



Date of Council Meeting: October 24, 2016

**TOWN OF LEESBURG
TOWN COUNCIL WORK SESSION**

Informational Memo

Subject: TLZM 2015-0003, Pennington Lot Parking Garage.

Staff Contact: Barbara Notar, Town Attorney

Council Action Requested: None. Information only.

Staff Recommendation: Not applicable.

Commission Recommendation: Not applicable.

Fiscal Impact: Not applicable.

Work Plan Impact: None.

Executive Summary: The Town Attorney has been asked for an opinion on whether, under Robert's Rules of Order, Town Council may rescind its decision to approve rezoning TLZM 2015-0003, Pennington Lot Parking Garage. It is opinion of the Town Attorney that under Robert's Rules of Order, which governs Council's procedures in its public meetings, it would be inappropriate to use a Motion to Rescind to revisit the approval of the Pennington Lot Parking Garage rezoning decision.

Background: On February 23, 2016, the Town Council voted to approve TLZM 2015-0003, Pennington Lot Parking Garage rezoning application. As a result, Zoning Ordinance 2016-O-005 was enacted. In the seven (7) months since the legislative action occurred, the landowner, Loudoun County, has substantially relied upon the rezoning and has taken the following steps while incurring significant costs:

- The Pennington Parking Structure is currently out-to-bid and Bids are due on October 26th;
- The County has paid Dewberry approximately \$260,000 in fees for preparation of the design and bid documents since the legislative approval, which includes the following engineering and other services:

Civil
Architectural
Mechanical

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Electrical

Plumbing

Land acquisition experts to obtain easements and plats required by the approval process

- Drawings were prepared for:

Church Street Extended

Church Street improvements from Market Street to North Street

Modifications to North Street

Pennington Parking Structure

Semones Lot

- This list does not include County staff costs.

According to Robert's Rules of Order Newly Revised (10th ed.), p. 297, l. 30-35, motions to rescind are not in order, "when something has been done, as a result of the vote on the main motion, that is impossible to undue". (The unexecuted part of an order, however, can be rescinded or amended.) An earlier edition of Robert's Rules of Order (4th ed.) states that, "votes cannot be rescinded after something has been done as a result of that vote that the assembly cannot undo; or where it is in the nature of a contract and the other party is informed of the fact".

Council approved the County's rezoning application and the Zoning Ordinance was amended to reflect the updated zoning. The County relied upon this approval. Based on this reliance, the County invested significant funds and thus, has "executed" the Town Council's decision. A rezoning is analogous to a contract where the Town Council has agreed to allow a landowner to change the zoning of the property and the landowner acts in reliance upon that agreement. In this case, the County not only was informed of the rezoning approval, but also took affirmative steps in reliance upon the rezoning by investing funds in the rezoning. Since the County has moved forward with site plans and construction plans, and has expended significant funds to execute Town Council's approval of the County's rezoning application, it would be inappropriate under Robert's Rules of Order to utilize a motion to rescind to revisit the rezoning decision; it would be impossible to undo the County's actions.