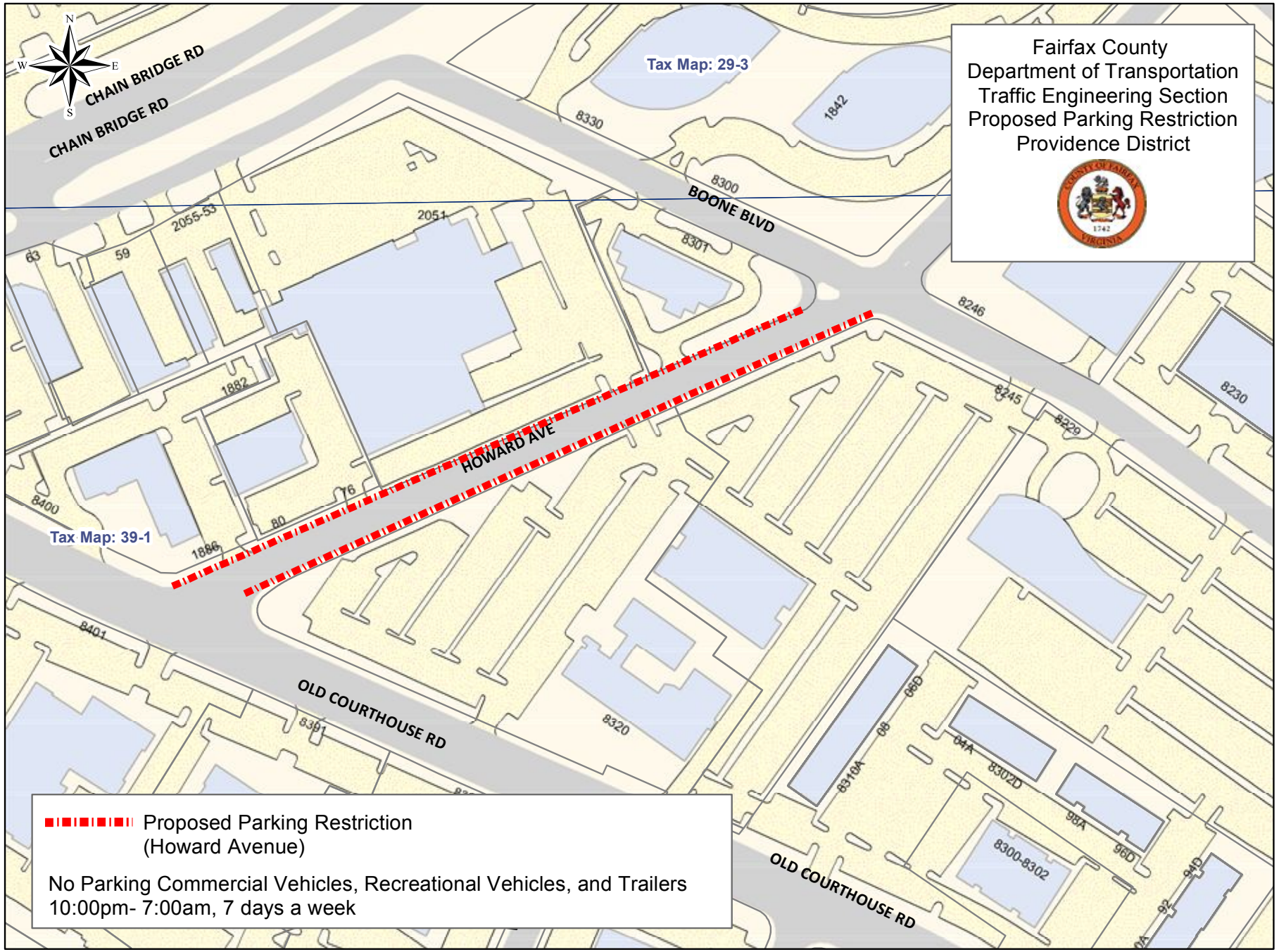
PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX R

Amend *The Code of the County of Fairfax*, *Virginia,* by adding the following to Appendix R, in accordance with Section 82-5-37:

Howard Avenue (Route 786)
Commercial vehicles, recreational vehicles, and trailers, as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), are restricted from parking on Howard Avenue, from Boone Boulevard to Old Courthouse Road, from 10:00 p.m. to 7:00 a.m., seven days a week.

Attachment II



Board Agenda Item
February 20, 2018

4:00 p.m.

Public Hearing to Consider Adopting an Ordinance Expanding the Greenway Downs Residential Permit Parking District, District 13 (Providence District)

ISSUE:
Public Hearing to consider a proposed amendment to Appendix G of *The Code of the County of Fairfax*, *Virginia* (Fairfax County Code), to expand the Greenway Downs Residential Permit Parking District (RPPD), District 13.

RECOMMENDATION:
The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix G of the Fairfax County Code to expand the Greenway Downs RPPD, District 13.

TIMING:
On January 23, 2018, the Board authorized a Public Hearing to consider the proposed amendment to Appendix G of the Fairfax County Code to take place on February 20, 2018, at 4:00 p.m.

BACKGROUND:
Section 82-5A-4(b) of the Fairfax County Code authorizes the Board to establish or expand an RPPD in any residential area of the County if: (1) the Board receives a petition requesting establishment or expansion of an RPPD that contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block of the proposed District, (2) the proposed District contains a minimum of 100 contiguous or nearly contiguous on-street parking spaces 20 linear feet in length per space, unless the subject area is to be added to an existing district, (3) 75 percent of the land abutting each block within the proposed District is developed residential, and (4) 75 percent of the total number of on-street parking spaces of the petitioning blocks are occupied, and at least 50 percent of those occupied spaces are occupied by nonresidents of the petitioning blocks, as authenticated by a peak-demand survey. In addition, an application fee of $10 per petitioning address is required for the establishment or expansion of an RPPD. In the case of an amendment expanding an existing District, the foregoing provisions apply only to the area to be added to the existing District.

On September 25, 2017, a peak parking demand survey was conducted for the requested area. The results of this survey verified that more than 75 percent of the total number of on-street parking spaces of the petitioning blocks were occupied by parked vehicles, and more than 50 percent of those occupied spaces were occupied by nonresidents of the petitioning blocks. All other requirements to expand the RPPD have been met.

FISCAL IMPACT:
The cost of sign installation is estimated to be $600. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code
Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

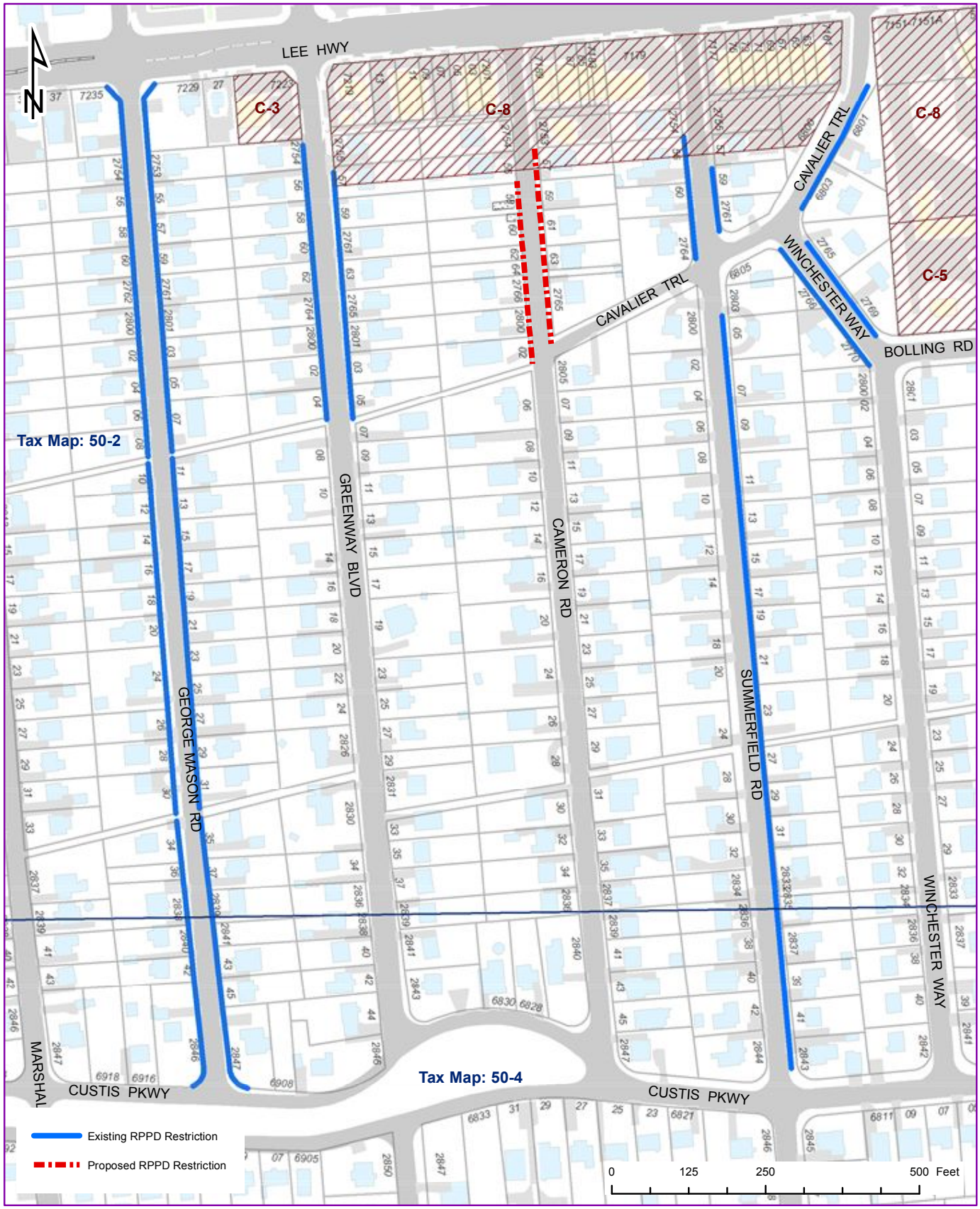
Attachment I

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by adding the following street in Appendix G-13, Section (b)(2), Greenway Downs Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

Cameron Road (Route 1714):

From the northern property boundaries of 2758 Cameron Road, west side, and 2757 Cameron Road, east side, to Cavalier Trail



FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
PROPOSED EXPANSION
GREENWAY DOWNS RPPD
PROVIDENCE DISTRICT

Board Agenda Item
February 20, 2018

4:00 p.m.

Public Hearing to Consider Parking Restrictions on Javier Road (Providence District)

ISSUE:
Public hearing to consider a proposed amendment to Appendix R of *The Code of the County of Fairfax, Virginia* (Fairfax County Code), to establish parking restrictions on Javier Road in the Providence District.

RECOMMENDATION:
The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix R, of the Fairfax County Code, to prohibit commercial vehicles, recreational vehicles and trailers as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), from parking on Javier Road, from Williams Drive to Arlington Boulevard from 9:00 p.m. to 6:00 a.m., seven days a week.

TIMING:
The public hearing was authorized by the Board on January 23, 2018, for February 20, 2018, at 4:00 p.m.

BACKGROUND:
Fairfax County Code Section 82-5-37(5) authorizes the Board of Supervisors to designate restricted parking in non-residential areas where long term parking of vehicles diminishes the capacity of on-street parking for other uses.

Representatives of various property owners of land along Javier Road contacted the Providence District office requesting a parking restriction on Javier Road from 9:00 p.m. to 6:00 a.m., seven days a week.

This area has been reviewed multiple times over a period of 30 days. Staff has verified that long term parking is occurring, thereby diminishing the capacity of on-street parking for other uses. Staff is recommending a parking restriction for all commercial vehicles, recreational vehicles, and trailers along Javier Road, from Williams Drive to Arlington Boulevard, from 9:00 p.m. to 6:00 a.m., seven days a week.

FISCAL IMPACT:
The cost of sign installation is estimated to be $600. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed amendment to Fairfax County Code, Appendix R (General Parking Restrictions)
Attachment II: Area Map of Proposed Parking Restriction

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Sarah A. Hensley, Assistant County Attorney

Attachment I

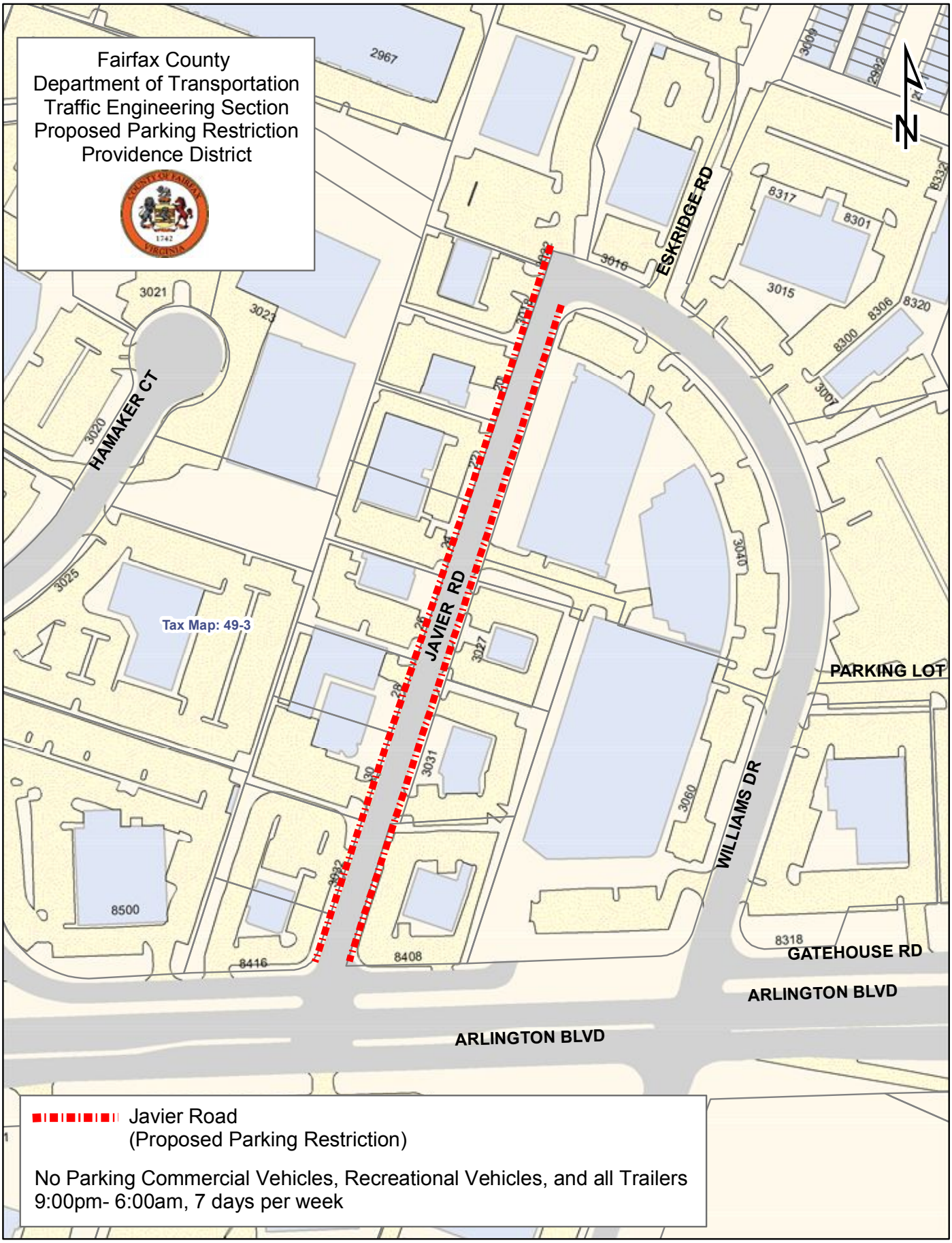
PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX R

Amend *The Code of the County of Fairfax*, *Virginia,* by adding the following to Appendix R, in accordance with Section 82-5-37:

Javier Road (Route 5163)
Commercial vehicles, recreational vehicles, and trailers, as defined, respectively, in Fairfax County Code §§ 82-5-7, 82-5B-1, and 82-1-2(a)(50), are restricted from parking on Javier Road, from Williams Drive to Arlington Boulevard, from 9:00 p.m. to 6:00 a.m., seven days a week.

Attachment II



Board Agenda Item
February 20, 2018

4:00 p.m.

Public Hearing to Consider Adopting an Ordinance Expanding the Culmore Residential Permit Parking District, District 9 (Mason District)

ISSUE:
Public Hearing to consider a proposed amendment to Appendix G of *The Code of the County of Fairfax*, *Virginia* (Fairfax County Code), to expand the Culmore Residential Permit Parking District (RPPD), District 9.

RECOMMENDATION:
The County Executive recommends that the Board adopt an amendment (Attachment I) to Appendix G of the Fairfax County Code to expand the Culmore RPPD, District 9.

TIMING:
On January 23, 2018, the Board authorized a Public Hearing to consider the proposed amendment to Appendix G of the Fairfax County Code, to take place on February 20, 2018, at 4:00 p.m.

BACKGROUND:
Section 82-5A-4(b) of the Fairfax County Code authorizes the Board to establish or expand an RPPD in any residential area of the County if: (1) the Board receives a petition requesting establishment or expansion of an RPPD that contains signatures representing at least 60 percent of the eligible addresses of the proposed District and representing more than 50 percent of the eligible addresses on each block of the proposed District, (2) the proposed District contains a minimum of 100 contiguous or nearly contiguous on-street parking spaces 20 linear feet in length per space, unless the subject area is to be added to an existing district, (3) 75 percent of the land abutting each block within the proposed District is developed residential, and (4) 75 percent of the total number of on-street parking spaces of the petitioning blocks are occupied, and at least 50 percent of those occupied spaces are occupied by nonresidents of the petitioning blocks, as authenticated by a peak-demand survey. In addition, an application fee of $10 per petitioning address is required for the establishment or expansion of an RPPD. In the case of an amendment expanding an existing District, the foregoing provisions apply only to the area to be added to the existing District.

On September 21, 2017, a peak parking demand survey was conducted for the requested areas. The results of this survey verified that more than 75 percent of the total number of on-street parking spaces of the petitioned block faces were occupied by parked vehicles, and more than 50 percent of those occupied spaces were occupied by nonresidents of the petitioned blocks. All other requirements to expand the RPPD have been met.

FISCAL IMPACT:
The cost of sign installation is estimated to be $900. It will be paid from Fairfax County Department of Transportation funds.

ENCLOSED DOCUMENTS:
Attachment I: Proposed Amendment to the Fairfax County Code
Attachment II: Map Depicting Proposed Limits of RPPD Expansion

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Engineering Division, FCDOT
Neil Freschman, Chief, Traffic Engineering Section, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

ASSIGNED COUNSEL:
Marc E. Gori, Assistant County Attorney

Attachment I

Proposed Amendment

Amend *The Code of the County of Fairfax*, *Virginia*, by modifying the following streets in Appendix G-9, Section (b)(2), Culmore Residential Permit Parking District, in accordance with Article 5A of Chapter 82:

Pinetree Terrace (Route 986):

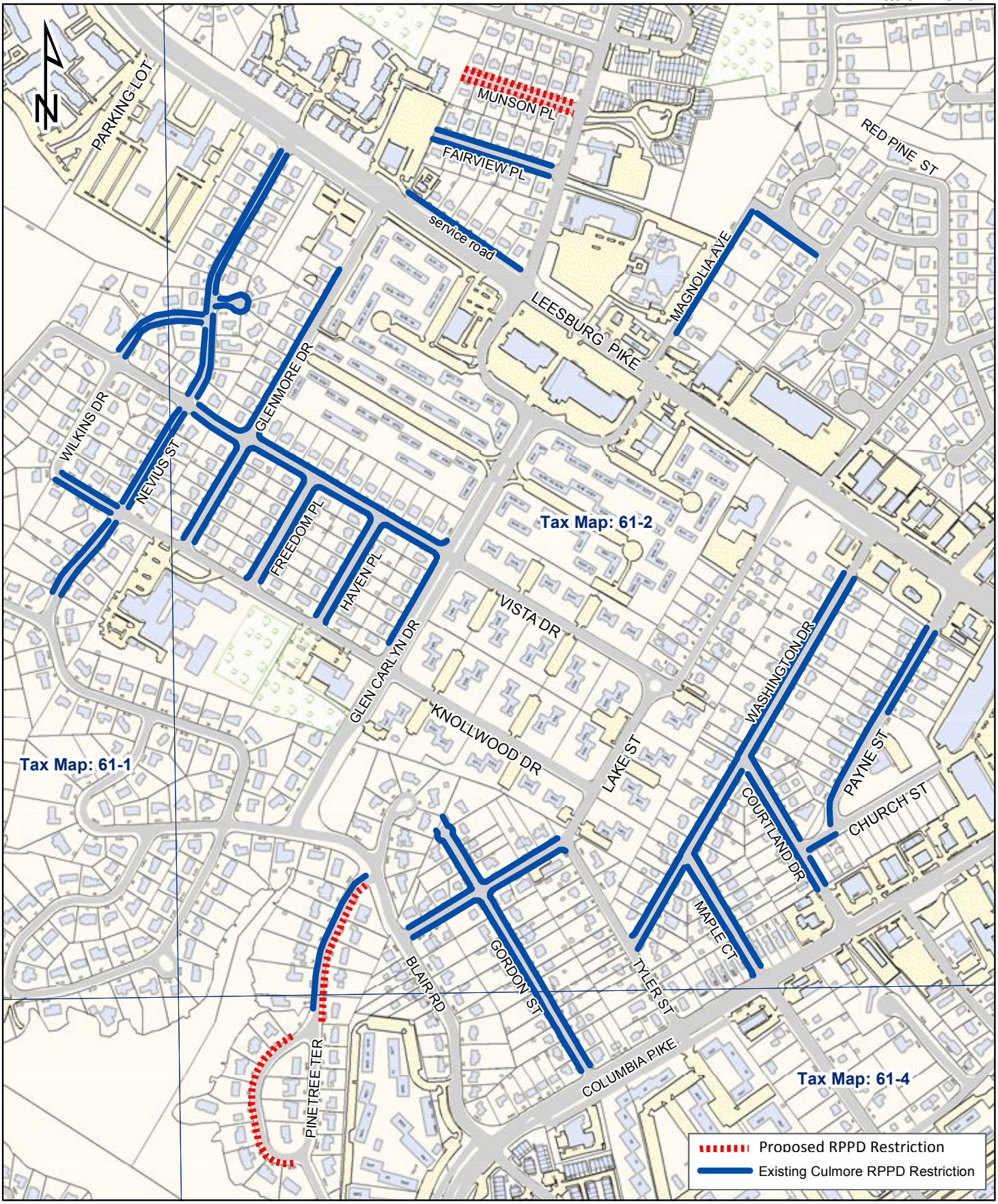
From Blair Road to the southern property boundary of 3516 Pinetree Terrace, west side ~~only~~; and to the southern property boundary of 3517 Pinetree Terrace, east side

From the northern property boundary of 3522 Pinetree Terrace to Boat Dock Drive, west side only

Munson Place (Route 983):

From Glen Carlyn Road to the end

Attachment II



Fairfax County Department of Transportation
Traffic Operations
Culmore Residential Permit Parking District
Mason District

Board Agenda Item
February 20, 2018

4:00 p.m.

Public Hearing on Proposed Amendments to Chapter 112 (Zoning Ordinance) and Appendix Q (Land Development Services Fee Schedule) of the Code of the County of Fairfax, Virginia (County Code) Re: Parking Requirements and Reductions

ISSUE:
Board of Supervisors' adoption of proposed amendments to the parking requirements in Article 11 of the Zoning Ordinance and fees charged for the review of parking reductions in Appendix Q. The proposed amendments streamline and add flexibility to the regulatory process by eliminating the need for some parking reductions, providing for administrative approval of some parking reductions currently requiring Board of Supervisors (Board) approval, and providing for Board approval of parking reductions ineligible for consideration under the current parking reduction provisions.

PLANNING COMMISSION RECOMMENDATION:
On February 1, 2018, the Planning Commission voted 10-0-1 (Commissioner Hurley abstained from the vote and Commissioner Flanagan was absent from the meeting) to recommend to the Board of Supervisors adoption of the proposed amendments to the Zoning Ordinance and Appendix Q of the County Code regarding parking requirements and reductions, as set forth in the staff report dated December 5, 2017.

RECOMMENDATION:
The County Executive recommends that the Board adopt the proposed amendments as set forth in the Staff Report dated December 5, 2017.

TIMING:
Board action is requested on February 20, 2018. On December 5, 2017, the Board authorized the advertising of public hearings. The Planning Commission held a public hearing on January 24, 2018, and deferred decision to February 1. 2018. If adopted, the proposed amendments will become effective on February 21, 2018, at 12:01 a.m.

BACKGROUND:
The proposed amendments: provide for administrative approval of some parking reductions based on sharing of parking among uses; reduce the amount of parking required for office, residential, and commercial uses within Transit Station Areas (TSAs)

identified in the Comprehensive Plan; replace the current provisions for parking reductions based on proffered Transportation Demand Management (TDM) programs with provisions for a more general parking reduction based on unique characteristics of a proposed use; and include related minor changes to existing parking requirements. The proposed amendments were developed in response to both the Fairfax First initiative and the Strategic Plan to Facilitate the Economic Success of Fairfax County. A small working group of County staff and stakeholders was tasked with reviewing the parking requirements in the Zoning Ordinance focusing on parking reductions. The proposed amendments are included as Item #3 on the 2017 Priority 1 Zoning Ordinance Work Program. Five proposals were developed and presented to the Board's Development Process Committee over a series of four meetings beginning with the February 17, 2017, meeting. Four of the proposals resulted in the proposed changes to the County Code presented below. The fifth proposal, which provides for the development and publishing of basic submission requirements for parking reduction requests, doesn't require a code amendment and will be completed subsequent to final Board action on the proposed amendments. The proposed amendments have been presented, in concept, to the Planning Commission's Land Use Process Review Committee, the Engineering Standards Review Committee, the Northern Virginia Building Industry Association, NAIOP (the Commercial Real Estate Development Association), the Engineers and Surveyors Institute, and the zMOD Citizen Advisory Group.

PROPOSED AMENDMENTS:
The specific changes to the Zoning Ordinance and County Code include:

1. Lower parking rates for office, multifamily residential, and commercial uses in the ten TSAs identified in the Comprehensive Plan. This will eliminate the need for many of the parking reduction requests based on proximity to the transit stations that have been routinely approved by the Board in the past. Reductions below the new base rates may be approved by the Board. The proposed rate for offices has two tiers based on distance from the metro station as opposed to the current requirement with three tiers based on total Gross Floor Area (GFA) of the building(s). The proposed rate for multifamily residential uses is based on the number of bedrooms per unit as opposed to the current rate of 1.6 spaces per unit. The proposed rate for commercial uses is a flat 20 percent reduction of current rates. The 20 percent reduction excludes office and eating establishment uses. As a result of the amendments to Zoning Ordinance adopted by the Board on January 23, 2018, related to restaurants, restaurants eligible to be parked at the shopping center rate will also be eligible for the 20 percent reduction for commercial uses in TSAs.

2. Approval of parking reductions of up to 30 percent by the Director of Land Development Services (LDS) based on the timing of peak parking demand for different uses (shared parking) subject to specific conditions to ensure that the site and adjacent areas are not adversely affected. Currently, such reductions must be approved by the Board. These provisions are narrowly tailored so that the Board retains authority over reductions for active zoning cases and any reduction previously approved by the Board. Approval by the Director of LDS will not be available for pending zoning cases submitted for approval by the Board or revisions to parking reductions previously approved by the Board. These would still have to be approved by the Board regardless of the amount of the requested reduction. Additionally, requests for reductions exceeding 30 percent could be approved by the Board.

3. Elimination of provisions for parking reductions based on proffered TDM programs. There is no generally accepted method for correlating vehicle trip reductions, using TDM strategies, with reductions in the amount of parking needed and there must be a plan in place to provide additional parking if the expected reduction in parking needed does not materialize. Additionally, the time of peak parking demand for a site that is assessed with parking studies, and the time of peak traffic for that same site that TDM typically targets, rarely align, making conclusions about parking reductions through TDM programs questionable. As a result, parking reductions based on proffered TDM programs are rarely justifiable and problematic because of post-construction site constraints preventing the installation of additional parking.

4. Provisions for Board approval of a parking reduction based on the unique characteristics of the proposed use(s). These provisions provide for parking reductions that do not qualify for consideration under more specific types of reductions and currently cannot be approved regardless of merit.

5. Related minor changes to clarify current requirements for the use of offsite parking, shared parking, and parking reductions based on proximity to mass transit stations and other types of transportation facilities or within TSAs.

6. Eliminate the $2,811.60 fee for review of parking reductions based on proffered TDM programs and add a fee in the same amount for review of parking reductions based on unique characteristics of a proposed use. Clarify that the fee for parking reductions based on proximity to mass transit includes reductions for other types of transportation facilities including bus service and sites within TSAs. The description in the fee schedule was not updated when the provisions for reductions related to mass transit were clarified in 2016.

Board Agenda Item
February 20, 2018

REGULATORY IMPACT:
The lowering of parking rates for multifamily residential, office, and commercial uses in TSAs is a lessening of current regulatory requirements. The allowance for administrative approval for some parking reductions currently requiring Board approval will lessen the processing time for review of such requests. The elimination of the current provision for parking reductions based on proffered TDM programs will have little impact because it is rarely used. The addition of a provision for a parking reduction based on unique characteristics of a proposed use will address situations that currently cannot be considered under any of the existing types of reductions. A fee will be charged for review of parking reduction requests in accordance with the Land Development Services Fee Schedule. Fees are unchanged except for the replacement of the fee for reductions based on proffered TDM programs with an equal fee for reductions based on unique characteristics of a proposed use.

FISCAL IMPACT:
There is no fiscal impact to the County. The proposed amendments will not require any additional staff to implement. Staff time will be reduced because of reduced processing time for some parking reduction requests and the elimination of the need for some requests in TSAs altogether.

ENCLOSED DOCUMENTS:
Attachment 1 – Planning Commission Verbatim Excerpt
Attachment 2 – Staff Report Dated December 5, 2017 - also available online at:
https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/zoning%20ordinance/proposed%20amendments/parkingrequirementsandreductions1.pdf

STAFF:
Robert A. Stalzer, Deputy County Executive
William D. Hicks, P.E., Director, Land Development Services
Leslie B. Johnson, Zoning Administrator, Department of Planning and Zoning

ASSIGNED COUNSEL:
F. Hayden Codding, Assistant County Attorney

County of Fairfax, Virginia
Planning Commission Meeting
February 1, 2018
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT – PARKING REQUIREMENTS AND REDUCTIONS – To amend Chapter 112 (the Zoning Ordinance) of the 1976 Code of the County of Fairfax, as follows: modify Chapter 112 and Appendix Q (Land Development Services Fee Schedule) of the Fairfax County Code to add flexibility to the regulatory process by eliminating the need for some parking reductions, providing for administrative approval of some parking reductions currently requiring Board of Supervisors (Board) approval, and providing for Board approval of parking reductions ineligible for consideration under the current parking reduction provisions. (Countywide)

Decision Only During Commission Matters
(Public Hearing held on January 24, 2018)

Commissioner Sargeant: I have a decision only this evening on a Zoning Ordinance Amendment regarding parking requirements and reductions. Public hearing was on January 24th. There were several questions raised for further consideration and review. And I'd like to go through – get some responses to those questions before providing a motion.

Chairman Murphy: Okay.

Commissioner Sargeant: Mr. Friedman, if you're available, we'd like to – we had some series of questions, including the issue of administrative approval with regard to shared parking and how that works and whether that would be, you know, sufficient in terms of a shared parking process. And you…you highlighted some of the issues in your research of the – this is not the same as typical parking, as we would think. Do you mind – elaborate on that. This is not…these are not true reductions in the sense we…we normally view them, correct?

John Friedman, Site Code Research & Development Branch, Land Development Services: Yes, with respect to the administrative approval of shared parking reductions, they're not really reductions in the true sense of the word. Normally, parking requirements for a site where there is more than one use is just the simple sum of the Code required parking for the individual uses. But in reality, parking needs vary throughout the day and the day of the week in a definable pattern. By taking the timing of parking demand into account, a more accurate determination of the amount of parking that's actually needed can be performed. This is basically a mathematical exercise. Whether the reduction is approved administratively or by the Board, the math doesn't change and the amount of parking required is the same. The review process at the staff level will not be different and staff will coordinate it with the district Board member to identify any known parking issues at or adjacent to the site. All the standard conditions will apply and run with the land, including the ability of the Director of Land Development Services and the Zoning Administrator to require the owner to conduct parking counts to identify and take steps to address problems. One final point is that the administrative approval of parking reductions is not available for sites with active zoning cases or sites where the amount of parking is specified by proffers or conditions or prior reductions approved by the Board.

Commissioner Sargeant: The other issue that was raised – concerns about inadequate parking and overflow parking if it's filled – felt that the parking on site for the reduction is not adequate. You looked into that and looked at the methods for mitigating that?

Mr. Friedman: Some of the ways that we can mitigate situations where it turns out that there isn't adequate parking and there ends up being an overflow parking on adjoining properties – if the adjoining property is residential, a residential permit parking district can be established that restricts parking on public streets to residents only. And for commercial property owners, any property owner can establish with signage parking restrictions and enforced towing on private property. In garages, residential parking can be segregated from parking for commercial uses with both signage and gates and valet parking in combination with off-site parking at sites with excess parking is frequently used by restaurants. Additional parking can be required where it's feasible and these are just some of the ways to remediate problems that result from inadequate parking.

Commissioner Sargeant: Two more issues, Mr. Chairman, and we'll be ready for a motion. Another request was to take a look at Alexandria's right-size parking initiatives and how that compares to what we're doing.

Mr. Friedman: Alexandria's – was in the – reviewed its parking standards over the course of, probably, the last three or four years. This occurred in two faces. New multi-family residential rates were adopted by the city in 2015 and were included in staff's review of rates in other local jurisdictions. It's represented in the staff report. Their multi-family rates are roughly equivalent to our proposed rates and are based on bedrooms counts, just as ours are. The – on January 20th of this year, the city adopted new commercial parking rates and they're equivalent of our transit station areas. The rates were 0.25 spaces per 1,000 square feet of gross floor area for both office and commercial. And those numbers turn out to be an 8th to a 16th of what staff is proposing in our transit station areas.

Commissioner Sargeant: So we're still taking a slightly more conservative approach.

Mr. Friedman: More than slightly. Quite a bit more conservative.

Commissioner Sargeant: Exactly. And finally, we had a request to consider the proposed 20 percent reduction for restaurant sites or eating establishments and why that is not really apropos for what we are looking at, in terms of this formula.

Mr. Friedman: The restaurants weren't included in the 20 percent reduction in the transit station areas because it's been staff's experience that parking issues at restaurants are more frequent than for other types of commercial uses. The new restaurant parking rates recently adopted the – by the Board – switched from a computation based on seats to a computation based on square footage and include allowing restaurants in shopping centers to be parked at the shopping center rate if they're less than 5,000 square feet. It should be noted that there – as a result of these amendments, restaurants parked at the shopping center rate would be eligible for the 20 percent reduction. Although the new rates, based on square-footage, are intended on average to result in the same amount of parking, as required by the prior methodology based on seats, the required parking can be less on a case-by-case basis under the new rates. Because we have no experience with the new restaurant rates and actual parking needs are quite variable, staff does not consider it prudent to provide an additional 20 percent reduction from restaurants outside of the shopping centers and larger restaurants in transportation areas at this time. This can be reconsidered in the future as part of the Zoning Ordinance Work Program. Having said that, the proposed amendments were advertised so that the Board may include restaurants if they choose.

Commissioner Sargeant: And in summary, what this amendment does is propose rates that are, on average, a little higher and more conservative than what we have seen on individual approvals for parking reductions by the Board. Correct?

Mr. Friedman: Yes, the proposed new base rates for offices in multi-family residential and transit station areas are higher than what the Board has been approving – comparable to our higher-than-other local jurisdictions and those in the Tysons PTC District and have been validated with parking counts at existing sites in the County. The proposed 20 percent reduction in commercial rates in TSAs, although not validated with parking counts, results in parking rates comparable to or higher than rates in other local jurisdictions and in Tysons. With respect to the shared parking reductions, the amount of the reduction – as I previously stated – that can be justified is exactly the same, whether the reduction is approved administratively by the Board and would be subject to the same requirements. Therefore, it's staff's opinion that adequate parking will be provided under the proposed changes to the Zoning Ordinance.

Commissioner Sargeant: Thank you, Mr. Friedman. Mr. Chairman, I'm ready to make a motion and move forward with this particular Zoning Ordinance Amendment. I'd like to thank Mr. Friedman and his colleagues for thorough research and additional research before and after the initial public hearing.

Chairman Murphy: Wait a minute. We have a – a couple questions here. Ms. Hurley. Mr. Carter.

Commissioner Hurley: We're not on verbatim yet, right?

Chairman Murphy: Right.

Commissioner Hurley: So I want to catch you before we go on verbatim.

Chairman Murphy: We are. We are.

Commissioner Hurley: Oh, we are. Okay. I'll try to be very short. You said if there's not – if it's found there's not sufficient parking, they will add it and I didn't get how it would be added. And specifically, you talked about if nearby residential neighborhoods have permit parking, they won't – what if they don't already have permit parking? What if they discover they only need the permit parking after the higher-density use comes into play and now they need the permit parking? Will they be able to get it after it becomes a problem?

Mr. Friedman: Yes, they can get the residential permit parking after the parking reduction has been approved and in situations where they discover they have problems.

Commissioner Hurley: Thank you.

Chairman Murphy: Yes, Mr. Carter.

Commissioner Carter: I don't know if any jurisdiction – this is a controversial issue and I don't care which jurisdiction area – but hopefully this isn't too late, or it's already included, or it's a last minute and we can't do it. But something that's come up with me is workforce housing units and does it make sense to have fewer parking…less parking for workforce housing and ADUs. I

know other jurisdictions do that – as much as half. But we're running into an issue there on several cases I happen to be working on where the workforce housing are calculated at the same rate as multi-family and it's a bit of a problem. Is it already addressed? Am I too late?

Mr. Friedman: I'm not really in a position to respond as to whether or not that's appropriate. I can tell you who the − a different rate for workforce housing would be outside the scope of the ad, so the whole amendment would have to be advertised if that was something that you wanted to be included.

Commissioner Carter: Something to think about, I think, especially in workforce housing. Since that's a policy, you might be able to address this in other ways if it starts coming up in other cases, which it will on my cases.

Commissioner Sargeant: Mr. Chairman?

Mr. Friedman: I mean, well we can certainly, you know, refer that to the people in zoning for possible inclusion of something to look at as part of the zMOD or the Zoning Ordinance Work Program.

Commissioner Carter: Okay.

Chairman Murphy: Mr. Sargeant.

Commissioner Sargeant: And, probably, rates would not be appropriate within this particular amendment.

Chairman Murphy: Anyone else? Okay.

Commissioner Sargeant: Okay. Thank you, Mr. Chairman. And once again, thanks to Mr. Friedman for all his diligent research in preparation for this. With that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE BOARD ADOPT THE PROPOSED AMENDMENTS TO THE ZONING ORDINANCE AND APPENDIX Q OF THE COUNTY CODE, AS SET FORTH IN THE STAFF REPORT DATED DECEMBER 5TH, 2017.

Commissioner Hart: Second.

Chairman Murphy: Seconded by Mr. Hart. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it adopt Zoning Ordinance Amendment, Parking Requirements and Reductions, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Hurley: Mr. Chairman?

Chairman Murphy: Yes, Ms. Hurley.

Commissioner Hurley: Abstain.

Chairman Murphy: Ms. Hurley abstains.

The motion carried by a vote of 10-0-1. Commissioner Hurley abstained from the vote. Commissioner Flanagan was absent from the meeting.

JLC

LAND DEVELOPMENT SERVICES
December 5, 2017

STAFF REPORT

☑ PROPOSED COUNTY CODE AMENDMENT

☐ PROPOSED PFM AMENDMENT

☐ APPEAL OF DECISION

☐ WAIVER REQUEST

Proposed Amendments to Chapter 112 (Zoning Ordinance) and Appendix Q (Land Development Services Fee Schedule) of the Code of the County of Fairfax, Virginia (County Code) Re: Parking Requirements and Reductions

Authorization to Advertise	December 5, 2017
Planning Commission Hearing	January 24, 2018
Board of Supervisors Hearing	February 20, 2018
Prepared by:	Code Development and Compliance Division JAF (703) 324-1780

STAFF REPORT

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors (the Board) adopt the proposed amendments as set forth in this Staff Report dated December 5, 2017.

BACKGROUND

The proposed amendments were developed in response to both the Fairfax First initiative and the Strategic Plan to Facilitate the Economic Success of Fairfax County. A small working group of County staff and stakeholders was tasked with reviewing the parking requirements in the Zoning Ordinance focusing on parking reductions. The proposed amendments are included as Item #3 on the 2017 Priority 1 Zoning Ordinance Work Program. Five proposals were developed and presented to the Board's Development Process Committee at committee meetings held on February 17, March 28, May 23, and July 18, 2017, which may be viewed here: https://www.fairfaxcounty.gov/boardofsupervisors/development-process-committee . Four of the proposals resulted in the proposed changes to the County Code presented below. The fifth proposal, which provides for the development and publishing of basic submission requirements for parking reduction requests, does not require a code amendment and will be completed subsequent to final Board action on the proposed amendments. In addition to the Board's Development Process Committee, the proposed amendments have been presented, in concept, to the Planning Commission's Land Use Process Review Committee, the Engineering Standards Review Committee, the Northern Virginia Building Industry Association, NAIOP (the Commercial Real Estate Development Association), the Engineers and Surveyors Institute, and the zMOD Citizen Advisory Group.

DISCUSSION

Amendments related to the use of offsite parking

Generally, required parking must be provided on the same lot as the building or use it serves. However, the Zoning Ordinance includes provisions to allow a site to meet its parking requirement using excess offsite parking spaces provided there is an agreement between the two property owners that assures the "permanent availability" of the off-site parking spaces. This provision is rarely used because most owners are unwilling to commit to providing permanent availability of the parking spaces. As uses on sites change over time, permanent availability is not always necessary, especially with respect to temporary uses. The proposed amendments add some flexibility to these provisions by replacing the requirement for permanent availability with a requirement for continuing availability sufficient to serve the uses associated with the parking. Continuing availability could relate to a specific minimum time period or the period of a lease, including options, determined on a case by case basis by the Director of Land Development Services (LDS) or the Board.

Amendments related to parking reductions based on the timing of peak parking demand for different uses (shared parking).

Where there are multiple uses on a site, although the physical parking spaces may be shared by the users, the required parking for the site is the sum of the required parking for each of the individual uses. In actuality, the demand for parking by each use varies throughout the day. Basing parking on a simple sum of the required parking for the individual uses may result in more parking being required than is actually needed. Determining the number of parking spaces based on the timing of parking demand for the different uses is basically a mathematical exercise conducted using a standard methodology. An example of how parking is determined using hourly parking demand was included in a staff presentation to the Board's Development Process Committee on March 28, 2017. The Zoning Ordinance includes provisions for approval of reductions in required parking by the Board based on the hourly variation in demand for parking provided the reduction does not adversely affect the site or the adjacent area. Staff reviewed 42 shared parking reductions approved by the Board between 2000 and 2016 and found that approximately 85 percent of the approved reductions were below 30 percent. Allowing for administrative approval of some of these routinely approved reductions would save time and effort for both applicants and the Board. Two amendments are proposed.

- The Zoning Ordinance refers to the variation in demand throughout the day as "hourly parking accumulation characteristics." This terminology is being replaced by the term "hourly parking demand" which is more readily understood.
- The proposed amendments include additional provisions for administrative approval of such reductions up to 30 percent by the Director of Land Development Services (LDS) subject to specific conditions to insure that the site and adjacent areas are not adversely affected. Approval by the Director of LDS will not be available for pending zoning cases submitted for approval by the Board, sites within 1,000 feet of a Residential Permit Parking District, or sites where the number of parking spaces is specified by an approved special permit, special exception, proffered condition, or a parking reduction approved by the Board. Any requests for reductions not eligible for administrative approval may be approved by the Board under the current shared parking provisions which are being retained. Approximately 50 percent of the 42 reductions reviewed by staff would have been eligible for administrative approval under the conditions proposed. Individual Board members would be consulted as part of the review process for each administrative reduction applied for in their district.

Amendments related to parking reductions based on proffered Transportation Demand Management (TDM) programs

The Zoning Ordinance includes provisions for approval by the Board of reductions in required parking based on proffered TDM programs. The purpose of TDM programs is the reduction of single occupancy vehicle trips. There is no generally accepted method for correlating trip reductions with reductions in parking demand. Additionally, the time of peak parking demand for a site that is assessed with parking studies, and the time of

peak traffic for that same site that TDM typically targets, rarely align, making conclusions about parking reductions through TDM programs questionable. Current provisions require that the applicant demonstrate how parking would be provided if the TDM program doesn't result in the projected reduction in parking demand. This is necessary because of the speculative nature of these reductions but is problematic because site layout is so reliant on the parking reduction that providing for additional parking after the site is built-out is unrealistic. There have been only a handful of reductions based solely on proffered TDM programs in the past 30 years. The proposed amendments delete the provisions for parking reductions based on proffered TDM programs and replace them with a more general type of reduction.

Amendments related to a parking reductions based on the unique characteristics of proposed uses.

The proposed amendments add provisions for Board approval of a more general type of parking reduction based on the unique characteristics of the proposed use(s). Some reductions don't fit neatly into the existing categories of reductions and couldn't otherwise be considered regardless of merit. As with other types of reductions, the applicant would still have to provide justification for the request and demonstrate that there would be no adverse impacts on the site or adjacent areas. This type of reduction request is only intended to address unique circumstances specific to that use and not as a mechanism to ask for a change to the parking rates set forth in the Zoning Ordinance for the general type of use involved.

Amendments related to parking rates in TSAs.

The Comprehensive Plan identifies ten transit station areas surrounding existing and proposed Metrorail stations. All of the proposed stations are in the design/construction stage with funding. Development in TSAs is transit oriented or influenced with specific plan recommendations. It is generally recognized that parking demand near transit stations is less than demand for similar uses without convenient access to transit stations. The basic proposal is to lower parking rates in the TSAs so that reductions are not needed. The proposed rates are structured in a similar manner to the current rates in the Zoning Ordinance for the PTC Planned Tysons Corner Urban District. However, unlike the PTC District, there are no maximum rates proposed for the TSAs. Applicants may still apply for Board approval of reductions below the new base rates under the provisions for proximity to mass transit, which are being retained. The basic proposal has three components: multifamily, office, and commercial excluding eating establishments and fast food restaurants.

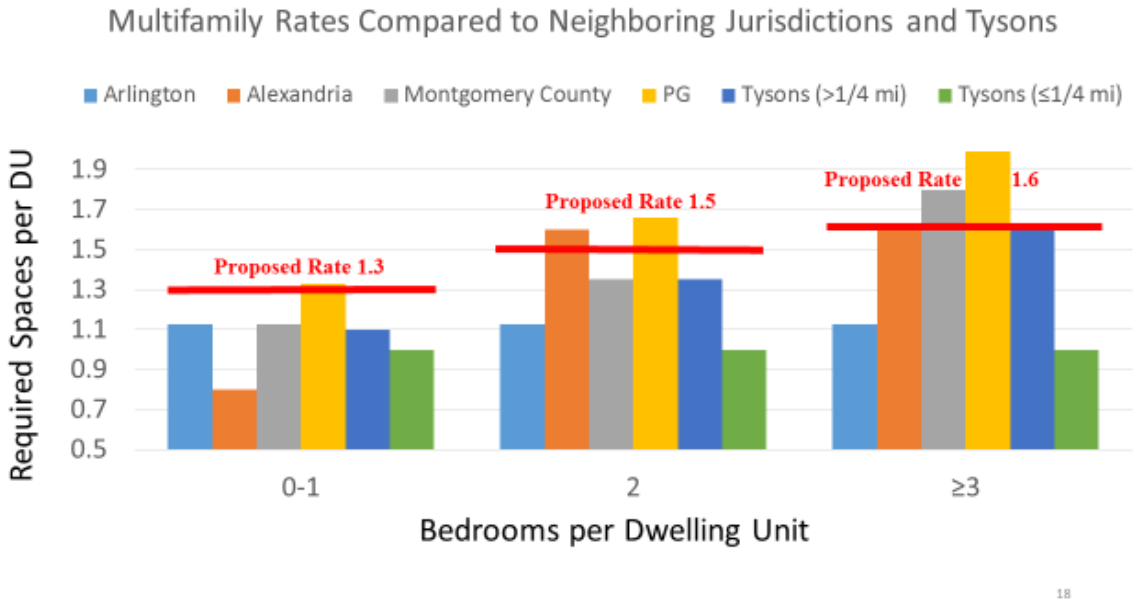
The current parking requirement for multifamily residential uses is 1.6 spaces per dwelling unit (DU). The proposed multifamily rates are based on the number of bedrooms per DU as shown in Table 1.

Table 1.

Proposed Multifamily Parking Rates in TSAs

Bedrooms	Parking Rate
0-1	1.3
2	1.5
3+	1.6

Parking required under the proposed rates was compared with observed parking at four multifamily developments in Fairfax County. All sites were within 0.4 miles of transit stations and bedroom counts were known. The parking supply at three of the four sites was adequate (i.e. more spaces were available than needed to meet the observed demand). At the fourth site, all of the available spaces were used. Therefore, it is assumed that the parking provided on the site is inadequate to meet the actual demand although the extent of the inadequacy is unknown. In all four cases, parking required under the proposed rates was adequate to meet the observed demand without over parking the site (i.e. Parking supply between 80 – 95 percent of demand.). Parking required under the proposed rates was also compared with eleven parking reductions for multi-family sites approved by the Board between 2000 and 2017. In each case, the amount of parking required under the proposed rates is more than the amount of parking that was required for the approved reductions. The average parking reduction approved by the Board was 19.9 percent versus an average reduction of 14.6 percent for the proposed rates as compared to the current rate. Therefore, the proposed rates are slightly more conservative than the reductions that the Board has been approving. The proposed rates were also compared to rates in neighboring jurisdictions for their equivalent of our TSAs and the Tysons PTC District. As depicted in the chart below, the proposed rates are more conservative than most of the neighboring jurisdictions and the Tysons PTC District.



The second component of the proposal covers office uses in TSAs. The current countywide parking requirement for office uses has a tiered structure that varies with the total gross floor area (GFA) of the building(s). The proposed parking requirement in TSAs also has a tiered structure but it varies with distance to a metro station. The proposed TSA and current countywide rates are shown in Table 2.

Table 2.
Proposed and Current Office Parking Rates in TSAs

Proposed Office Rates

Distance	Proposed Rate
0 - 1/4 mile	2.0
> 1/4 mile	2.3

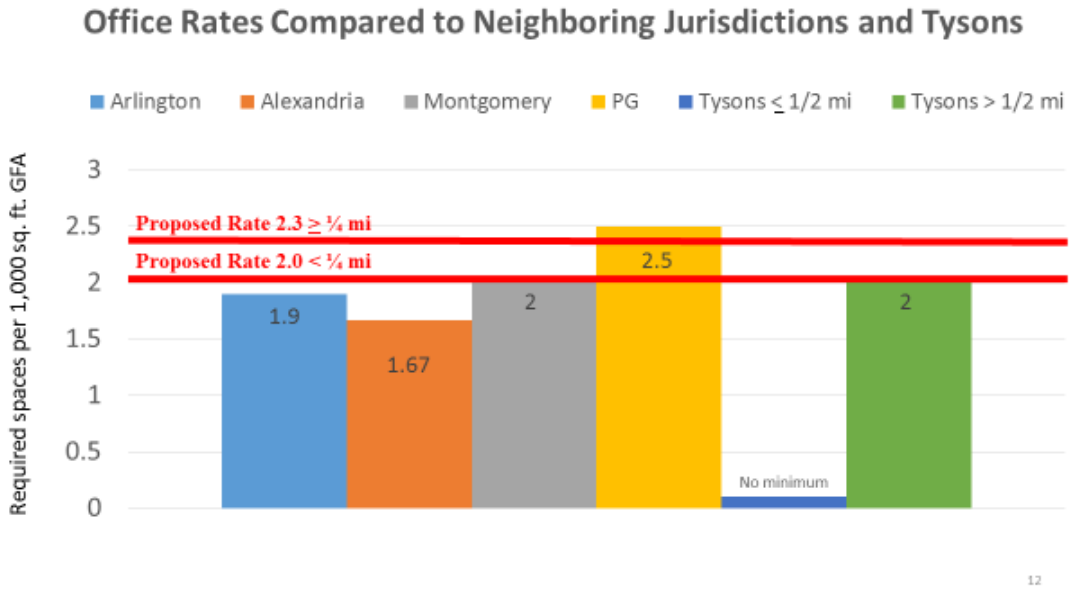
Current Office Rates

Total GFA (sq. ft.)	Existing Rate
≤ 50,000	3.6
50,000 - < 125,000	3.0
≥ 125,000	2.6

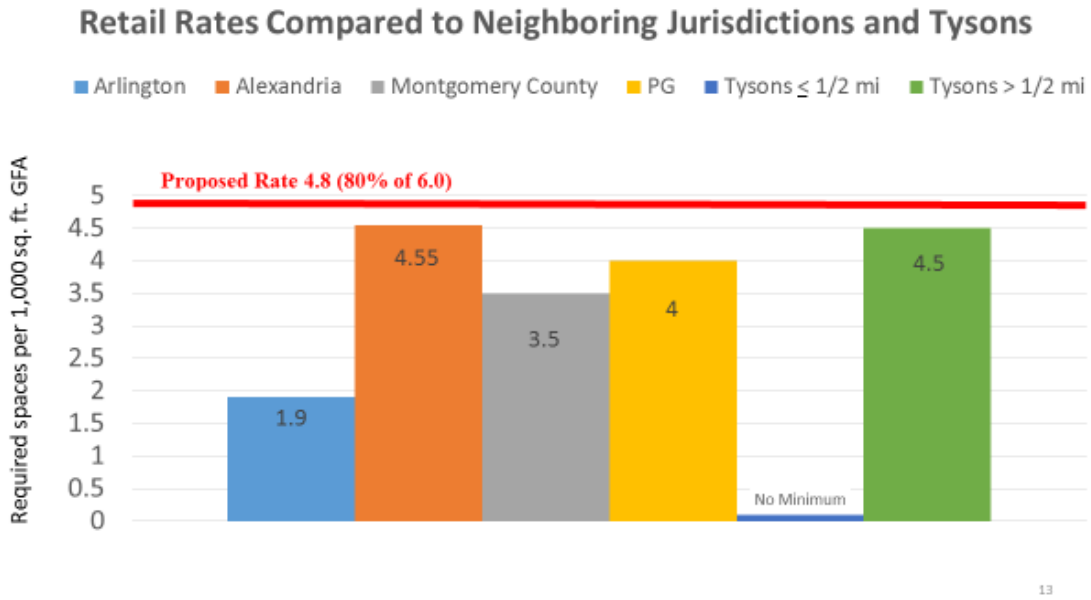
Note: All rates in spaces per 1,000 sq. ft. GFA

Parking data was collected at ten office sites located in Merrifield, Tysons, Reston, Herndon, and Fair Oaks in 2008-2009 prior to construction of the Silver Line. The average parking demand for the ten sites was 1.64 spaces per 1,000 sq. ft. of GFA with

an 85th percentile value of 2.33 spaces per 1,000 sq. ft. of GFA. The 85th percentile value simply means that 85 percent of the observed values were below that number. The 85th percentile value is frequently used to set parking requirements. Because the data was collected prior to construction of the Silver Line, it is a strong indication that the proposed rates will provide adequate parking in the TSAs. The proposed rates were also compared to rates in neighboring jurisdictions for their equivalent of our TSAs and the Tysons PTC District. As depicted in the chart below, the proposed rates are more conservative than most of the neighboring jurisdictions and the Tysons PTC District.



The third component covers commercial uses not including office and eating establishment in TSAs. [*Note: On October 24, 2017, the Board authorized public hearings on a proposed zoning ordinance amendment to delete the definition of eating establishment and replace it with a new definition of restaurant. If the amendment is adopted the reference to eating establishment will be replaced with restaurant.*] The proposed amendments would reduce the parking requirements in the TSAs by 20 percent. Because there are many and varied commercial uses, all of which cannot be compared, as an example, the proposed rates were compared to rates in neighboring jurisdictions for their equivalent of our TSAs and the Tysons PTC District. As depicted in the chart below, the proposed rates are more conservative than most of the neighboring jurisdictions and the Tysons PTC District.



Amendments to the LDS Fee Schedule

Because parking reductions for proffered TDMs are being eliminated, its associated review fee is being deleted. A review fee is being added for the new reduction type based on the unique characteristics of proposed uses in an amount of $ 2,811.60, which is equal to the lowest current fee for any reduction requiring Board approval. The text for the fee related to shared parking is being changed to match the replacement of the terminology “hourly parking accumulation characteristics” with “sum of the hourly parking demand.” The text for the fee for parking reductions based on proximity to mass transit includes reductions for other types of transportation facilities including bus service and sites within TSAs. The description in the fee schedule was not updated when the provisions for reductions related to mass transit were clarified in 2016.

CONCLUSION

The proposed amendments streamline and add flexibility to the regulatory process by eliminating the need for some parking reductions, providing for administrative approval of some parking reductions currently requiring Board approval, providing for Board approval of parking reductions ineligible for consideration under the current parking reduction provisions, and clarifying existing requirements.

PROPOSED ZONING ORDINANCE AMENDMENT
CHAPTER 112 OF THE FAIRFAX COUNTY CODE

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of December 5, 2017, and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, which other amendments may be adopted prior to action on this amendment. In such event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 11, Off-Street Parking and Loading, Private Streets, Part 1, Off-Street Parking, as follows:

- **Amend Sect. 11-102, General Provisions, by revising Paragraphs 1, 4, 5 and 26, to read as follows:**

1. All required off-street parking spaces ~~shall~~ must be located on the same lot as the structure or use to which they are accessory or on a lot contiguous thereto which has the same zoning classification, and is either under the same ownership, or is subject to agreements or arrangements satisfactory to the Director that will ensure the continuing availability of such spaces in a manner that is sufficient to adequately serve the use(s) to which such parking is associated ~~permanent availability of such spaces~~.

   Provided, however, where there are practical difficulties or if the public safety and/or public convenience would be better served by the location other than on the same lot or on a contiguous lot with the use to which it is accessory, the Board, acting upon a specific request, may authorize such alternative location subject to conditions it deems appropriate and the following:

   A. Such required space ~~shall~~ will be subject to agreements or arrangements satisfactory to the Board that will ensure the continuing availability of such spaces in a manner that is sufficient to adequately serve the use(s) to which such parking is associated ~~permanent availability of such spaces~~, and

   B. The applicant ~~shall~~ must demonstrate to the Board's satisfaction that such required space ~~shall be~~ is generally located within 500 feet walking distance of a building entrance to the use that such space serves or such space will be provided off-site with access via a valet or shuttle service subject to agreements or arrangements approved by the Board which will ensure the operation of such service and that there will not be any adverse impacts on the site of the parking spaces or the adjacent area, or

   C. Such required space ~~shall~~ will be accommodated in accordance with the provisions of Par. 6 below.

In a Commercial Revitalization District, the Director may approve an alternative location in accordance with the above and the provisions of the Commercial Revitalization District.

4. Off-street parking spaces may serve two (2) or more uses; however, in such case, the total number of such spaces must equal the sum of the spaces required for each separate use except:

   A. As may be permitted under Paragraphs 5, 22, 26, ~~and~~ 27, and 28 below and Par. 3 of Sect. 106 below, or a previously approved parking reduction based on a proffered transportation demand management program;

   B. That the Board may, subject to conditions it deems appropriate, reduce the total number of parking spaces required by the strict application of this Part when the applicant has demonstrated to the Board's satisfaction that fewer spaces than those required by this Part will adequately serve two (2) or more uses by reason of the sum of the hourly parking demand ~~accumulation characteristics~~ of such uses and such reduction will not adversely affect the site or the adjacent area.

   C. That the Director may, subject to appropriate conditions, reduce by up to **thirty (30) percent** the total number of parking spaces required by the strict application of this Part when the applicant has demonstrated to the Director's satisfaction that fewer spaces than those required by this Part will adequately serve two (2) or more uses by reason of the sum of the hourly parking demand of such uses and such reduction will not adversely affect the site or the adjacent area. Such reductions may not be approved if: ***[Advertised to permit the Board to consider a parking reduction of 0 to 50 percent.]***

      (1) There is a pending rezoning, special exception, or proffered condition amendment application for the site; or

      (2) There is a Residential Permit Parking District within 1000 feet of the subject site; or

      (3) The number of parking spaces on the site is specified by an approved special permit, special exception, proffered condition, or a parking reduction approved by the Board, unless the approval allows such administrative reductions.

      (4) Any reduction not meeting the requirements for approval by the Director under this paragraph may be approved by the Board pursuant to Par. 4B above.

~~Notwithstanding the above,~~ Required off-street parking spaces and their appurtenant aisles and driveways which are not fully utilized during the weekday may be used for a public commuter park-and-ride lot when such lot is established and operated in accordance with a public commuter park-and-ride lot agreement approved by the Board.

In addition, for a use where the minimum number of required parking spaces is provided on site in accordance with this Part, but additional off-site parking may be desired, the Director may, subject to conditions the Director deems appropriate, approve the use of a portion of an adjacent site's required parking spaces, when the applicant has demonstrated to the Director's satisfaction that the use of such spaces on the adjacent site will not adversely affect such site or the adjacent area by reason of the sum of the hourly parking demand ~~accumulation characteristics~~ of such uses.

5. Subject to conditions it deems appropriate, the Board may reduce the number of off-street parking spaces otherwise required by the strict application of the provisions of this Part when a proposed development is within ~~reasonable walking distance to~~:

A. Reasonable walking distance to a mass transit station ~~and/or within an area designated in the adopted comprehensive plan as a Transit Station Area~~ wherein the station either exists or is programmed for completion within the same time frame as the completion of the subject development; or

B. An area designated in the adopted comprehensive plan as a Transit Station Area; or

~~B~~C. Reasonable walking distance to an existing transportation facility consisting of a streetcar, bus rapid transit, or express bus service or wherein such facility is programmed for completion within the same timeframe as the completion of the subject development and will provide high-frequency service; or

~~C~~D. Reasonable walking distance to a bus stop(s) when service to this stop(s) consists of more than three routes and at least one route serves a mass transit station or transportation facility and provides high-frequency service.

Such reduction may be approved when the applicant has demonstrated to the Board's satisfaction that the spaces proposed to be eliminated are unnecessary based on the projected reduction in the parking demand resulting from the proximity of the mass transit station or transportation facility or bus service and such reduction in parking spaces will not adversely affect the site or the adjacent area, including potential impacts on existing overflow parking in nearby neighborhoods. For the purposes of this provision, a determination regarding the completion time frame for a mass transit station or transportation facility ~~shall~~ must include an assessment of the funding status for the transportation project.

26. ~~In conjunction with the approval of a proffer to establish a transportation demand management (TDM) program, or if a development is subject to an approved proffer for the establishment of a TDM program, the Board may, subject to conditions it deems appropriate, reduce the number of off-street parking spaces otherwise required by the strict application of the provisions of this Part when the applicant has demonstrated to the Board's satisfaction that, due to the proffered TDM program, the spaces proposed to be eliminated for a site are unnecessary and such reduction in parking spaces will not adversely affect the site or the adjacent area. In no event shall the reduction in the number~~

~~of required spaces exceed the projected reduction in parking demand specified by the proffered TDM program.~~

~~For the purposes of this provision, a proffered TDM program shall include: a projected reduction in parking demand expressed as a percentage of overall parking demand and the basis for such projection; the TDM program actions to be taken by the applicant to reduce the parking demand; a requirement by the applicant to periodically monitor and report to the County as to whether the projected reductions are being achieved; and a commitment and plan whereby the applicant shall provide additional parking spaces in an amount equivalent to the reduction should the TDM program not result in the projected reduction in parking demand.~~

For reductions that are not eligible for consideration under Paragraphs 4, 5, 22, 27, or 28 of this Section, or Par. 3 of Sect.106 below, the Board may, subject to conditions it deems appropriate, reduce the total number of parking spaces required by the strict application of this Part when the applicant has demonstrated to the Board's satisfaction that, due to the unique characteristics of the proposed use(s), the spaces proposed to be eliminated for the site are unnecessary and such reduction in parking spaces will not adversely affect the site or the adjacent area.

- **Amend Sect. 11-106, Minimum Required Spaces for Other Uses, by revising Par. 3 to read as follows:**

3. Church, Chapel, Temple, Synagogue or Other Such Place of Worship:

One (1) space per four (4) seats in the principal place of worship; provided that the number of spaces thus required may be reduced by the Director, subject to conditions the Director deems appropriate, by not more than fifty (50) percent if the place of worship is generally located within 500 feet of any public parking lot or any commercial parking lot where sufficient spaces are available by permission of the owner(s) without charge, during the time of services to make up the additional spaces required.

For places of worship with child care centers, nursery schools and/or schools of general or special education, the Director may, subject to conditions the Director deems appropriate, reduce the total number of parking spaces required by the strict application of this Part for such child care centers, nursery schools and/or schools of general or special education when the Director has determined that fewer spaces than those required will adequately serve all the uses on-site due to ~~their respective~~ the sum of the hourly parking demand for such uses ~~accumulation characteristics~~.

- **Add new Sect. 11-107, Minimum Required Spaces for Transit Station Areas, to read as follows:**

11-107 Minimum Required Spaces for Transit Station Areas

For any development within an area designated in the adopted comprehensive plan as a Transit Station Area, minimum off-street parking spaces accessory to the uses hereinafter designated will be provided as follows:

1. Dwelling, Multiple Family:

   A. 0 or 1 bedroom: One and three-tenths **(1.3) spaces per unit**

   B. 2 bedrooms: One and five-tenths **(1.5) spaces per unit**

   C. 3 or more bedrooms: One and six-tenths **(1.6) spaces per unit**

[Advertised to permit the Board to consider a range of 1.1 -1.6 spaces per unit.]

2. Office:

   A. Two (2.0) spaces per 1,000 square feet of gross floor area for a building located a distance of 0-1/4 mile from a metro station entrance along an accessible route

   B. Two and three-tenths (2.3) spaces per 1000 square feet of gross floor area for a building located a distance of greater than 1/4 mile from a metro station entrance along an accessible route

4. **Eating Establishment**: Parking rates set forth in Sect. 11-104.

[On October 24, 2017, the Board authorized public hearings on a proposed zoning ordinance amendment to replace the eating establishment definition with a new restaurant definition. If the amendment is adopted, the reference to eating establishment will be replaced with a reference to restaurant.]

5. Commercial and Related Uses:

   All commercial and related uses set forth in Sect. 11-104 and not contained in this section**: Eighty (80) percent** of the parking rate set forth in Sect. 11-104

[Advertised to permit the Board to consider a range of 75 to 95 percent of the minimum parking space requirement and/or include eating establishments.]

All other uses located in a designated Transit Station Area that do not have a parking rate set forth in this section will be subject to the parking rates set forth in Sections 11-103, 11-105 and 11-106.

PROPOSED AMENDMENTS
TO
APPENDIX Q (LAND DEVELOPMENT SERVICES FEE SCHEDULE)
OF THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA

Amend Section II Site Development Fees, by modifying Part A (Plan and Document Review Fees, Subpart (D) (Processing of Studies, Soils Reports and Other Plans) Item No. 1 (Studies) to read as follows:

1. Studies	
● Drainage study, per submission (non-floodplain watersheds)	$1,960.80
● Floodplain study	
▪ Per submission, per linear foot of baseline or fraction thereof	$2.76
▪ Plus, fee per road crossing and per dam,	$610.80
Not to exceed total fee, per submission	$11,226.00
● Parking study	
▪ Parking tabulation for change in use, per submission	$980.40
▪ Parking redesignation plan, per submission	$980.40
▪ Administrative parking reduction for churches, chapels, temples, synagogues and other such places of worship with child care center, nursery school or private school of general or special education, per submission	$980.40
▪ Parking reduction based on ~~hourly parking accumulation characteristics or hourly parking accumulation characteristics~~ the sum of the hourly parking demand or the sum of the hourly parking demand in combination with other factors when the required spaces are:	
♦ Under 225 spaces	$2,811.60
♦ 225 to 350 spaces	$4,882.80
♦ 351 to 599 spaces	$7,806.00
♦ 600 spaces or more	$16,351.20
▪ Parking reduction based on proximity to a mass transit station, transportation facility, or bus service or a parking reduction within a Transit Station Area	$2,811.60
▪ Parking reduction based on ~~a Transportation Demand Management Program~~ the unique nature of the proposed use(s)	$2,811.60
● Recycling study: When the plan or study is submitted to the County for the sole purpose of placing recycling containers on a commercial or industrial site, as required by the Fairfax County Business Implementation Recycling Plan, per submission.	$0.00
● Water quality Fees*	
▪ Resource Protection Area (RPA) Boundary Delineations and	

Resource Management Area (RMA) Boundary Delineations	
♦ Non-bonded lots, existing lots and acreage, rough grading and filling parcels, and parcels with lots of 5 acres or more not within a subdivision or site plan development currently bonded with the County, per submission	$418.80
♦ Bonded lots: lots in conjunction with multiple construction within a subdivision currently bonded with the County, per submission:	
□ Projects with 150 linear feet or less of baseline	$418.80
□ Projects with greater than 150 linear feet of baseline	$418.80
▪ Plus, fee per linear foot of baseline or fraction thereof, in excess of 150 linear feet	$0.96
● Water Quality Impact Assessment (WQIA)	
♦ Non-bonded lots: existing lots and acreage, rough grading and filling parcels, and parcels with lots of 5 acres or more not within a subdivision or site plan development currently bonded with the County, per submission	$432.00
♦ Bonded lots: lots in conjunction with multiple construction within a subdivision or site plan currently bonded with the County, per submission	$1,652.00
*In the event that a RPA and RMA Boundary Delineation and a WQIA are submitted simultaneously, only one fee shall be required and such fee shall be the higher of the fees required for the individual studies.	

Board Agenda Item
February 20, 2018

4:30 p.m.

Public Hearing on the Acquisition of Certain Land Rights Necessary for the Construction of Project 5G25-06-000, Pedestrian Improvements - 2014, Fund 30050, Transportation Improvements at the Columbia Pike/Gallows Rd. Intersection (Mason District)

ISSUE:
Public Hearing on the acquisition of certain land rights necessary for the construction of Project 5G25-060-009, Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection, Fund 300-C30050, Transportation Improvements.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors (Board) adopt the attached resolution authorizing the acquisition of the necessary land rights.

TIMING:
On January 23, 2018, the Board authorized advertisement of a public hearing to be held on February 20, 2018, at 4:30 p.m.

BACKGROUND:
This project consists of pedestrian improvements at the intersection of Columbia Pike and Gallows Road in Annandale. The Improvements include new sidewalk and improvements within an existing intersection island, seven American with Disabilities Act (ADA) compliant curb ramps, and cross-walk striping across Columbia Pike to the island and across Gallows Road.

Land rights for these improvements are required on three properties, two of which have been acquired by the Land Acquisition Division (LAD). The construction of this project requires the acquisition of Dedication for Public Street Purposes and Grading Agreement and Temporary Construction Easements.

Negotiations are in progress with the affected property owner of the remaining property, however, because resolution of this acquisition is not imminent, it may become necessary for the Board to utilize quick-take eminent domain powers to commence

construction of this project on schedule. These powers are conferred upon the Board by statute, namely, Va. Code Ann. Sections 15.2-1903 through 15.2-1905 (as amended). Pursuant to these provisions, a public hearing is required before property interests can be acquired in such an accelerated manner.

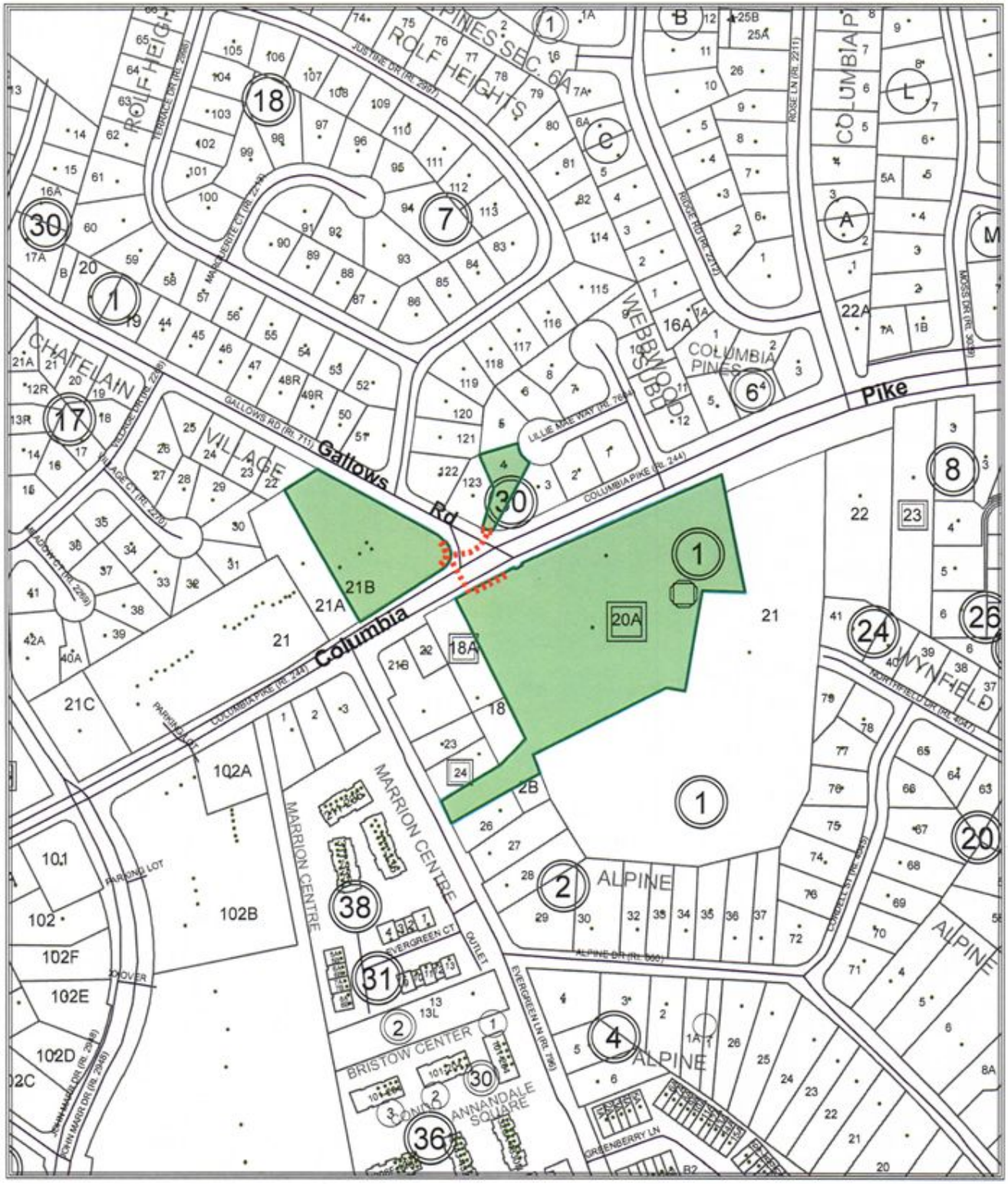
FISCAL IMPACT:
Funding is available in Project 5G25-060-009, Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection, Fund 300-C30050, Transportation Improvements. This project is included in the Adopted FY 2018 – FY 2022 Capital Improvement Program (with future Fiscal Years to FY 2027). No additional funding is being requested from the Board.

ENCLOSED DOCUMENTS:
Attachment A – Project Location Map
Attachment B – Resolution with Fact Sheets on the affected parcels with plats showing interests to be acquired (Attachments 1 through 1A).

STAFF:
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Ronald N. Kirkpatrick, Deputy Director, DPWES, Capital Facilities

ASSIGNED COUNSEL:
Pamela K. Pelto, Assistant County Attorney, Office of the County Attorney

ATTACHMENT A



COLUMBIA PIKE / GALLOWS ROAD PEDESTRIAN INTERSECTION IMPROVEMENTS

Project 5G25-060-009

Tax Map: 60-3 & 60-4 **Mason District** **Scale: Not to Scale**

Affected Properties: **Proposed Improvements:**

ATTACHMENT B

RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, February 20, 2018, at which meeting a quorum was present and voting, the following resolution was adopted:

WHEREAS, certain Project 5G25-060-009, Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection, had been approved; and

WHEREAS, a public hearing pursuant to advertisement of notice was held on this matter, as required by law; and

WHEREAS, the property interests that are necessary have been identified; and

WHEREAS, in order to keep this project on schedule, it is necessary that the required property interests be acquired not later than March 30, 2018.

NOW THEREFORE BE IT RESOLVED, that the Director, Land Acquisition Division, in cooperation with the County Attorney, is directed to acquire the property interests listed in Attachment 1 through 1A by gift, purchase, exchange, or eminent domain; and be it further

RESOLVED, that following the public hearing, this Board hereby declares it necessary to acquire the said property and property interests and that this Board intends to enter and take the said property interests for the purpose of constructing pedestrian improvements at the intersection of Columbia Pike and Gallows Road in Annandale. The Improvements include new sidewalk and improvements within an existing intersection island, seven American with Disabilities Act (ADA) compliant

curb ramps, and cross-walk striping across Columbia Pike to the island and across Gallows Road, as shown and described in the plans of Project 5G25-060-009, Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection, on file in the Land Acquisition Division of the Department of Public Works and Environmental Services, 12000 Government Center Parkway, Suite 449, Fairfax, Virginia; and be it further

RESOLVED, that this Board does hereby exercise those powers granted to it by the *Code of Virginia* and does hereby authorize and direct the Director, Land Acquisition Division, on or subsequent to March 22, 2018, unless the required interests are sooner acquired, to execute and cause to be recorded and indexed among the land records of this County, on behalf of this Board, the appropriate certificates in accordance with the requirements of the *Code of Virginia* as to the property owners, the indicated estimate of fair market value of the property and property interests and/or damages, if any, to the residue of the affected parcels relating to the certificates; and be it further

RESOLVED, that the County Attorney is hereby directed to institute the necessary legal proceedings to acquire indefeasible title to the property and property interests identified in the said certificates by condemnation proceedings, if necessary.

LISTING OF AFFECTED PROPERTIES
Project 5G25-060-009
Pedestrian Improvements - 2014 - Columbia Pike/Gallows Rd. Intersection
(Mason District)

PROPERTY OWNER(S)	TAX MAP NUMBER
1. Annandale Shopping Center, LLC	060-3-01-0021B

Address:
7010 Columbia Pike, Annandale, VA 22003

A Copy – Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

ATTACHMENT 1

AFFECTED PROPERTY

Tax Map Number: 060-3-01-0021B

Street Address: 7010 Columbia Pike,
Annandale, VA 22003

OWNER(S): Annandale Shopping Center, LLC

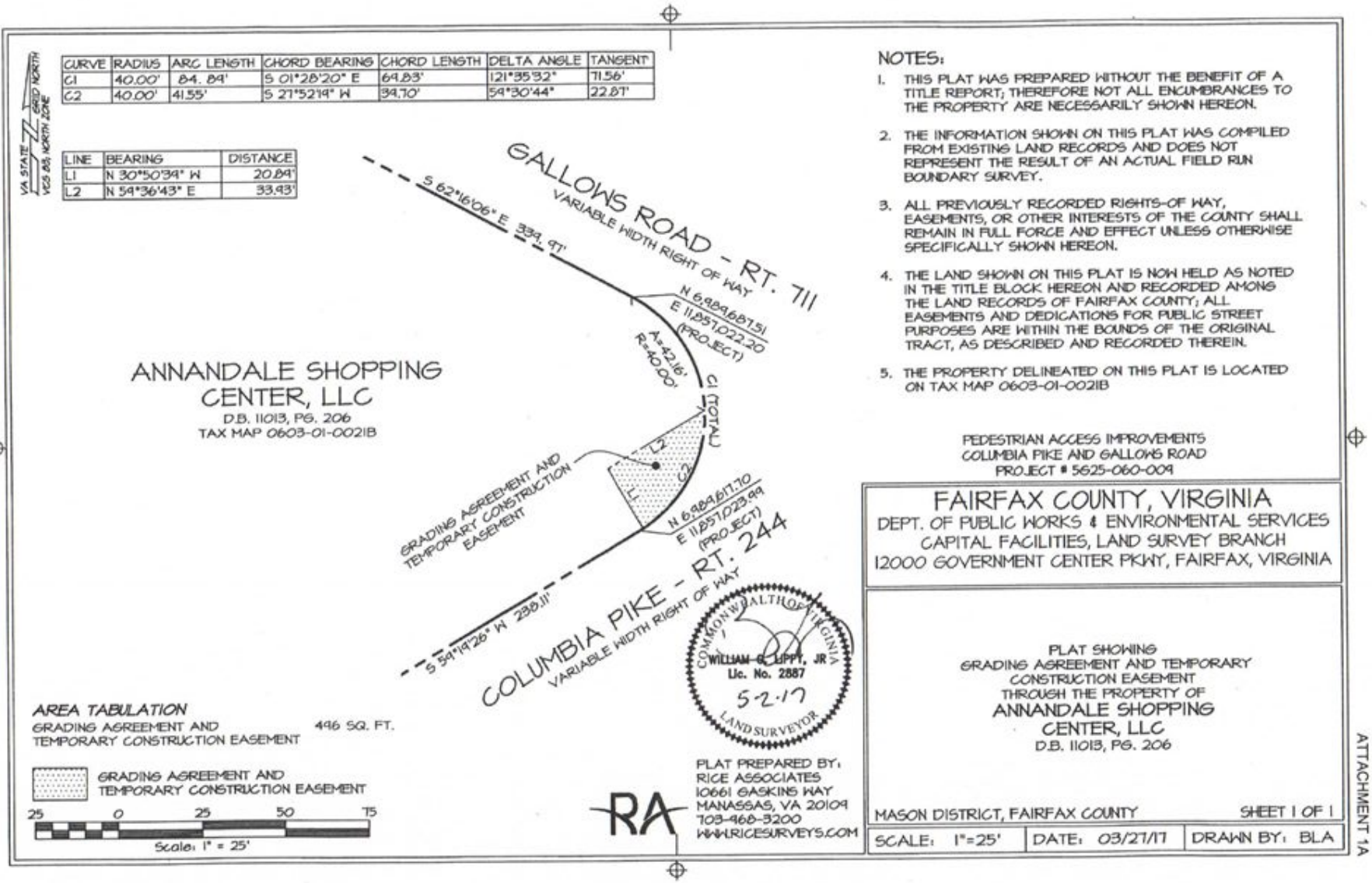
INTEREST(S) REQUIRED: (As shown on attached plat/plan)

Grading Agreement and Temporary Construction Easement - 496 sq. ft.

VALUE

Estimated value of interests and damages:

TEN THOUSAND NINE HUNDRED TWENTY DOLLARS ($10,920.00)



CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE	TANGENT
C1	40.00'	84.89'	S 01°28'20" E	69.83'	121°35'32"	71.56'
C2	40.00'	41.55'	S 27°52'19" W	39.70'	59°30'44"	22.87'

LINE	BEARING	DISTANCE
L1	N 30°50'39" W	20.89'
L2	N 59°36'43" E	33.93'

NOTES:

1. THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT; THEREFORE NOT ALL ENCUMBRANCES TO THE PROPERTY ARE NECESSARILY SHOWN HEREON.
2. THE INFORMATION SHOWN ON THIS PLAT WAS COMPILED FROM EXISTING LAND RECORDS AND DOES NOT REPRESENT THE RESULT OF AN ACTUAL FIELD RUN BOUNDARY SURVEY.
3. ALL PREVIOUSLY RECORDED RIGHTS-OF WAY, EASEMENTS, OR OTHER INTERESTS OF THE COUNTY SHALL REMAIN IN FULL FORCE AND EFFECT UNLESS OTHERWISE SPECIFICALLY SHOWN HEREON.
4. THE LAND SHOWN ON THIS PLAT IS NOW HELD AS NOTED IN THE TITLE BLOCK HEREON AND RECORDED AMONG THE LAND RECORDS OF FAIRFAX COUNTY; ALL EASEMENTS AND DEDICATIONS FOR PUBLIC STREET PURPOSES ARE WITHIN THE BOUNDS OF THE ORIGINAL TRACT, AS DESCRIBED AND RECORDED THEREIN.
5. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON TAX MAP 0603-01-0021B

PEDESTRIAN ACCESS IMPROVEMENTS
COLUMBIA PIKE AND GALLOWS ROAD
PROJECT # 5625-060-009

FAIRFAX COUNTY, VIRGINIA
DEPT. OF PUBLIC WORKS & ENVIRONMENTAL SERVICES
CAPITAL FACILITIES, LAND SURVEY BRANCH
12000 GOVERNMENT CENTER PKWY, FAIRFAX, VIRGINIA

PLAT SHOWING
GRADING AGREEMENT AND TEMPORARY CONSTRUCTION EASEMENT
THROUGH THE PROPERTY OF
ANNANDALE SHOPPING CENTER, LLC
D.B. 11013, PG. 206

MASON DISTRICT, FAIRFAX COUNTY SHEET 1 OF 1

SCALE: 1"=25'	DATE: 03/27/17	DRAWN BY: BLA

ATTACHMENT 1A

Board Agenda Item
February 20, 2018

4:30 p.m.

Public Hearing on SEA 96-L-034-05 (Greenspring Village, Inc.) to Amend SE 96-L-034 Previously Approved for Elderly Housing with Nursing Facilities and Telecommunications Facility to Permit Associated Modifications to Site Design and Development Conditions, Located on Approximately 64.68 Acres of Land Zoned R-3 (Lee District)

This property is located at 7470 Spring Village Drive, Springfield, 22150. Tax Map 90-1 ((1)) 63G and 64

The Board of Supervisors deferred this public hearing at the January 23, 2018 meeting until February 6, 2018 at 3:30 p.m.; at which time it was deferred again to February 20, 2018 at 4:30 p.m.

PLANNING COMMISSION RECOMMENDATION:
On January 24, 2018, the Planning Commission voted 10-0-1 (Commissioner Tanner abstained from the vote and Commissioner Flanagan was absent from the meeting) to recommend to the Board of Supervisors approval of SEA 96-L-034-05, subject to the proposed development conditions dated January 22, 2018.

ENCLOSED DOCUMENTS:
Planning Commission Verbatim Excerpt and Staff Report available online at:
https://www.fairfaxcounty.gov/planning-zoning/zoning-application-board-packages-fairfax-county-board-supervisors

STAFF:
Tracy Strunk, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Katelyn Antonucci, Planner, DPZ

Board Agenda Item
February 20, 2018

4:30 p.m.

Public Comment from Fairfax County Citizens and Businesses on Issues of Concern