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- c. Tobacco Taxation. The Town Council opposes any proposal to limit the authority of municipalities to impose and sustain sales or excise taxes on tobacco products.
 - d. County Taxing Authority. The Town Council opposes equalization of county taxing authority with that of cities and towns. Counties and cities are not identical because some counties have or will have towns within their borders. These towns serve as urban centers and provide urban services that the taxes support. Equalization of county taxing authority with that of cities and towns could adversely affect towns by raising the specter of double taxation of town citizens, by taxing town businesses and citizens without their direct consent, and by facilitating duplicative and unnecessary urbanization of the unincorporated county that should properly take place within existing urban centers, such as towns. Any proposed equalization of county taxing authority with that of cities and towns should preserve or adopt a clear town tax preemption of the same county tax within the town.
2. The Town Attorney shall mail or deliver a copy of this resolution to the Town's representatives in the General Assembly; other selected members of the General Assembly and area local governments; and to other interested persons, as appropriate.

Ordinance 02-O-34, Approving a Real Estate Contract to Purchase Property at 750 Center Street from Joseph F. Wyzkoski, Jr. and Lease Back of this Land to Joseph F. Wyzkoski, Jr. for Two Years.

A Certificate of Publication was filed from the Editor of the *Herndon Observer* newspaper showing that notice of said public hearing had been duly advertised in the November 15, 2002 issue.

Richard B. Kaufman, Town Attorney, briefly outlined his memorandum dated November 14, 2002, which is on file in the Town Clerk's office. He stated the draft ordinance, if adopted, would approve a contract of sale to purchase real estate located at 750 Center Street from Mr. Joseph F. Wyzkoski, Jr., and lease back the property for two years.

Mr. Kaufman outlined the main terms of the contract and lease:

Contract:

- Real estate. Located at the intersection of Vine Street and Center Street, Herndon, Virginia, and bearing Fairfax County tax map numbers 16-2-02-17, 16-2-02-18, and 16-2-02-10B.

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- Price. \$1,500,000, plus \$4,000 for one-half of the seller's appraisal costs; plus two years free rent for the seller's occupancy of the building, ten parking spaces, along Vine Street, and ingress and egress to and from the building and parking spaces (leased premises). Except for the leased premises, the Town during the lease term would own, possess, and enjoy the real estate at 750 Center Street.
- Deposit. \$50,000.
- Closing. The closing would take place not earlier than sixty and not more than ninety days after execution of the contract. The Town would have a sixty-day feasibility period to investigate the property and its title.
- Title. The Town would receive marketable title, free from liens or major title objections, by general warranty deed with additional title covenants.
- Relocation costs. The price for the real estate would include relocation costs for owner and tenants.

Lease:

- Leased premises. The lease would cover the building, ten parking spaces along Vine Street, and ingress and egress to and from the building and parking spaces. Otherwise, the Town would own, possess, and enjoy the land at 750 Center Street during the lease term.
- Term. Two years from the date of closing.
- Uses. Office, commercial printing, and copying.
- Maintenance. Town will maintain exterior roof and walls, and structural elements. Mr. Wyzkoski would maintain other elements of the leased premises.
- Subleases. Town would allow two subleases to Minuteman Press and to Master copy and others as may be reasonably approved. These subleases would terminate upon the expiration of earlier termination of the lease.
- Insurance and indemnity. Mr. Wyzkoski would provide standard commercial insurance benefiting the Town. Mr. Wyzkoski would indemnify and hold the Town harmless against claims arising from his use of the leased premises.''
- Signage. Mr. Wyzkoski would not erect any signs on the leased premises without zoning approval and approval from the Town as a landlord.

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The public hearing was held and the following individuals presented testimony:

- Mr. Les Zidel, 1458 Kingsvale Circle, Herndon;
- Ms. Stacey Sinclair, Vice President of the Council for the Arts of Herndon, 763 Monroe Street, Herndon;
- Mr. Richard Schneider, 510 Alabama Drive, Herndon;
- Mr. Richard Downer, 609 Center Street #203, Herndon; and
- Ms. Betty Hatfield, 414 Madison Forest Drive, Herndon.

Following the public hearing, Mayor Thoesen read, into the record, a letter he received from Mr. Jim Deuel, President, Herndon Dulles Chamber of Commerce, dated November 26, 2002.

(Note: The letter from Mr. Jim Deuel, President, Herndon Dulles Chamber of Commerce, is attached hereto and numbered as page 48-A.)

Vice Mayor Bruce moved approval of Ordinance 02-O-34, approving a real estate contract to purchase property at 750 Center Street from Joseph F. Wyzkoski, Jr. and lease back of this land to Joseph F. Wyzkoski, Jr. for two years. This motion was seconded by Councilman Reece.

Councilman De Noyer recalled some of the struggles the Town went through in making the Town Green what it is today and he is proud that the Town persisted and got things done. He stated it has been a long, steady fight and he believes this is the next big step that the Town must take in the Downtown.

Councilman O'Reilly stated he received an e-mail from Ms. Kathy East, dated November 26, 2002, expressing concerns about purchasing the property and moving forward with the cultural arts center at this time. A copy of the e-mail is on file in the Town Clerk's office.

Councilman O'Reilly expressed support for moving forward with the proposed ordinance and acquiring the site. He stated he believes the cultural arts center will benefit the downtown and is something that the citizens of Herndon have looked forward to for many years. There is existing and upcoming private and public development in the downtown that will compliment the cultural arts center and he looks forward to seeing it come to fruition.

Councilwoman Hutchinson stated she supports the cultural arts center project and believes the property at 750 Center Street will be of benefit to the project; however, she expressed concern regarding the purchase price. She stated the purchase price is more than 50 percent more than the appraised value stated in the Town's professional appraisal. She stated by paying such an inflated price for

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Mayor Richard Thoesen
Town of Herndon

Dear Mayor Thoesen,

Due to conflicting appointments I will, unfortunately, be unable to attend this evenings Town Council Meeting. I would ask that you read this letter in open session, and enter it into testimony on the discussion of the Cultural Arts Center.

The Herndon Dulles Chamber of Commerce, at its November 19th Board of Directors' Meeting, voted unanimously to support the purchase of the "Hands" site, with the assumption that the agreed upon price was a fair compromise between two valuations. The location is ideal and would align extremely well with the Town Green, existing and future parking, the downtown business community, and the nearby residential areas. With the expectation that this facility will be the focal point in downtown for several decades, the established price when spread over the life of the project will undoubtedly be considered a great value. This is a very visionary step for the future of Herndon and we urge the Town Council to take advantage of this opportunity.

Very sincerely,

Jim Deuel, Chairman
Herndon Dulles Chamber of Commerce

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this property it will stifle any future development of other undeveloped parcels in the downtown because it will raise the asking price for other properties to an unrealistic level, which will discourage development. She stated she would like to support the cultural arts center project at this level but will not be able to because of the negotiated purchase price.

Councilman Husch stated he would support the motion to procure the property because of the guidance and direction the Town received from its consultants and community leaders, and the impact the acquisition would have on future development of the Herndon core business district. He stated many people have advised the Town Council that Herndon's core downtown must transition from a sub-urban to an urban environment if the businesses are to survive. The transition to an urban environment means more people, more traffic, and more construction density. The consultants also indicated that there was a high priority that market pressures would force this transition. The Town Council made the decision to attempt to control the transition and attempt to assure that the community did not become a victim of urbanization and lose its identity. The acquisition of this site is the next step in controlling the urbanization of downtown Herndon. He stated well over a decade ago the first steps were taken with the procurement of land for the construction of the library and the Municipal Center. This was followed by the design and construction of the Council Chambers. These developments recognized the coming urbanization, the need to consolidate Town offices in the core downtown, and the need to maintain sub-urban green-space. That is why the parking garage and the Council Chambers are underground. The Town's downtown development consultants, Cooper-Leaky recommended additional land acquisition for public purposes in the downtown and laid the conceptual groundwork for what has become Fortnightly Boulevard. The land acquisition they recommended is the purchase of the property at 750 Center Street.

Councilman Husch stated in 1995, the Town Council made the decision to purchase the land presently occupied by the Station Street parking lot. The Council's vision was to create a surface parking facility until such time as the demand for parking increased to a level that it was economically feasible to build structured parking. The Council recognized that no one really wanted the cold, industrial look of a parking structure so the vision included the development of retail/commercial space along the Station Street frontage, which would separate the garage area from the streetscape. The Downtown Charrette conducted last year substantiated this vision. Shortly after that the Council took a significant risk to purchase the land occupied by the old Tortilla Factory on Grace Street. The Town was in the midst of cleaning up the land previously occupied by the Public Works Department. Years of vehicle maintenance, fuel spills, and storage of the materials necessary to provide services had left contamination that required cleanup. The Council consolidated that land with the old Public Works property in an attempt to convince Fairfax County Housing Authority to build what has become Herndon Harbor House. If this initiative were successful, Herndon would establish the transition area that would establish the boundary for the development of the core downtown west of a major parcel of undeveloped property.

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Councilman Husch stated Town staff and the Town Council recognized that desirable development could be encouraged if suitable incentives were created. The incentives were ascribed in a new zoning alternative - Planned Development-Mixed Use (PD-MU). The current downtown zoning - Central Commercial District (CCD) - allows a development of one-half of the available property. That means for a property of 3,000 square feet, the owner would have about 1,500 square feet of property available for leasing. This was a significant disincentive to any development or redevelopment. PD-MU allowed for development up to two and one half times the size of the property. Now those 3,000 square feet of land could yield 7,500 square feet of lease-able property. This is a significant incentive for development and there are significant "strings attached." Development of the Town's required streetscape, the Town's approval of building facades, approval of building materials, and the stipulation of how the first floor of the new buildings would be used were all requirements if the new zoning were approved. This was done so the Town could control the coming urbanization and maintain the elements that made Herndon a special place to live.

Councilman Husch stated in another bold move the Town Council, Planning Commission, and staff took the initiative to create the "Prototypical Plan for the Development of Fortnightly Boulevard" - a street that did not exist on land the Town did not own. This initiative was based on an understanding with the Fairfax County Redevelopment and Housing Authority, whereby they would assemble the parcels and sell them to a developer that agreed to develop Fortnightly Boulevard in substantial conformance with the approved Prototypical Plan. This was done so that the Town could control the density and quality and establish requirements for streetscapes, specific building design features, and materials to be used.

Councilman Husch stated guidance from the community, reflected in the FY 2002-2003 budget, authorized the expenditure of \$2.55 million for the acquisition of property for the purpose of providing additional parking and a future site for the cultural arts center. The purchase of this property is important to the future of downtown Herndon. The Town Council established the focus of the Downtown with the development of the Municipal Center, established the outer boundary of development with the construction of Herndon Harbor House, established the standard for urban residential development with the Fortnightly Boulevard plan, and created incentives for development that assures a quality, pedestrian-friendly environment. With the purchase of 750 Center Street, the Town consolidates the land from Center Street to Station Street (the Station Street parking lot and 750 Center Street). In conjunction with the vacation of Vine Street, the Town will be able to realize the vision of retail space on Station Street, a parking structure with more than 300 spaces, and a future cultural arts center. He stated the purchase of this property should not be a surprise and should be viewed as the next event in a strategy to control urbanization that was undertaken by Herndon's Town Council and staff almost two decades ago. The acquisition establishes the value of the land in the downtown and provides the Town with significant additional monetary leverage supporting the development of the Station Street retail and parking

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facility. There are important messages in the action to procure this property - Herndon is committed to the development of a core downtown that will reflect the quality and preservation requirements of the community; being economically viable for the business owners; and serving the shopping, dining, and recreational needs of the citizens of Herndon.

Councilman Reece stated Council is taking a bold step and not every resident of Herndon supports the purchase of the property. He stated most of the residents he has talked to during the past few years support the purchase. Some of the residents who support it have lived here all their lives or for quite a long time. He stated he supports the proposed ordinance because he strongly believes it is the right thing to do for the future of the Town.

Councilman O'Reilly stated, with regard to the proposed purchase price, he believes fair market value is generally defined as a value that is determined by a willing buyer and a willing seller. The Town and the property owner both had appraisals done on the property as if it were zoned PD-MU, which will likely be the future zoning. The property owner's appraisal came in at \$2.2 million and the purchase price is \$1.5 million. He stated he was not involved in the negotiations. Mayor Thoesen and the Town Manager were involved in the negotiations with Mr. Wyzkoski and his lawyer. The negotiations came within \$3,000 or \$4,000 of falling apart on a number of occasions. It truly was a hard fought negotiation and members of Council were very concerned for weeks hoping that the negotiations would be fruitful. He stated the property owner lowered his expectations and the Council raised their expectations and a fair market value was set by both parties. He commended Mayor Thoesen for his hard work in this matter.

Mayor Thoesen stated approximately 18 months ago former Mayor Rust and the Town Council appointed him as the Chairman of the Cultural Arts Advisory Committee II. The purpose of the committee was to create greater specificity in terms of finding a site, delivering a governance model, and providing a functional analysis for a cultural arts center. He stated he was very honored by that appointment from which he resigned when he was elected Mayor. He stated he was honored by the Council's decision to make him the Council representative to work with the Town Manager and Town Attorney on the negotiating team. He wishes he could have brought the community a lower price. It was a very emotional negotiation at times and ended up being an amicable arrangement. It was a friendly transaction and lets the business community know that the Town is not going to push people around. He stated he hopes this is another step toward the cultural arts center, which will help the Town maintain its sense of uniqueness.

The question was called on the motion, which carried by a vote of 6-1. The vote was:

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Councilmembers:

Bruce	yes
De Noyer	yes
Husch	yes
Hutchinson	no
O'Reilly	yes
Reece	yes
Mayor Thoesen	yes

02-O-34 Ordinance - An Ordinance Approving a Real Estate Contract by Which the Town Would Purchase Real Estate at 750 Center Street from Joseph F. Wyzkoski, Jr. for \$1,500,000 plus \$4,000 for One Half of Seller's Appraisal and Approving a 2 Year Lease of the Land to Joseph F. Wyzkoski, Jr. for Nominal Consideration as Further Consideration for the Town's Purchase of this Real Estate.

BE IT ORDAINED by the Council for the Town of Herndon that:

1. The Town Council approves a contract of sale dated November 5, 2002 by which the Town could purchase from Joseph F. Wyzkoski, Jr., the real estate described as 750 Center Street, Herndon, Virginia, Fairfax County tax map numbers 16-2-02-17, 16-2-02-18, and 16-2-02-10B, with the plan of locating the Community Cultural Arts Center at this site.
2. This contract will also provide for a purchase price of \$1,500,000 (including a \$50,000 deposit), \$4,000 for one-half of the seller's appraisal cost, and two years free rent for the seller's continued occupancy of the above land; a closing not earlier than sixty and not more than ninety days after execution of the contract; the Town's receipt of a general warranty deed; and inclusion in the purchase price of business relocation costs for the seller and his tenants.
3. This contract may contain other terms agreed to by the Mayor and shall be on such form approved by the Town Attorney.
4. The Mayor is authorized to sign and deliver this contract. The Mayor, Town Manager, and Town Attorney are authorized to sign and deliver any ancillary documents or instruments necessary or convenient to evidence or effectuate the contract.
5. The Town Council approves the lease dated November 12, 2002 by which the Town would lease to tenant Mr. Joseph F. Wyzkoski, Jr., the above land (leased premises) at nominal consideration, for a term of two years after the date of the Town's purchase of the leased premises.