

THE ART CENTER – Grab for Money, Prestige and Power

By
Jasbinder Singh

Let no one fool you. An Art Center, proposed by Herndon's arts community and discussed in the Oct 7th Town Council work session, will cost \$15 – \$20 million with parking. The question is, "Will the Town pay for it by, among other things, donating the town-owned land to developers and/or increasing development density unreasonably? The art community's representatives Mr. O'Reilly and Mr. Hoffman did not talk about its capital costs. They couldn't have, because the arts organizations have not raised any meaningful capital over the last twelve years. It appears that the arts community expects the Town to somehow pay for the Art Center. That is, the taxpayers will, most likely, foot essentially 100% of the bill, even though, most will never even enter its halls, much less, benefit from it.

On October 7th, Mr. O'Reilly, representing the Council For the Arts and Foundation for the Cultural Arts (Art Groups), presented (1) the Vision Committee's (the Committee) concept of the Art Center and (2) the projected financial performance of the Art Groups to the Town Council[1]. Mr. Hoffman, the Producing Artistic Director of the Next Stop theatre discussed the strides the theatre had made after changing its name from The Elden Street Players and becoming a professional company in 2013.

Their presentations raised many questions that are the subject of this article. These include:

- What is an Art Center?
- What is its expected size and cost?
- How much rental subsidy will the Art Groups receive?
- Will the Art Center pay for itself?
- Who will manage the Art Center or the proposed Community Room? and
- Who will benefit from the Art Center?"

The questions and answers to them were not readily apparent during the ensuing discussion. They were embedded in the data and the presentations.[2]

A. WHAT IS AN ART CENTER?

The concept of an Art Center has been defined by a select few in the Town. It has always included a theater and an art gallery. Perhaps, it was always meant to be a home for the Council for the Arts, the Foundation for the Cultural Arts and The Elden Street Players. The 2003 Wilson Butler and Lodge, Inc. (WBL) design consisted of (1) a playhouse, and (2) a lobby / gallery area with "ample walls for visual arts display". The WBL also added a "Community Room" to its design in order to generate some rental income. In comparison, the Committee's current proposal specifically set aside 4,000 sf (square feet) for Art Galleries, Dance & Music Rooms, Arts & Craft Rooms, and Artists' Studios. This reflects both the progress the select few have made in defining their "products" since 2008 and their aspirations of what an Art Center could be. Finally, small spaces have been set aside for Herndon Community Center Television (HCTV) that operates out of rather cramped quarters in the old Town Hall.

However, the interests of the community-at-large, from Herndon old-timers to the recent immigrants who now form the majority of the population, have never been solicited and there are no plans to do so any time soon. They probably have a lot to say about what Art they would like to see and how they would like to participate.

B. WHAT IS THE SIZE OF THE ART CENTER?

On Oct 7th, the Town Manager also presented his concept of the 15,000 sf art center that included a 200-seat, 8,000 sf. theatre. Mr. O'Reilly followed up with a discussion of the Committee's initial concept of a 14,500 sf Art Center that included a 7,000 sf for a 200-seat theatre and 4,000 sf for an Art-related spaces. The almost equal sizes of the two proposals suggest that the Town Manager and the Vision Committee had reached an understanding about the size of the art center before the work session. However, during the work session, Mr. O'Reilly requested the Council to consider including a 3,500 sq ft Community Room to the proposal. The WBL, in 2002, had included a Community Room in its design, because it would generate substantial rental income. Rather than elaborate on spaces allocated to art-related uses, Mr. O'Reilly spent most of the time lobbying for the inclusion of the Community Room. The Council approved his request and thereby, increased the size of the Art Center to 18,000 sf.

On the face of it, the Committee's final concept appeared to be no different than the 18,854 sf Art Center designed by WBL, except for the fact that it included a 274-seat theatre in contrast to 200-seat theater in the new proposal. The costs of the two proposals were likely to be identical, that is, \$13 to \$15 million without parking. There was no reason to be concerned about the cost estimate except that in a subsequent meeting with me, the Town Manager claimed that WBL had designed a 29,000 sf and not an 18,000 sf Art Center. Consequently, I decided to examine the relevant data and compare the three proposals.

This difference had arisen due to the confusion about the type of square feet units associated with the figures stated by the Town Manager. Whereas the 29,000 figure was in gross square feet (gsf), the 18,854 figure was in net square feet (nsf) and all of data presented by the Town Manager and Mr. O'Reilly was in nsf. The tabulation of the data helped to articulate the difference between nsf and gsf units, but it also raised several new issues that are discussed in the following paragraphs. The results are presented in Table 1. ([Click here](#) to view the table.)

Notwithstanding numerous difficulties of tabulating the data, there were three major differences between the WBL design and the proposals presented by Mr. O'Reilly and Mr. Hoffman as discussed below.

1. Walls, Corridors etc. Missing from Mr. O'Reilly's Proposal – Mr. O'Reilly's proposal did not account for the area occupied by walls, mechanical/electrical rooms, inaccessible shafts, attics, plenum, elevator, stairs, and other structures. WBL had estimated that these areas would occupy 10,176 sf over and above the 18,845 "net" sf of the art center.

In order to put the WBL and Committee's proposals on the same footing, that is, to compare apples with apples, we should compare the sizes by using either net sf or gross square feet (gsf) areas. In other words, if we want to compare usable areas, we should use the nsf metric. On the other hand, if want to compare the costs, then we should use the gsf metric.[3],

2. Haphazard Allocation of Space in the Town Manager's and Mr. O'Reilly's Proposals – Even though the two proposals were essentially identical in size, they allocated different square footage to identical categories. For example, while the Town Manager's had allocated 1200 sf to Offices and 500 sf to Public Restrooms, Mr. O'Reilly had allocated zero sf and 150 sf respectively to the same two categories. Yet, both had proposed identically sized Art Center (if we ignore the Community Room in Mr. O'Reilly's proposal). What this means is that they had agreed in advance that the Art Center, without the Community Room, would contain about 15,000 sf of space. It is likely that the Town Manager and the Mayor had directed Mr. O'Reilly and Mr. Hoffman to keep the size of the Art Center below 15,000 sf.[4].

If so, it is unfortunate that the Mayor and the Town Manager had chosen not to inform the entire Council of their decision before the work session. This incident supports my often-stated contention that the Mayor and the Town Manager often do not care about receiving councilmembers' input before making their decisions.

3. Other Differences Between the Proposals – WBL design differs from Mr. Hoffman and the Town Manager's proposals in the following ways.

- **Difference in the Sizes of Public Areas** – WBL designed the art center with public areas that patrons usually expect and find in a first-rate theater. These include Entrance Foyer, Public Ticket Booth, Box Office Suite, Coat Room, Concession Room, Public Restrooms and Lobby. WBL allocated 4,800 sf of space to these public areas. The Committee's proposal, on the other hand, allocated only 850 sf. to such public areas. *In other words, the Committee's proposal will not meet the standards of a first-rate theater and its patrons may not find it sufficiently attractive.*

- **Missing Art Galleries In the WBL Proposal** – The Committee's proposal included 4,600 sf of space for Art Galleries, Dance & Music Rooms, Arts & Craft Rooms, Storage, and Artists Studies. These items were **not** included in the WBL design per se. *Their inclusion in the WBL proposal would have increased the size of the Art Center from 18,845 net sf to 23,445 net sf and increased its cost by about \$2 million.*

- **Missing Theater Performance & Production, and Facility Program Support Services in the Committee's Proposal** – The WBL design allocated a little more than 4,500 sf. to a variety of support services for the theater.[5] The Committee's proposal, on the other hand, allocated only 1,250 sf to such items. *This reduction in space might make the operations of the theater less efficient.*

In short, if the Committee had given more professional consideration to the space requirements of a first-rate theater (that is, built it to the same standards as the WBL design), then its design would have been larger by 4,600 nsf of space and cost about \$2 million more than my previous estimates of \$13 to \$15 million.

C. WHO WILL PAY THE CAPITAL COSTS?

It has been quite clear for several years that the art community, under the leadership of Mr. Richard Downer (who was the president of the Foundation for the Cultural Arts) had not raised any meaningful capital for building an Art Center. Therefore, it was not surprising that neither Mr. O'Reilly nor Mr. Hoffman gave even a small hint of contributing to the capital costs of the proposed facility. They made no comments even when prompted to address some of Capital Cost issues. Their presentations had focused largely on the projected revenues and expenses and the amount of rent they could possibly pay in the future. Accordingly, it was easy to conclude that the arts community expected the Town and thereby, Herndon taxpayers to somehow foot the capital cost bill.

The inability and/or unwillingness of the Art Groups to contribute substantially to the capital costs runs counter to the expectations of Herndon residents. It is a shame that the Foundation for the Cultural Arts did not make any noteworthy effort to raise the much-needed capital during the last 12 years. The Foundation had not complied particularly with Clause 5 of the 2004 MOU it had signed with the Town. [Click here](http://herndonopinion.com/) to view the MOU.

My conversations with many Herndon residents suggest that, perhaps, the construction of the Art Center should be postponed until the managements of the Art Groups and the Theater have raised a substantial portion of the needed capital and that they have demonstrated the ability to raise not only the remaining

capital but to also cover the expected operating deficits. The residents have asserted that the art community must have a very thick “skin in the game” before public funds are used to construct an Art Center.

D. WHO WILL PAY THE COST OF PARKING?

The projections of the number of parking spaces required have also varied wildly over the years. Available documents show that nobody has backed up their projections with even a cursory analysis. Each of three distinct components of the Art Center would require their “own” parking and we can do a quick analysis of their needs. Functions at Art Space currently generate demand for about 30 cars. Let us assume that, this number would double to 60 spaces if an Art Center is built in the future.

The Community Room and the theater can be expected bring 150 and 200 people respectively to the Art Center during peak periods. If we conservatively assume a ratio of 3 people to a car, these two units of the art center would generate demand for about 120 parking spaces. Thus, the new facility would generate a total demand for about 180 (120+60) spaces, if the units of the center were being used simultaneously. Even if we assume that “normal” requirements are 80% of this peak, then 144 parking spaces would be required. *The cost of 144 parking spaces would be \$4 to \$5 million.[6] One way or the other, the Town will foot this bill as well.*

E. WHO WILL PAY O&M COSTS OF THE FACILITY?

According to the data presented to the Town Council, the Arts Groups had budgeted \$12,000 for annual rent. This is far less than the most likely market rent of about \$210,000, if an art center were built to meet only the needs of the Art Groups. [7] In other words, *the Art Groups would be receiving a rent subsidy of almost \$200,000 per year!*[8]

Mr. Hoffman’s presentation was less complex than Mr O’Reilly’s. Mr Hoffman stated that he expects Next Stop to move to a new location in about 3 years and that the theater should bring 200 patrons every day for about 300 days per year. The remaining 65 days will be taken up by the preparations for the performances. For the year around use, the Next Stop Theatre expected to pay a rent of about \$100,000 per year. *Under this arrangement, the Town would be spending about \$20 million to attract essentially a single-use facility that very few Town residents will use. Some people have questioned the wisdom of not building a multi-use facility that would meet needs of a diverse community.*

F. WILL THE ART CENTER PAY FOR ITSELF?

Several councilmembers were excited about the fact that Next Stop would bring more than 200 people every day for 300 days per year and that would bring considerable amount of meals tax to the town. My calculations show that if every patron would spend \$30 every night for the whole year, the Town would receive only \$45,000 per year in meals taxes (@2.5%) — not much to get excited about. Actually, we should expect the additional meals tax revenue to be much less. The Town would be lucky if a one quarter of the theater-goers would dine in local restaurants. The meals-tax receipts along with the proposed rental payments by both parties and would amount to less than \$150,000 per year.

In comparison, depending on the interest rate, the cost of debt service on a \$20 million, 20-year bond would vary between \$1.2 and \$1.6 million per year.[9] Thus, the rental payments and meal taxes would defray only about 10% of the debt service. *In other words, the Town will lose between \$1 and \$1.5 million every year, even if we ignore the cost of running and managing the art center and the loss of real estate and property taxes (if the town owns the Art Center).*

Mr. O'Reilly suggested that the Arts Group would rent the community room to third parties and generate an annual income of as much as \$120,000 per year. Then, he jokingly opined that the Arts Group might return some of this income to the town! *This comment, it seems, was nothing but his opening salvo to gain control of the Community room and of any income it might generate.*

G. WHO WILL MANAGE THE ART CENTER OR THE COMMUNITY ROOM?

In the work-session, beyond some stray comments by Mr. O'Reilly, no discussion of the management of the Art Center took place. There was no time for that. The Town, it appears, has not given much, if any, thought to this issue.

The WBL study, on the other hand, contemplated retaining (1) Executive Director, (2) Building Manager, (3) Event / House Manager, (4) Receptionist / Office Manager / Booking Clerk, (5) Stage Manager, (6) Box Office Staff, (7) Security Staff, (8) Theater Custodial, and (9) Community Custodial. After assuming that some of these positions would be funded by the Arts Group and the Theatre, the WBL study estimated that the positions would cost the Town approximately \$300,000 (in 2003 \$s). WBL also estimated that it will cost \$184,000 per year to pay for occupancy services that include, security services, janitorial services, utilities, maintenance, grounds, insurance and bonding. **Thus, total cost of operating the facility would be about \$500,000 in 2003 dollars. In today's dollars it would easily exceed \$600,000.**

Mr. O'Reilly proposed to rent the Community Room to third parties to generate income for the Arts Group, but said nothing else. Mr. Hoffman also did not address this issue as far as the theatre is concerned. I believe the Art and Theater groups should focus on their core expertise and not worry about the management of the Art Center or about renting any spaces.

A Board representing the entire Herndon community should be appointed to oversee the operations of the Art Center.

H. WILL THE ART CENTER GENERATE ANY ECONOMIC DEVELOPMENT?

The Mayor has often claimed that Art Centers bring economic development to town and cities, but had never produced any evidence (I prefer to review relevant scholarly articles). During this work session, she started the discussion of Art Centers by reading from a Power Point presentation on the economic development potential of art centers. The Power Point had been prepared by a national arts organization. It turns out that it was nothing but an advertisement for investing in arts centers. It provided no evidence that art centers have net economic benefits. It made no mention of either the capital or operating costs art centers or their reliance on government subsidies. It also did not provide any guidance for making decisions. In addition, it did not address a claim often made by developers that "art centers do not make business sense." The Mayor also did not address the local experience with the arts over the last two decades. Among other things, a small private gallery in Herndon had failed to attract much interest, and the Art Space during the last seven years and the Next Stop theater over the last 27 years had not generated any economic development worth bragging about. *In light of this local experience and the expected operating losses discussed above, the power point presentation was totally inapplicable to our town.*

I. WILL A NEW ART CENTER IN RESTON AFFECT THE FINANCIAL VIABILITY OF AN ART CENTER?

This is a legitimate concern because many patrons of the Herndon's Art activities live in Reston or come from other surrounding areas. They would have more choices in the future and may take their efforts and money to Reston. I had raised this issue several months ago after I came to know that the Fairfax County was planning to build a \$50 million, multi-use arts facility in the very near future. In fact, it had already issued a request for proposal to begin the process of selecting a developer. During the Oct 7th work session, the Mayor made a statement that in effect said that a prominent arts person had told her that the multi-use facility in Reston should have no effect on an Art Center in Herndon. The Town, I believe, should not rely on such weak assurances to avoid doing a serious assessment of the financial viability of an Art Center in Herndon.

J. WHO WILL BENEFIT FROM THE ART CENTER?

The advent of an Art Center would be a personal triumph for Mr. Richard Downer (and others) who was one of the founders of The Elden Street Players, is a director of the Next Stop theatre and owns at least a share of one of the properties where NextStop theater is located. Reportedly, he has also played a significant part in the purchase of the Art Space property and was the president of the Herndon Foundation for the Cultural Arts for more than six years. To many in the arts community, he would be a hero, if an Art Center comes to the downtown, especially with 100% public financing. Whether or not the future Art Center induces any economic development, it is likely to have a positive, albeit, a small effect on the values of commercial properties in the downtown. Hence, downtown property owners, including Mr. Downer, should realize some economic benefit unless they are forced to pay for the Art Center through special tax assessments.

Notwithstanding past claims made by principals of the Foundation for the Cultural Arts that the Art Center would be free for our town residents, the Art Center would be paid by a combination of (1) Donation of the Town-owned land (worth 7 to 10 million dollars in my opinion) to a selected developer, (2) Increasing the density of development in the downtown, and (3) issuing bonds and contributing the proceeds to the developer.

Also read ["A Free" Art Center? A Wonderful Fantasy or What?"](#)

The Art Center could be financed by using tax-increment financing, but the Town has been advised that this type of financing is not feasible. If it were so, a portion of the capital cost might fall on the existing property owners.

It remains to be seen how the Art Center would be financed; however, it appears that Herndon residents would pay for it one way or the other. The strange thing is that a vast majority of the population in the Town is not even aware of the Council for the Arts, or the Foundation for the Cultural Arts or even the NextStop Theatre. Further, they have never been asked about their social, entertainment and artistic preferences. Without the benefit of having their input, it is difficult to imagine how an Art Center would make a material difference in their economic welfare.

NOTES

[1] The Vision Committee was apparently formed by the Arts Group to promote its mission.

[2] It was surprising to find Mr. O'Reilly, an attorney and a politician, make the presentation. The Council should have had the benefit of receiving advice from experts in designing and building theaters and art centers.

[3] Ever since I published the potential costs of an Art Center, some people have been looking to undermine my estimate of between \$13 and \$15 million in 2015 dollars for a 275-seat 18,000 sq. ft. art center. My estimate was largely based on the data given in the WBL study. Since gsf for both designs are almost equal, the cost of the Art Center based Mr. O'Reilly's proposal is likely to be almost equal to that of the WBL design.

[4] Over the last two decades, Art Center sizes have varied between 18,854 nsf for the WBL design and 12,000 nsf for the JPI proposal. Past proposals have included theaters of varying sizes from 275-seats on the high end to the current proposal of 200-seat theater. Given that Next Stop currently operates in a 125-seat theater, the projected need of a 200-seat theater over the next 3 or 4 years does not appear to be unreasonably risky.

[5] These spaces include Department Head Offices, Vending Areas, Backstage Toilets, Lighting Equipment Storage, Audio Equipment Rm., Receiving Dock and Staging Area, Trash Handling Room, Scene Maintenance and Repair Shop, Cast Dressing Room, Performer's Lounge, Wardrobe Maintenance and Playhouse Stage Size Rehearsal Studio.

[6] This estimate is derived by using \$26,000/space figure given in the 2005 Norton Scott proposal and inflating it by 25-35% to account for inflation.

[7] This amount has been calculated by assuming that the market rent is \$20/sq. ft., the Art Groups will occupy 10,500 sq. ft in the Art Center. It is also assumed that they would have exclusive use of the art rooms, and the community room and would share kitchen, bathrooms, receiving docks, etc. with the proposed theater.

[8] Currently, they pay a meager rent of \$2,400 per year and receive a rent subsidy of more than \$60,000 per year. Even with the subsidy and annual grants from the Town, they have not earned net profits during the last six years.

[9] Some people claim that the Town will not have to raise any capital to build the Art Center (and associated parking), because the value of the Town-owned land that may amount to as much as (as well as the value of the extra density that might be permitted by the town). That may be true, but that does not mean that we should ignore the opportunity cost of the capital in making the investment decisions. The Town can always sell the land and invest the proceeds in another endeavor.

**COMPARISON OF THE ESTIMATED SIZES OF THE ART CENTERS
2003 WBL DESIGN VS. VISION COMMITTEE DESIGN**

BY, Jasbinder Singh (10/15/2015)

COST COMPONENTS OF THE ART CENTER	WBL 2003 Design	Vision Committee's 2015 Design	Town Manager's Design
	Area in Net Sq. Ft.	Area in Net Sq. Ft.	Area in Net Sq. Ft.
1. Public Areas for Playhouse shared with Community Room			
Entrance Foyer	500		
Public Ticket	200	50	
Box Office Suite	320		300
Coat Room	150	50	100
Concessions Storeroom	100	150	
Front of House Storage	100	50	
Public Restrooms for Playhouse	550	150	500
Lobby	2,750	400	1,200
Subtotal	4,670	850	2,100
2. Art Galleries Etc.			
Art Galleries		2,000	2,000
Dance & Music Rooms		400	
Arts & Craft Rms		600	
Storage		400	500
Artists Studios		600	
Offices			1,200
Classrooms			300
Subtotal		4,000	4,000
3. Auditorium/Stage for 275 Seat Playhouse			
Auditorium (275 Seats @ 15sf/seat)	4,125	7,000	3,000
Stage 30'x60'x30' high	1,800		
Dimmer Rm	50		
Audio Rack Rm	50		100
Lighting Control Booth	120	100	200
Subtotal	6,145	7,100	3,300
4. Multipurpose Community Rm for 100 People			
Public Banquet/Meeting/Flat Floor Rm/Recital Space	2,200	3,500	
Catering Pantry with Warming Ovens and Clean-up Provisions	500	300	200
Table and Chairs Storage	150		
Subtotal	2,850	3,800	200

COST COMPONENTS OF THE ART CENTER	WBL 2003 Design	Vision Committee's 2015 Design	Town Manager's Design
	Area in Net Sq. Ft.	Area in Net Sq. Ft.	Area in Net Sq. Ft.
5. Broadcast Friendly TV Studio/Recording Studio			
Broadcast/Teleconference Studio	500		
Broadcast Studio Control Rm	150		
Subtotal	650	500	500
6. House /Stage Production Support Spaces			
Department Head Office	200		
Vending Area	80		
Backstage Toilets	160	50	
lighting Equip Storage	100		300
Audio Equipment Rm	100		
Receiving Dock and Staging Area (Enclosed)	400	200	200
Trash Handling Rm	150		
Facility Adm. Office	450	400	
Janitor Closet	160	100	
Subtotal	1,800	750	500
7. Company Production Support Space			
Secure Tool Rm	100		
Scene Maintenance and Repair Shop	600	100	1,700
Subtotal	700	100	1,700
8. Performance Support Services (6-8 Performers)			
Cast Dressing Rm	400	400	600
Performers' Lounge	350		500
Wardrobe Maintenance/Laundry	80		
Subtotal	830	400	1,100
9. Facility Program Support Services			
Playhouse Stage Size Rehearsal Studio 30'x40'	1,200		1,200
Subtotal	1,200		1,200
TOTAL NET AREA	18,845	17,500	14,600
Mechanical/Electrical (15%)	2,827	400	400
Inaccessible Shafts/Attics/Plenum (14%)	2,638		
Circulation(Corridors, Elevators, Stairs (12%)	2,261	100	
Walls and Structures (13%)	2,450		
Subtotal	10,176	500	400
Grand Total	29,021	18,000	15,000

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING dated October 7, 2004 between the TOWN OF HERNDON, VIRGINIA a municipal corporation (Town) and HERNDON FOUNDATION FOR THE CULTURAL ARTS, a Virginia non-profit, charitable corporation (Foundation).

Foundation is a charitable institution, association, or organization that provides recreational or cultural services to the residents of the Town of Herndon, Virginia and of the surrounding communities and jurisdictions.

In consideration of \$1.00 paid by each party to the other, and of the mutual benefits and obligations of this memorandum of understanding ("MOU"), the parties agree as follows:

1. Purpose. The purpose of this MOU is to define the relationship between the Town and the Foundation in the establishment of a community cultural arts center ("arts center") on Town owned land at or near 750 Center Street, Herndon, Virginia ("land"), a goal that both parties share. The arts center will provide recreational or cultural services to the residents of the Town of Herndon, Virginia and the surrounding communities and jurisdictions.

2. Legal. The Town is a public body under Virginia law and is compelled to comply, chooses to comply, and will comply with the constitutional provisions assuring the right of free speech, with laws requiring appropriation of funds prior to Town expenditure or commitment to spend funds, with the Virginia Freedom of Information Act, and with the Town's public procurement ordinances, among many other laws. Section 15.2-2506, Code of Virginia provides that "[n]o [Town] money shall be paid out or become available to be paid out ... unless and until there has first been made an ... appropriation for such ... expenditure

by the governing body.” Foundation is a private corporation, separate from the Town and by design is not an element of the government of Town. Town may appoint by resolution six of the original thirteen Foundation Board members. This proportion of elected and appointed directors shall be maintained thereafter, should the board size increase or decrease. The Town appointed directors will always be at least one less than 50% of the entire board.

3. Planning. Town, in consultation with the Foundation, intends to plan for the design, development, financing, outfitting, and construction of the arts center. Foundation will serve as an active participant in consulting and advising Town on planning. Town will remain responsible for and in control of the planning.

4. Financing. Upon eventual appropriation of Town funds, Town and Foundation will finance the planning, development, construction, and outfitting, of the arts center. Foundation may make donations to Town to this end.

Upon eventual appropriation of funds, Town may make grants to Foundation to advance or achieve the planning, development, construction, and outfitting, of the arts center.

Specifically, the parties intend that subject to Town appropriation the Town and Foundation provide necessary funds to complete the construction of a shell arts center from 2006 to 2008 and Town and Foundation would fund finishing out of the arts center during and after 2008 to 2010.

The Town Council may by ordinance make a yearly appropriation to provide an operating financial subsidy to the Foundation to support the Foundation’s operation of the arts center. Foundation intends to manage the arts center with the goal of recovering at least two thirds of the cost to operate and manage the arts center, which funds Foundation will dedicate toward these purposes. The subsidy will be based on a yearly financial plan to be developed

by Foundation and submitted to Town for possible approval and acceptance as an element of the Town's yearly budget. The financial plan will describe the financial aspects of the operation of the arts center and specify a possible yearly subsidy.

Foundation may operate or see to the operations of food and beverages and other retail concessions at the arts center. Foundation will dedicate the proceeds from the concessions to operation of the arts center.

5. Fundraising. Foundation intends to conduct fundraising activities in its name to advance the planning, development, construction, and outfitting of the arts center. Foundation intends to make the funds raised available to Town for the arts center or to utilize the funds raised directly for financial obligations Foundation might incur in its efforts to support the planning, development, construction, and outfitting of the arts center. Town intends to appropriate for these purposes the funds provided by the Foundation to Town.

If this MOU is terminated, Town and Foundation will honor any donor restrictions on funds in their close out use or the return of unspent portions to donors.

Town shall not be responsible to third parties with respect to funds raised by Foundation in the Foundation's name; for Foundation's failure to expend or to account for these funds; or for failure or delay in the planning, development, construction, or outfitting of the arts center.

It is the intention of the Town and Foundation to plan, develop, construct, and outfit the arts center. However, if this intention should not be realized before September 16, 2014, or if by that date substantial progress toward realization of this intention has not been made such that success appears unlikely, or if the MOU is terminated by either party without having realized the construction of the arts center, both parties, subject to Town appropriation, shall

return before September 16, 2015 unused contributions to the donor, its successors or assigns, honoring donor restrictions.

When Foundation transfers to Town such funds or other property raised by Foundation, these funds shall upon the transfer assume the character of Town's public funds, intended to be used and appropriated for the planning, development, construction, or outfitting of the arts center, or else returned to the original donor, subject in any case to donor restrictions.

Town and Foundation shall hold each other harmless for any claims one or the other, or third parties, may assert, against the other growing out of any fundraising for the arts center conducted by the Foundation.

Foundation as a fundraising technique may provide non-corporeal, non-real estate licenses to have names of arts center donors to the Foundation or to the Town inscribed on bricks, indoor murals, plaques, equipment, furniture, or interior displays. The Town Council by ordinance may authorize the Foundation as a fundraising technique to accord to a donor to the Town or the Foundation non-corporeal, non-real estate 20-year revocable licenses to name the arts center or any room or component facility thereof. Otherwise, Town retains this naming prerogative.

Foundation will report to Town quarterly on Foundation's fundraising activities under this MOU. Each party may inspect the financial books and financial records of the other related to this MOU on reasonable notice and during normal business hours.

6. Service Contracts. Town intends to involve Foundation in the selection of architectural and engineering services for the planning, development, and construction of the arts center. Any professionals employed by the Town for the planning, development, or

construction of the arts center shall report to and take direction from the Town. Town intends to share information with Foundation concerning the Town's procurement of these services and to provide for Foundation's representation on Town selection committees for such procurements. Town intends generally to seek the Foundation's advice and counsel in this regard.

7. Development of the arts center. Town will undergo any necessary site planning, subdivision, or other land use approval process to achieve the development and construction of the arts center. Town intends to benefit from the advice, counsel, and support of Foundation in this process.

8. Construction of the arts center. Town intends to have the arts center constructed with the advice, counsel, and support of the Foundation.

9. Management of the arts center. During the initial start-up period the Town will play a key role in the overall administration of the arts center through the Executive Director. The Executive Director is expected to be hired by the Town as a Town employee, with the advice of the Foundation, approximately two years before the expected opening of the arts center. The parties intend that the Executive Director will be employed by and report to the Foundation two years after the opening of the arts center. The Executive Director will manage and operate the facilities, programs and activities to occur within and around the arts center. The Town intends to provide interior maintenance; janitorial services; general building maintenance; maintenance of roof, utility systems, heating and air conditioning, escalators, walls, and foundation; and to provide for the overall structural integrity for the arts center building.

10. Programming at the arts center. Foundation will assume responsibility for establishment, over-sight, form, and content of any artistic or other recreational programming and the fees therefor to occur at the arts center. Programming, artistic, recreational, form, fee, and content decisions of the Foundation as to the arts center represent private decisions of a private entity. The Foundation will assume responsibility for establishing the policies for planning, design, promotion, and supervision of arts center programs and activities.

Town reminds Foundation that the arts center is not a purely private facility but represents a public-private undertaking. As such, Foundation must ensure that program content decisions reflect contemporary community standards or that any specific programming taken as a whole is not obscene.

11. Insurance. Each party will obtain and maintain in commercially reasonable amounts all appropriate insurance with respect to the arts center.

12. Assignment. This MOU may not be assigned.

13. Term. The term of this MOU shall run to December 31, 2014. In the absence of a negotiated renewal by a date one year prior to the scheduled expiration date, this agreement will automatically be renewed for one two-year period.

14. Termination. In the event that completion of the arts center appears futile, the parties will terminate the MOU and subject to donor restrictions shall return unused contributions to the donors, their successors or assigns. Either party may terminate the MOU on 90 days written notice to the non-terminating party, prior to beginning construction of the arts center. After the beginning of construction of the arts center, either party may terminate the MOU on one year's written notice to the non-terminating party.

15. No partnership. The parties are not partners or joint-venturers.

16. Effective Date. This MOU is effective on and after October 13, 2004.

17. Supplementation. The parties intend that they will supplement and define this MOU with detailed amendments addressing functional areas set out in the MOU.

18. Shared Objectives. In accordance with the Governance Recommendations submitted by the Citizen's Advisory Committee in April 2003, the following are the shared objectives of the Town and the Foundation with respect to the operation of the arts center:

(a) Programming

- Provide year round programming which strives for artistic excellence seeking to entertain, stimulate, and enhance the quality of life for our community.
- Encourage development of resident companies to foster successful and vibrant programming.
- Develop mentoring programs, master classes, and other participatory events to complement the performance schedule and encourage program development.
- Include lectures, demonstrations, and exhibits, which explore Herndon's culture, history, and way of life.
- Supplement the programs of local presenters by identifying or encouraging outside presenters to provide programs or events to fill out the schedule.

(b) Community Involvement

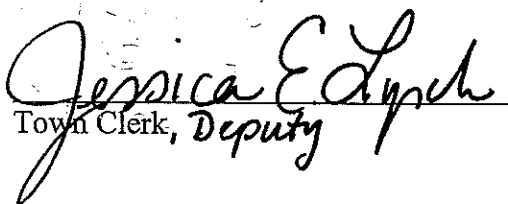
- Engage the richness of our citizen's heritage by providing opportunities to showcase the diversity in the arts of many cultures.
- Encourage broad community participation by seeking to include programs with affordable ticket prices.
- Promote local restaurants and caterers as resources for functions & events when permitted under local law.
- Promote the vitality and continued development of the Town's Downtown by developing strong ties with associations and organizations in the community.
- Supplement programs for our young people by forming a cooperative partnership with local schools.
- Develop programs that encourage citizens to participate in creating and supporting art as part of their life experience.
- Utilize volunteer efforts to foster community ownership and advance the spirit of community service.
- Include a display area or hall.

(c) Management & Fiscal Responsibility

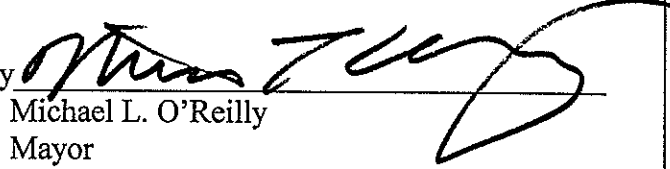
- Provide a well-designed and professionally managed venue.
- Maintain an outstanding fundraising and marketing program to support the goals of artistic excellence and financial responsibility.
- Manage the schedule to encourage a diverse season representing theater, music, dance, and visual arts (including film/TV).
- Provide a convenient and attractive function area for use by local community groups and businesses when the center is not scheduled for cultural activities.
- Encourage rental of the center to the business community for conferences and events when the center is not scheduled for cultural activities.
- Utilize volunteer efforts to reduce the cost of operation and maintenance.

TOWN OF HERNDON, VIRGINIA

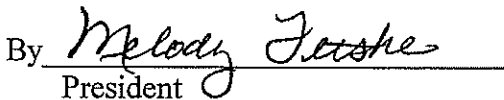
ATTEST:


Town Clerk, Deputy

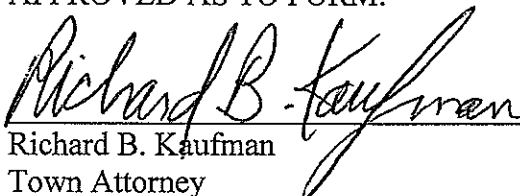
By


Michael L. O'Reilly
Mayor

HERNDON FOUNDATION
FOR THE CULTURAL ARTS

By 
President

APPROVED AS TO FORM:


Richard B. Kaufman
Town Attorney