



**Judicial
Watch**[™]
*Because no one
is above the law!*

VIA FEDERAL EXPRESS

August 12, 2005

The Hon. Michael L. O'Reilly
Mayor, Town of Herndon
Herndon Municipal Center
777 Lynn Street
Herndon, VA 20170

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

Dear Mayor O'Reilly:

Judicial Watch, Inc. represents concerned residents and taxpayers of the Town of Herndon and Fairfax County. These residents and taxpayers wish to express their opposition to a conditional use permit being requested by "Project Hope and Harmony" to operate a "Day Laborer Site" in the Town of Herndon. We note that the Planning Commission recommended against the application after two lengthy hearings on August 1 and August 3, 2005. The Town Council is scheduled to consider the application at a public meeting on Tuesday, August 16, 2005.

Project Hope and Harmony's application calls for the proposed "Day Laborer Site" to be situated on Town of Herndon property. The use of public land for the site, free of charge, constitutes a substantial economic benefit and a significant use of taxpayer resources. It also is our understanding that approximately \$170,000 in funds are being made available for the proposed site by Fairfax County. 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 Staff Report, dated July 11, 2005 ("Staff Report"), at 3. 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 5, 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 3 and 5. 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 very likely that the site will be used by undocumented workers and employers of undocumented workers for illegal activities, namely the employment of undocumented workers.¹

As it is currently written, the application proposal contains no provision for screening day laborers at the proposed site to determine whether, in fact, they are eligible to work in the United States. *See, e.g.,* Staff Report at Attachment 3, p. 10. Although Section 78-107 of the Town of Herndon Zoning Ordinance expressly requires that “[a]ll activities conducted on the site shall be carried out in a lawful manner, as determined by competent town, Virginia or federal authorities,” the Staff Report does not even attempt to address the illegal employment of undocumented workers or the facilitation of such illegal employment by the Town of Herndon and Fairfax County. Failing to ensure that the day laborers at the proposed site are eligible to work in the United States makes 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

¹ 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.

not be detrimental to the public welfare or injurious to property or improvements to the neighborhood. *See* Staff Report at 9-11. 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.

Moreover, by devoting taxpayer resources to the proposed "Day Laborer Site," the Town of Herndon and Fairfax County 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 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, it is likely that the proposed "Day Laborer Site" also is illegal under Virginia law. We are aware of no Virginia statute expressly authorizing municipalities such as the Town of Herndon to establish day laborer sites. In the unlikely event that the establishment of such sites can be fairly implied from powers expressly granted to the Town of Herndon by Virginia law, it nevertheless is likely that establishment of the proposed site is illegal because it is not a reasonable method of implementing any implied powers conferred on the Town of Herndon by Virginia law. *See, e.g., Arlington County v. White*, 259 Va. 708 (2000). The proposed site also may violate Va. Code § 63.2-503.1, among other applicable provisions of law.

For the Town of Herndon and Fairfax County to use taxpayer resources in the manner proposed in the application is akin to a municipality or county operating a house of prostitution or illicit drug market to enable persons who participate in such activities to have a safe, well-regulated environment in which to engage in 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 Town Council will reject it.

Nonetheless, 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 an *ultra vires* act, among other bases, and will seek declaratory and injunctive relief, attorney's fees, costs, and any other relief to which they are entitled.

Finally, it is our understanding that members of the public are entitled to express their views on the proposed "Day Laborer Site" at the Tuesday, August 16, 2005 public meeting. Given the amount of public interest in the proposed site, we trust that reasonable

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accommodations will be made to ensure that everyone who wishes to express their views on the proposed site will be given a fair and equal opportunity to do so. *See, e.g., City of Madison*, 429 U.S. 168 (1976); *Collinson v. Gott*, 895 F.2d 994 (4th Cir. 1990).

Thank you for your attention to this matter.

Sincerely,

JUDICIAL WATCH, INC.

A handwritten signature in black ink, appearing to read "Paul J. Orfanedes", with a long horizontal flourish extending to the right.

Paul J. Orfanedes
Director of Litigation

cc: Town Council, Town of Herndon, Virginia
Board of Supervisors, Fairfax County, Virginia
Board of Supervisors, Loudon County, Virginia