

IS THE PROPOSED PURCHASE PRICE FOR THE ASHWELL'S PROPERTY FAIR?

By

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Any price is fair, but one must always ask, “fair by what measure?” and “fair to whom?” In this short article, we take a look at one measure of fairness - the density of the resulting development. The density envisioned by the town and approved by the 2010-2012 Town Council is far different than the density used by the appraisers to value the Ashwell's property.

The appraisers used town-provided documents to determine the level of density that can be achieved under the regulations developed by the 2012-2014 Town Council. These documents included the Pattern Book that was finalized in 2013 and the materials related to the May 2014 rezoning of the town-owned land. The following discussion shows that much had changed during the term of the 2012-2014 Council to affect downtown land values.

A. UNDERSTANDING APPRAISALS, GENERALLY

Developers use such rules-of-thumb as the following to determine the financially-viable price of land:

Apartments/Condos	= \$35,000 per condo
Commercial	= \$30/sq. ft.
Hotels	= \$20,000 per suite

Thus, if a “residential” developer is permitted to build 100 apartment units on a piece of land, then his/her starting point for assessing the economic viability of a purchase would be \$3.5 million.[1] Similarly, if a developer is allowed to build a 100-room hotel on a property, he/she would peg the initial price at \$2 million. The price would double, if he can build a 200-room hotel. Thus, generally speaking, it is reasonable to assume that the price of the land is directly proportional to the density of development.

B. DEVELOPMENT SCENARIOS AND THE PROPOSED PURCHASE PRICE

Figure 1 (Click [APPRAISALS](#)) shows four alternative development scenarios that can be or have been used to estimate the purchase price for the lots on Blocks D & E. The property belonging to Ashwell LLC constitutes about half of Block D.

Scenario 1. Master Plan – Option A: The Town Council approved about 127 development units for Block D & E in 2011.

Scenario 2. Master Plan – Option B: This option, representing the lowest density with about 60 development units, was rejected by the Town Council in 2011.

Scenario 3. Appraisal 1. – After examining the regulatory documents provided by the Town, the appraisers determined that 197 units could be built on Blocks D & E. They also determined that the best and highest use of the property was residential and a small amount of commercial.

Scenario 4. Appraisal 2. – The second appraiser took a similar tack, but determined that 276 apartment units (albeit very small units) could be built at the site. He also decided that the best and highest use of the property was residential and a significant amount of commercial.

If we apply the valuation methodology used by the first appraiser to the approved density in the Master Plan, then the Ashwell property would be valued at about \$2.4 million.[2]. **This means the contract price of \$3.6 million dollars is 50% higher than it should be.**

It is expected that the town will buy the Ashwell property, rezone it and then sell it to a developer. If the developer decides to build to the Master Plan density, then he will offer to buy the property for no more than \$2.4 million. Under this scenario, the Town will lose \$1.2 million by buying the Ashwell property and selling it to the developer. *The Town's tax-payers will end up footing the \$1.2 million difference.*

If the developer decides to build to the density allowed under the regulations developed by the 2012-2014 Council, then he/she is likely to offer \$3.6 million for the land and the Town would break even. The higher density development at this location will likely induce others to propose higher density developments at other locations in the downtown. Thus, the town-residents will have put up with dense developments, (up to) 64' high buildings and unattractive open spaces, for a long time to come.

Therefore, the potential outcome in either case is not very attractive or fair to the residents of the town.

C. DECISIONS THAT HAVE LED TO A HIGHER DENSITY

The higher density proposed by both appraisers did not “happen” by accident. The record suggests that the 2012-2014 council took a series of actions that have resulted in higher density.[3]

1. The Primary Objective of the Master Plan: In 2009, the then Town Council rejected a 5-story, 50' high hotel in the downtown. Many people felt that the hotel was not compatible with the small town character of Herndon. The community had also rejected dense development in the past. With the community opposition to tall buildings in mind, the Town initiated a process to develop a Master Plan that represented the citizen's vision of what the town should look like. *The end result of the process was the 2011 Master Plan.*

2. The Lack of Consideration of Form-Based Code During the Master Plan Process: During the Master Plan development process, potential use of Form Based Code was mentioned, but not pushed. The staff advocated its use to define and standardize the style, materials, architecture and location of buildings. *The staff*

*never mentioned that Form-Based Code is used to **urbanize** a subdivision (or, an area) in an orderly and predictable manner.*

The staff made its first presentation about Form Based Code to the TC more than 3 months **after** the approval of the Master Plan in June 2011. The staff indicated that it would write the Form Based Code and prepare a Pattern Book that would act as a regulatory tool for guiding development. There are good reasons to believe that, even after the presentation, not many people in the Town understood the scope and breadth of the Form Based Code applications.

3. Deviations From the Master Plan: *Form Based Code literature strongly suggests that it should be written to conform to the vision of a Town (as represented by the Master Plan and its illustrations). What is paramount is that *the number of stories of the buildings, location of open spaces and their relationships to public spaces should be maintained to conform to the illustrations in the Master Plan throughout the Form-Based Code writing and Pattern Book development process.**

That is the essence of Form-Based Code; however, the process led to major deviations from the Master Plan include the following:

- § Even though the Pattern Book, a regulatory document, suggests that up to 3 and 4 story buildings can be built, the 2 story illustrations of the Master Plan have been ignored. The Pattern Book should have stated that builder would not able to build more than 2 story structures along certain streets.
- § Knowledgeable participants in the Master Plan process recall that no one ever suggested that almost all buildings could become mainly residential or that almost all buildings could be 4 stories tall (as appraisers have assumed in order to determine the value of the properties.)
- § In January 2013, the town loosened the open space requirements by including new language that stated that "... buildings and open spaces in the PD-TD district shall be arranged to serve the needs of coordinated downtown development " (**and, not the other way around**) in its regulatory documents. (*Emphasis added*)
- § By January 2013, the Town had approved the maximum building height of 54' (64' if parapet walls, elevator structures, heating, ventilation and air-conditioning equipment etc. were counted) and modified the definition of an English basement. Under the new regulations, if two thirds of an English basement was above ground, it would not be counted as a story. Thus, if a developer could dig 4' underground to make a basement, then 8' of it could be above ground. *It should be noted that the Master Plan process was designed to reflect the community's commitment to maintaining a small town feel. The use of English basements, or, of 50' high or taller buildings was beyond most people's thinking.*
- § The two appraisers assumed that builders would provide their own, unsubsidized parking. In 2014, however, the town changed its parking policy "to permit any developer to participate in its Shared Parking program". This means any developer could receive a subsidy equal to 40% of the cost of structured

parking. He/she could also be free to add more development units to his/her lots.

§ Also, in 2014, the rezoning allowed, “architecturally enhanced parking garages without a 6’ wide buffer.” This means, the developers could build larger garages, if necessary, or, simply add more development units to their projects.

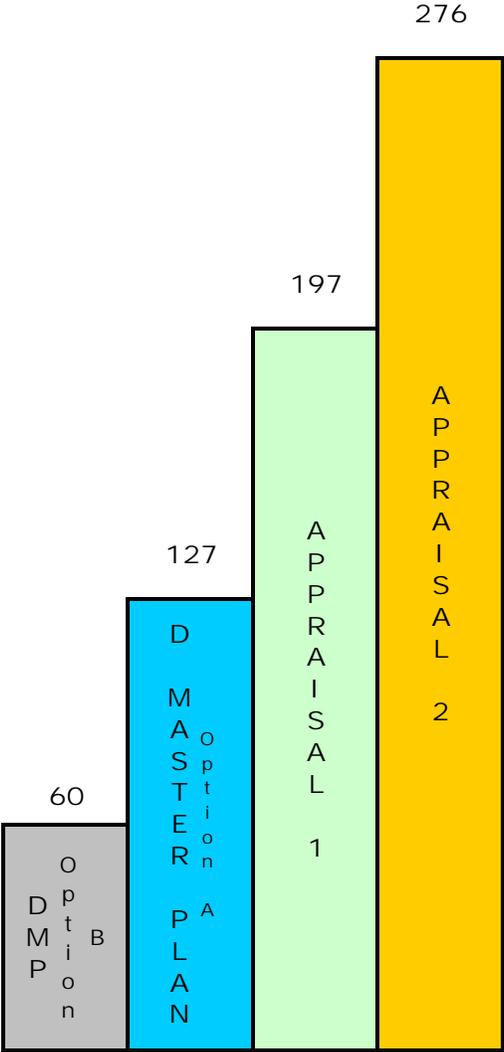
These and other changes were breathtaking in their breadth, depth and scope. [The 2012-2014 Council has essentially negated the mandate of the 2011 Master Plan](#) and radically changed the town’s earlier vision for the downtown. The higher resulting density has given a much higher value to the Ashland’s property. Consequently, the proposed price is more than fair to Ashwell LLC (and to other downtown property owners who should also experience higher values as a result of this sale). The deal is nearly not as fair to the town residents, who will bear the financial risks and/or live with developments that are likely to be twice as dense as they had desired and approved.

[1] This initial threshold can go up or down depending on the physical conditions at a site and with the terms and conditions of a sale.

[2] The substantial increase in the number of units that can be built on Blocks D& E, that is, from 197 under the first appraisal to 276 units under the second appraisal, cannot be explained due to the normal professional differences. A close examination of the appraisals suggests that the second appraisal had reached a pre-determined result. While the first appraisal was highly professional, the second one hardly met the professional standards. The circumstances of ordering the second appraisal will be discussed in a subsequent post.

[3] This topic will also be dealt with in detail in a subsequent article.

FIGURE 1. BASIS FOR THE TWO APPRAISALS
(No. of Development Units)



Value of The Ashwell Property Under THE MASTER PLAN	\$2.4 million
Proposed Purchase Price	\$3.6 million
PARKING SUBSIDY	Not Considered, Yet