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# Judicial Watch

*Because no one is above the law!*

**VIA FEDEX**

July 25, 2005

Chairman Carl I. Siversten  
Herndon Planning Commission  
Town of Herndon Municipal Center  
777 Lynn Street  
Herndon, VA 20170

**Re: Proposed Day Laborer Site, C.U. #05-11**

Dear Chairman Siversten:

Judicial Watch, Inc. represents concerned residents and taxpayers of the Town of Herndon and Fairfax County. These residents and taxpayers wish to express their concern about the "Day Laborer Site" proposed by "Project Hope and Harmony."

Project Hope and Harmony's application for a conditional use permit calls for the "Day Laborer Site" to be situated on Town of Herndon property. This provision of rent-free land has substantial dollar value and therefore constitutes a use of taxpayer resources. It also is our understanding that approximately \$170,000 in county funds are being made available for the proposed site. Our clients' concerns are numerous, but center on the use of taxpayer resources, including town property and county funds, to facilitate illegal activity.

As you undoubtedly know, it is unlawful for employers to hire undocumented workers. Federal law expressly prohibits the recruiting or hiring of an alien if it is known that the alien is not authorized to work in the United States. 8 U.S.C. § 1324a(a)(1)(A). In addition, it is unlawful to hire any individual for employment in the United States without complying with federal employment eligibility verification requirements. 8 U.S.C. § 1324a(a)(1)(B)(i).

The stated purpose of the proposed "Day Laborer Site" is to provide an "assembly site where day laborers can congregate for the purpose of finding work." See Town of Herndon, Virginia, Planning Commission Staff Report, Update Summary, dated July 11, 2005 ("Staff Report"), at 2. In addition, the application also proposes providing a variety of services to the day laborers who use the site, including "job training, language and literacy classes, job development, workers rights and immigration law assistance, and leadership development." *Id.* at Attachment A, para. 12.

It cannot be reasonably disputed that users of the proposed "Day Laborer Site" will include undocumented workers. In fact, it appears from the permit application and "Operating Policy and Procedures" that the proposed site is aimed at assisting precisely such workers. *Id.* at Attachments A and C. Moreover, in June 2004, Fairfax County published the results of a survey of day laborers taken in the Fall of 2003. *See* Dep't of Systems Management for Human Services, "An Account of Day Laborers in Fairfax County," June 2004 ("Fairfax County Survey"). The survey interviewed two hundred and one (201) day laborers at four (4) "informal" day laborer sites in Fairfax County, including a site in Herndon. *Id.* at 5. The results of the survey showed that the overwhelming majority of day laborers interviewed -- some eighty-five percent (85%) -- preferred permanent employment to day labor. *Id.* at 15. Of this eighty-five percent (85%), approximately eighty-five percent (85%) cited the lack of documentation as being a barrier to obtaining permanent employment. *Id.* Based on the expressed intent of the applicant, as demonstrated by its application and its "Operating Policies and Procedures," as well as the Fairfax County Survey, it appears extremely likely that the site will be used by undocumented workers and employers of undocumented workers for illegal activities, namely the employment of undocumented workers.<sup>1</sup>

As it is currently written, the application proposal contains no provision for screening day laborers at the site to determine whether, in fact, they are eligible to work in the United States. The Staff Report does not even attempt to address in any meaningful way the illegal employment of undocumented workers or the Town of Herndon's and the County of Fairfax's facilitating such illegal employment practices. These critical omissions make it very likely that taxpayer resources will be used to facilitate violations of federal law.

In addition, the Staff Report notes, citing Section 78-91 of the Town of Herndon Zoning Ordinance, that conditions for the issuance of a use permit for the "Day Laborer Site" include the following: (1) that the proposed use must not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use; or (2) that the proposed use must not be detrimental to the public welfare or injurious to property or improvements to the neighborhood. *See* Staff Report at 7-8. While the report tries to address petty criminal activity, nowhere does it address the obvious violation of federal immigration and employment laws that will likely take place on the site or that will be facilitated by the existence of the site.

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<sup>1</sup> According to the Fairfax County Survey, day laborers frequently complain about improper and abusive practices by employers, including lack of sufficient breaks, non-payment and under-payment, abandonment, discrimination, and threats and violence. Fairfax County Survey at 16. Using taxpayer funds to facilitate black market labor makes the Town of Herndon and Fairfax County complicit in such reprehensible practices.

Moreover, by devoting taxpayer resources to the proposed "Day Laborer Site," the Town of Herndon and Fairfax County themselves will likely be violating federal law. Federal immigration laws make it illegal to "encourage or induce an alien come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." 8 U.S.C. § 1324(a)(1)(A)(iv). Federal immigration laws also make it unlawful to aid or abet the commission of such acts. 8 U.S.C. § 1324(a)(1)(A)(v)(II). Certainly, facilitating the illegal employment of undocumented aliens, as is contemplated by the proposed "Day Laborer Site," may be deemed encouraging or inducing an alien to come to, enter, or reside in the United States, or, at a minimum, aiding and abetting such conduct.

In addition to being illegal under federal immigration laws and/or facilitating illegal conduct, the proposed "Day Laborer Site" also likely constitutes an *ultra vires* act, since it is not a reasonable method of implementing the authority conferred on the Town of Herndon and/or Fairfax County by Virginia law. See, e.g., *Arlington County v. White*, 259 Va. 708 (2000). Should the proposal go forward, our clients are prepared to challenge the "Day Laborer Site" in court as an illegal use of taxpayer funds and will seek declaratory and injunctive relief, attorney's fees, costs, and any other relief to which they are entitled.

For the Town of Herndon and Fairfax County to use taxpayer resources in the manner proposed by the application is akin to a local or county government operating a house of prostitution or an open-air drug market so that "customers" and "suppliers" can have safe, well-run locale in which to carry out their illegal transactions. While the applicant's intentions may be well-meaning, the proposed "Day Laborer Site" is neither good public policy nor a lawful use of taxpayer resources, and our clients are firmly opposed to it. We trust that the Planning Commission will recommend against the proposed use.

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.



Paul J. Ofanedes  
Director of Litigation

cc: Mayor Michael L. O'Reilly  
Town Council, Town of Herndon, Virginia  
Board of Supervisors, Fairfax County, Virginia  
Board of Supervisors, Loudon County, Virginia