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BOARD OF SUPERVISORS BUSINESS MEETING ACTION ITEM

SUBJECT: Use of Eminent Domain for Acquisition of Site for New

Aldie Fire Station

ELECTION DISTRICT: Blue Ridge

CRITICAL ACTION DATE: At the pleasure of the Board

STAFF CONTACTS: Joe Kroboth, Director, Department of Transportation &

Capital Infrastructure

Chief Keith Brower, Department of Fire, Rescue and

Emergency Management

Courtney R. Sydnor, Deputy County Attorney

PURPOSE: The purpose of this item is for further discussion of, and possible action by the Board concerning a proposed ordinance authorizing the use of eminent domain to acquire certain property for public use. The subject property consists of 9.63 acres located at 39573 John Mosby Highway, and is identified by Tax Map Number /89//////18D (PIN # 361-36-8286) (the "Property"). (Attachments 1 & 2). The Property is currently owned by David N. Senty and Laura P. Senty, Co-Trustees of the David N. Senty Revocable Trust (the "Sentys"). The proposed public use is construction by the County of Loudoun of a fire and rescue station to serve Aldie and the surrounding communities, including Middleburg, Arcola, Philomont, Kirkpatrick Farms, and Leesburg (the "Public Use").

PUBLIC HEARING: On May 14, 2014, the Board conducted a Public Hearing concerning the proposed ordinance, which would approve the Public Use and authorize staff to proceed with condemnation. During the Public Hearing, the Sentys, their counsel and fourteen members of the public spoke in opposition to the proposed condemnation. At the conclusion of the hearing, the Board voted to forward the matter to its May 21, 2014 Business Meeting for further discussion.

BACKGROUND: The Necessity for the Proposed Public Use: The Department of Fire, Rescue and Emergency Management ("DFREM") and Aldie Volunteer Fire Company provide personnel to staff an engine, tanker, heavy rescue squad, and an advanced life support ambulance. These units are strategically and centrally located on the Route 50 corridor to provide emergency response to the primary and surrounding communities. It is also a central location from which DFREM can deploy water rescue assets in times of forecasted inclement weather due to the

number of flash flood events in the Aldie, Arcola, Philomont and Middleburg communities. The proposed Public Use is necessary to replace the existing fire and rescue station in Aldie, which is of inadequate size and subject to periodic flooding. A new facility is needed to ensure the continued ability of DFREM and the Aldie Volunteer Fire Company to provide emergency response in support of life safety and property preservation in Aldie and the surrounding communities.

In early 2012, the County issued a Request for Interest (RFI), soliciting interest from landowners regarding the possible sale of their property. In the RFI, the County indicated that it needs a site of at least five acres excluding floodplain, wetlands and steep slopes; and defined the "Optimum Search Area" as a parcel with direct access to John Mosby Highway (Route 50) that is bordered by Snickersville Turnpike (Route 734) to the west and James Monroe Highway (Route 15) to the east. This search area was identified by DFREM in order to address needs and concerns regarding response times within the County's fire and rescue system.

Negotiation History: In November 2012, the Sentys sent a letter to Staff, offering to sell the Property (the complete 9.63 acre parcel) to the County for \$2.25 million. The Sentys contacted Staff of their own initiative. Staff did not take any steps to solicit an offer from the Sentys other than by forwarding the RFI to property owners within the search area. The Sentys' November 2012 offer letter stated that the Property is located within the Optimum Search Area, "on a gentle slope, [and] not in a floodplain." The Sentys later increased their offer to \$2.5 million. That offer is substantially higher than the County's fair market value assessment of the Property for tax purposes, and the value as determined by two independent appraisers.

For the years 2012 through 2014, the County assessed the fair market value of the Property at \$852,500, \$710,910, and \$722,630, respectively. An appraiser retained by the Sentys valued the Property at \$920,000 as of October 19, 2012. An independent appraiser retained by the County valued the property at \$825,000 as of May 3, 2013; and at \$925,000 as of September 20, 2013.

In 2013, the Board directed Staff to attempt to acquire the Property through a negotiated sale. In July and August 2013, Staff made written offers to the Sentys in the amounts of \$875,000 and \$1 million, respectively. Those offers were rejected by the Sentys, who stated on both occasions that they would agree to sell the property only if the Board accepted their price of \$2.5 million. In November 2013, Staff made an additional offer to the Sentys in the amount of \$1.1 million. The Sentys rejected that offer as well. Thereafter, the Board directed Staff to pursue condemnation of the Property.

Statutory Requirements for Condemnation: Prior to instituting eminent domain proceedings, the Board is required to make a bona fide effort to purchase the Property in accordance with the requirements of Va. Code § 25.1-204. That Code section requires the Board to deliver to the Property owner a written statement that contains, among other things, a certification that the acquisition has been reviewed by the condemnor for compliance with Code § 1-219.1. (Attachment 3). Although the County has made three written offers to purchase the Property, those offers did not contain a certification that the Board has reviewed the acquisition for compliance with Code § 1-219.1, and they did not contain certain other technical elements

required by § 25.1-204. Thus, before proceeding with condemnation, the Board must make a bona fide offer in compliance with Code § 25.1-204.

Pursuant to Code § 15.2-1903, prior to instituting condemnation proceedings the Board is also required, after a public hearing, to adopt a resolution or ordinance stating the use to which the property will be put and the necessity therefor, approving the proposed public use, and directing the acquisition of property for the public use by condemnation or other means. The Board conducted the requisite public hearing on May 14, 2014. Attached is a proposed ordinance that satisfies the requirements of Code § 15.2-1903. The proposed ordinance also authorizes and directs the County Administrator to make a bona fide effort to purchase the Property in compliance with Code § 25.1-204 and, if successful, to proceed with purchase. In the event the County Administrator's effort is not successful, the ordinance would also authorize and direct the County Attorney to institute condemnation proceedings. (Attachment 4).

ALTERNATIVES: If the Board decides not to proceed with the acquisition of the Senty Property, Staff would need to resume its search for an appropriate site for the new Aldie fire and rescue station.

FISCAL IMPACT: If the County proceeds with condemnation, the fiscal impact of this action will depend, principally, on the amount of just compensation to which the owners are entitled. That amount will be determined by a jury or a panel of commissioners at trial. In addition, the Board may be required to pay some of the owners' expert witness costs. The Board will also incur costs for its own expert witness(es), depositions, and other litigation related expenses. The litigation expenses could be significant, as the Sentys' have retained counsel who indicates that he will fight condemnation vigorously.

DRAFT MOTIONS:

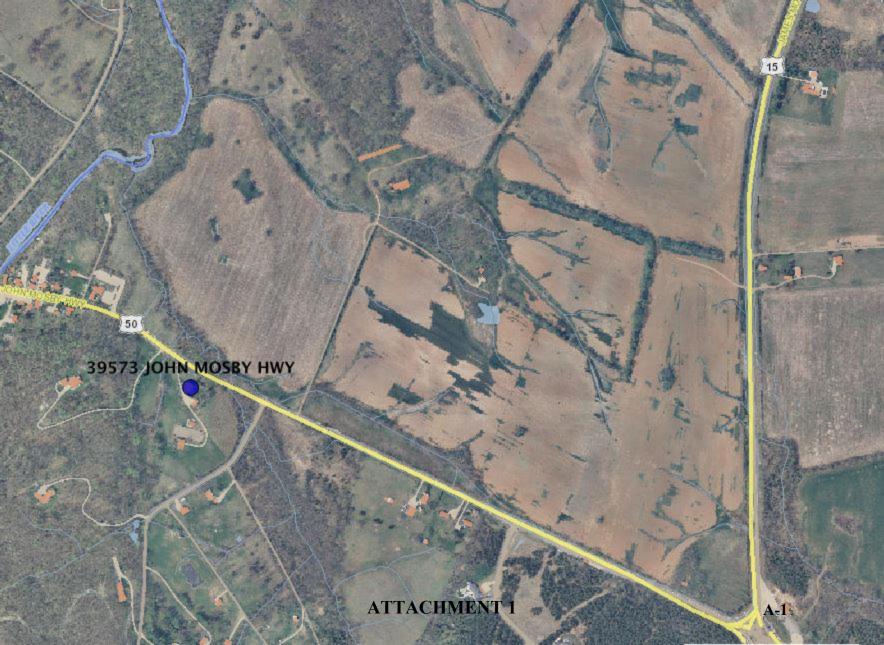
1. I move that the Board of Supervisors **adopt** the ordinance as set forth in Attachment 4 to the May 21, 2014 Board of Supervisors Business Meeting staff report – i.e., an ordinance authorizing acquisition of property for public use by negotiation or condemnation for the public purpose of constructing a fire and rescue facility.

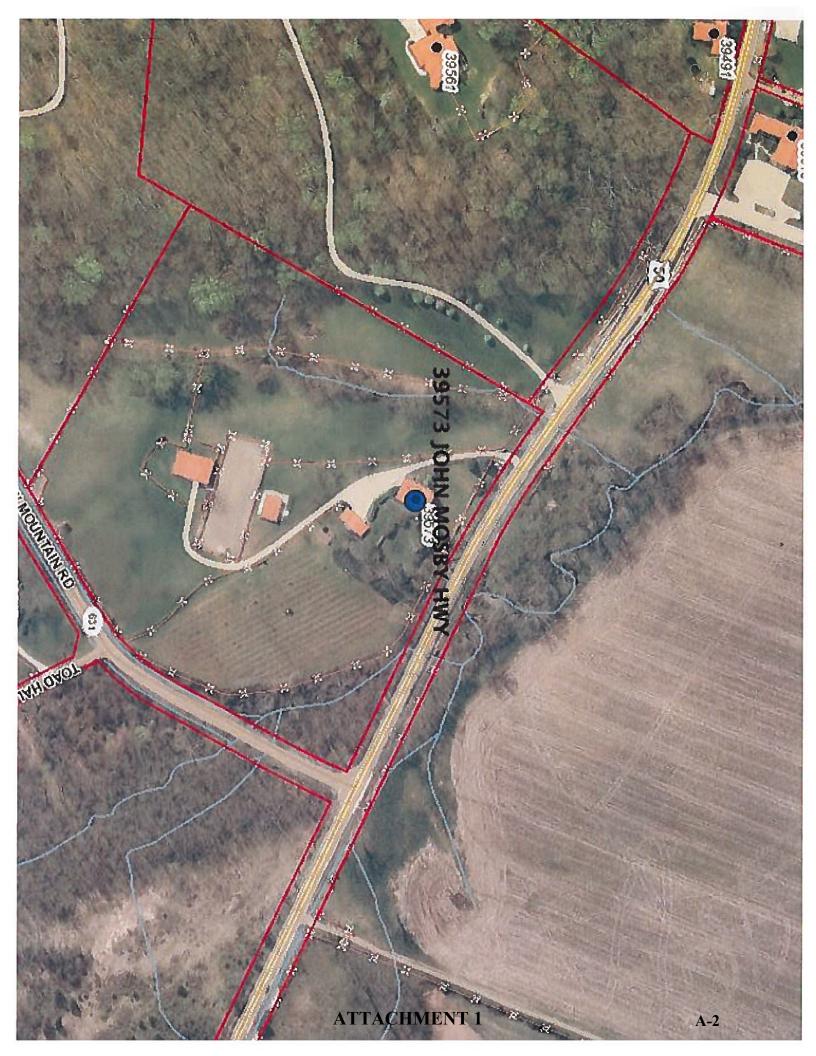
OR

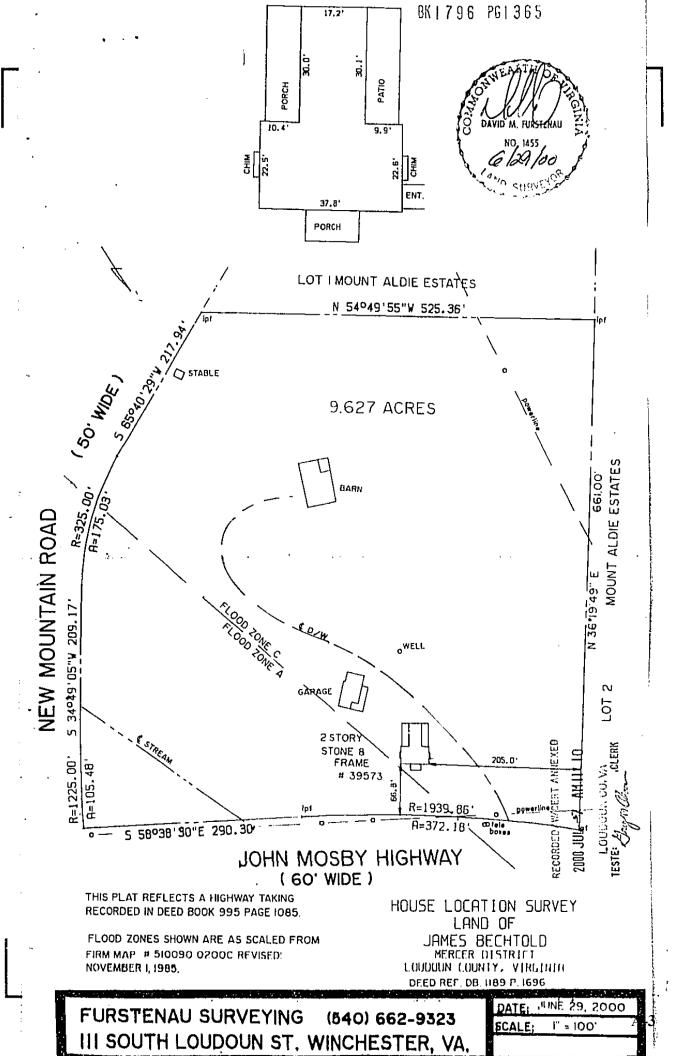
2. I move that the Board of Supervisors direct staff to take no further action on this matter at this time.

ATTACHMENTS:

- 1. Vicinity maps
- 2. Plat showing proposed acquisition
- 3. Va. Code § 1-219.1
- 4. Proposed ordinance







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§ 1-219.1. Limitations on eminent domain.

A. The right to private property being a fundamental right, the General Assembly shall not pass any law whereby private property shall be taken or damaged for public uses without just compensation. The term "public uses" mentioned in Article I, Section 11 of the Constitution of Virginia is hereby defined as to embrace only the acquisition of property where: (i) the property is taken for the possession, ownership, occupation, and enjoyment of property by the public or a public corporation; (ii) the property is taken for construction, maintenance, or operation of public facilities by public corporations or by private entities provided that there is a written agreement with a public corporation providing for use of the facility by the public; (iii) the property is taken for the creation or functioning of any public service corporation, public service company, or railroad; (iv) the property is taken for the provision of any authorized utility service by a government utility corporation; (v) the property is taken for the elimination of blight provided that the property itself is a blighted property; or (vi) the property taken is in a redevelopment or conservation area and is abandoned or the acquisition is needed to clear title where one of the owners agrees to such acquisition or the acquisition is by agreement of all the owners.

B. For purposes of this section:

"Blighted property" means any property that endangers the public health or safety in its condition at the time of the filing of the petition for condemnation and is (i) a public nuisance or (ii) an individual commercial, industrial, or residential structure or improvement that is beyond repair or unfit for human occupancy or use.

"Government utility corporation" means any county or municipality, or entity or agency thereof, which provides or operates one or more of the following authorized utility services: gas, pipeline, electric light, heat, power, water supply, sewer, telephone, or telegraph.

"Public corporation" means the Commonwealth of Virginia or any political subdivision thereof or any incorporated municipality therein or any public agency of the Commonwealth or of any political subdivision thereof or of any municipality therein.

"Public facilities" means (i) airports, landing fields, and air navigation facilities; (ii) educational facilities; (iii) flood control, bank and shore protection, watershed protection, and dams; (iv) hospital facilities; (v) judicial and court facilities; (vi) correctional facilities, including jails and penitentiaries; (vii) library facilities; (viii) military installations; (ix) parks so designated by the Commonwealth or by the locality in its comprehensive plan; (x) properties of historical significance so designated by the Commonwealth; (xi) law enforcement, fire, emergency medical, and rescue facilities; (xii) sanitary sewer, water or stormwater facilities; (xiii) transportation facilities including highways, roads, streets, and bridges, traffic signals, related easements and rights-of-way, mass transit, ports, and any components of federal, state, or local transportation facilities; (xiv) waste management facilities for hazardous, radioactive, or other waste; (xv) office facilities occupied by a public corporation; and (xvi) such other facilities that are necessary to the construction, maintenance, or operation of a public facility as listed in clauses (i) through (xv) and directly related thereto.

C. No more private property may be taken than that which is necessary to achieve the stated public use.

D. Except where property is taken (i) for the creation or functioning of a public service corporation, public service company, or railroad; (ii) for the provision of any authorized utility service by a government utility corporation; or (iii) for sanitary sewer, water or stormwater facilities, or transportation facilities, including highways, roads, streets, and bridges, traffic signals, related easements and rights-of-way, mass transit, ports, and any components of federal, state, or local transportation facilities, by a public corporation, property can only be taken where: (a) the public interest dominates the private gain and (b) the primary purpose is not private financial gain, private benefit, an increase in tax base or tax revenues, an increase in employment, or economic development.

E. During condemnation proceedings, the property owner may challenge whether the taking or damaging is for a public use, the stated public use is a pretext for an unauthorized use, or the taking or damaging of property is a violation of subsection D. Nothing in this section shall be construed as abrogating any defenses or rights otherwise

ATTACHMENT 3

available to the property owner independently of this section.

- F. Subject to the provisions of subsection D, the limitations contained in this section shall not abrogate any other provision of law that authorizes a condemnor to dispose of property taken for a public use as surplus property, as otherwise provided by law.
- G. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the entire property for its fair market value as otherwise provided by law, but the condemnor shall not acquire an uneconomic remnant if the owner objects and desires to maintain ownership of the excess property.
- H. The provisions of this section shall control to the extent there are any inconsistencies between this section and any other general or special law; otherwise, nothing herein shall be construed as abrogating the power of eminent domain delegated independently of this section.
- I. The provisions of this section shall not apply to the forfeiture of property under Chapters 22.1 (§ 19.2-386.1 et seq.) and 22.2 (§ 19.2-386.15 et seq.) of Title 19.2.
- J. The provisions of this section shall not apply to real property that is subject to a certificate of take or a certificate of deposit recorded prior to July 1, 2007, in the circuit court clerk's office for the circuit where the real property is located or real property that is the subject of a petition for condemnation filed prior to July 1, 2007.
- K. For the purposes of any taking of private property in accordance with Article I, Section 11 of the Constitution of Virginia, a government utility corporation shall be considered to be acting as a public service corporation or public service company where the property is taken for the provision of an authorized utility service only; provided, however, that nothing in this subsection shall modify or affect the jurisdiction of the State Corporation Commission.

(2007, cc. <u>882</u>, <u>901</u>, <u>926</u>; 2012, cc. <u>283</u>, <u>626</u>, <u>756</u>.)

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CONDEMNATION ORDINANCE

An ordinance authorizing the acquisition of property for public use by negotiation or condemnation for the public purpose of constructing a fire and rescue facility.

IT IS HEREBY ORDAINED BY THE BOARD OF SUPERVISORS OF LOUDOUN COUNTY AS FOLLOWS:

- The specific property to be acquired is as follows: Fee simple interest in the real property presently owned by David N. Senty and Laura P. Senty, Co-Trustees of the David N. Senty Revocable Trust dated May 2, 2002; located at 39573 John Mosby Highway, and bearing Parcel Identification No. 361-36-8286 and Tax Map No. /89//////18D (the "Property").
- 2. The proposed public use of the Property is for construction of a fire and rescue station by the County of Loudoun to serve Aldie and the surrounding communities, including Middleburg, Arcola, Philomont, Kirkpatrick Farms, and Leesburg (the "Public Use"). The Department of Fire, Rescue and Emergency Management ("DFREM") and Aldie Volunteer Fire Company provide personnel to staff an engine, tanker, heavy rescue squad, and an advanced life support ambulance. These units are strategically and centrally located on the Route 50 corridor to provide emergency response to the primary and surrounding communities. It is also a central location from which DFREM can deploy water rescue assets in times of forecasted inclement weather due to the number of flash flood events in the Aldie, Arcola, Philomont and Middleburg communities. The proposed Public Use is necessary to replace the existing fire and rescue station in Aldie, which is of inadequate size and subject to periodic flooding. A new facility is needed to ensure the continued ability of DFREM and the Aldie Volunteer Fire Company to provide emergency response in support of life safety and property preservation in Aldie and the surrounding communities.
- 3. The Board has reviewed the acquisition for compliance with Virginia Code § 1-219.1. Acquisition of the Property for the Public Use satisfies the requirements of that statute. Accordingly, the proposed Public Use is hereby approved.
- 4. The County Administrator or his designee is authorized and directed to make a bona fide effort to purchase the Property from the owners, in accordance with the requirements of Virginia Code § 25.1-204 and consistent with the most recent appraisal obtained by the County.
- 5. In the event the County Administrator or his designee is able to negotiate an agreement for purchase of the Property, the County Administrator or his designee is authorized to execute a written purchase contract in a form approved by the County Attorney. Pursuant to Virginia Code § 15.2-1803, the Board of Supervisors hereby accepts instruments of conveyance for the Property. The Chairman or the Vice Chairman of the Board of Supervisors or the County Administrator is authorized to execute the deed of conveyance for the Property.

The County Attorney is authorized to execute all collateral documents reasonably necessary to facilitate settlement.

- 6. In the event the County Administrator is unable to negotiate an agreement for purchase of the Property from the owners, despite a bona fide effort to do so, the County Attorney is authorized and directed to initiate judicial proceedings to acquire the Property for the Public Use by condemnation, in accordance with Virginia Code §§ 15.2-1901, et seq., and §§ 25.1-200, et seq., including, if appropriate, an application to the circuit court for a right of entry upon the Property pursuant to Virginia Code §§ 25.1-223, et seq.
- 7. This ordinance shall take effect upon passage.