



## ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item  
Meeting of March 12, 2011

**DATE:** March 1, 2011

**SUBJECT:** Enactment of an Ordinance to Amend and Reenact an Ordinance to Vacate a portion of an Easement for Public Street, Sidewalk and Utilities Purposes, a portion of which is within the North Randolph Street Right of Way, running North to its intersection with Wilson Boulevard, then running East along Wilson Boulevard, on Property described as Parcel A, Rees Property, 4030 Wilson Blvd. (RPC# 14-060-036), by extending the Ordinance expiration date, with Conditions.

**Original Applicant:** Ashton Park Associates, LLC

**Original Owner:** Nehoso Inc.

**Present Applicant/Owner:** Ashton Park Associates IV, LLC c/o The Shooshan Company, LLC

By: Tad Lunger, Esq.  
Bean, Kinney & Korman, P.C.  
2300 Wilson Boulevard, 7<sup>th</sup> Floor  
Arlington, Virginia 22201

### C. M. RECOMMENDATION:

- A. Enact the attached Ordinance to Amend and Reenact an Ordinance to Vacate a portion of an Easement for Public Street, Sidewalk and Utilities Purposes, a portion of which is within the North Randolph Street Right of Way, running North to its intersection with Wilson Boulevard, then running East along Wilson Boulevard, on Property described as Parcel A, Rees Property, 4030 Wilson Blvd. (RPC# 14-060-036), with Conditions.
- B. Authorize the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services, or his designee, to execute, on behalf of the County Board, the Deed(s) of Vacation, and to accept on behalf of the County Board all deeds and easements required by the Ordinance to be dedicated or conveyed to the County Board, and to execute other documents necessary to effectuate the attached Ordinance of Vacation, subject to approval of such documents as to form by the County

County Manager:

*BMD/GA*

County Attorney:

*BAC*      *GA*

Staff: Betsy Herbst, DES, Real Estate Bureau

12.

Attorney.

**ISSUE:** The present Applicant/Owner has requested an extension of an expiration date contained in a previously enacted Ordinance of Vacation of an easement. The existing expiration date to meet the Ordinance conditions is July 19, 2011. The proposed extended expiration date would be July 19, 2014 to allow for time to construct the relocated storm sewer facilities required as conditions of the Ordinance. There are no issues identified in this request.

**SUMMARY:** The present Applicant/Owner, Ashton Park Associates IV, LLC, an affiliate entity of the Original Applicant (“Applicant”), and current owner of the subject property, has requested an amendment and reenactment of a vacation ordinance associated with phased development Site Plan #413, Founders Square. The purpose of the proposed Ordinance is to extend the expiration of one of the original four vacation ordinances enacted by the County Board on July 19, 2008. As provided in the 2008 vacation ordinance (“2008 Ordinance”), the Applicant has until noon on July 19, 2011, to complete all conditions of the 2008 Ordinance. The conditions of three of the four original vacation ordinances have already been met and deeds of vacation authorized by those ordinances have been recorded. However, because of construction phasing of the project, the Applicant has been unable to complete the required conditions of the last of the four original vacation ordinances and has requested an amendment to extend the expiration date of that ordinance. An Ordinance to amend and reenact that ordinance is attached to this report as Attachment 1 (“Amended Ordinance”).

Upon enactment of the Amended Ordinance, the Applicant would be required to satisfy the Ordinance conditions by July 19, 2014. Except for the expiration date, all other conditions of the 2008 Ordinance are incorporated into, and made part of, the Amended Ordinance. As a condition of the vacation, the Applicant is being required to remove and relocate an existing 15” storm sewer pipe located within the portion of the easement being vacated, and rededicate new storm sewer facilities as provided in the approved Site Plan. With completion of the conditions specified in the Amended Ordinance, the County’s interest in the portion of the vacated easement for public street, sidewalk and utilities purposes, on Parcel A, 4030 Wilson Boulevard, will be extinguished.

**BACKGROUND:** The approved Site Plan #413 provides for phased construction of this project consisting of two office buildings, including a US Department of Defense Uniform Security Standard building, two residential buildings and retail space in the Ballston area. The site plan area is shown on the Vicinity Maps attached hereto as Attachments 2 and 3.

As part of several complex property exchange transactions, the Applicant entered into an agreement with Washington Metropolitan Area Transit Authority (“WMATA”) to purchase certain real property adjacent to Mosaic Park. The Applicant also entered into an Exchange Agreement dated July 29, 2008, with the County whereby the County agreed to convey the vacated portions of 5<sup>th</sup> Road North and 5<sup>th</sup> Place North, located within the subject block, to the Applicant for development of Founders Square in exchange for the Applicant conveying the property adjacent to Mosaic Park, obtained from WMATA, to the County for future expansion of the park. In a series of real estate transactions, the property exchanges all occurred in 2009.

In order to meet preconditions of the Exchange Agreement and facilitate construction of Site Plan #413, the Applicant requested that the County Board enact four ordinances of vacation, which were approved along with the Site Plan on July 19, 2008. As part of the exchange transactions, the Applicant satisfied the conditions and caused three of the four Deeds of Vacation to be recorded among the land records of Arlington County, Virginia. The remaining vacation of a portion of an easement for public street, sidewalk and utilities purposes, which is the subject of this extension request, has not been recorded because the conditions of the 2008 Ordinance have not yet been satisfied.

On January 22, 2011, the Site Plan was amended for the purpose of transferring density from the Mosaic Park parcel to the Site Plan site, changing the height of certain buildings and other associated issues.

**DISCUSSION:** The Applicant requests that the County amend and reenact the one remaining 2008 Ordinance, in order to extend the deadline for completion of the conditions of that Ordinance which will vacate a portion of an easement for public street, sidewalk and utilities purposes, a portion of which is within the North Randolph Street right of way. The easement is located on a portion of the property known as 4030 Wilson Boulevard, RPC# 14-020-036, running north to the intersection with Wilson Boulevard, then running east along Wilson Boulevard, as depicted on the plat attached hereto as Exhibit A. One of the conditions of the 2008 Ordinance requires the Applicant to relocate an existing 15” storm sewer pipe located within the easement, at the Applicant’s sole cost and expense, into the right-of-way of North Randolph Street and Wilson Boulevard to permit redevelopment of the final phase of the Site Plan. Because construction on this phase of the Site Plan has not yet begun, the relocation of the new storm facilities has not yet been constructed.

Since enactment of the 2008 Ordinances, the subject property has been conveyed by Nehoso, Inc. to Ashton Park Associates IV, LLC by Special Warranty recorded in Deed Book 4424, Page 853, and by Quitclaim Deed recorded in Deed Book 4424, Page 858, both being dated December 15, 2010 and recorded December 16, 2010, among the land records of Arlington County, Virginia.

Legal and Physical Description: The portion of the easement proposed to be vacated is on property known as RPC# 14-060-036, currently owned by Ashton Park Associates IV, LLC, located at the intersection of North Randolph Street and Wilson Boulevard. The easement was established by Deed of Easement dated January 14, 1972, recorded in Deed Book 1777, Page 553 among the land records of Arlington County. The portion of the easement to be vacated consists of 787 square feet.

Compensation: As a condition of one of the completed vacations, the Applicant was required to dedicate to the County, in fee simple, a portion of RPC# 14-060-013, for use by the County as right-of-way for North Randolph Street. This parcel of land has been conveyed to the County by Deed of Dedication for Public Street and Utility Purposes dated November 10, 2009 and recorded November 13, 2009, in Deed Book 4324, Page 777 among the land records. At the time of enactment of the original vacation ordinances, dedication of this right-of-way to the County was considered sufficient compensation from the Applicant for two of the vacated areas,

including the subject vacation. Since the conveyance to the County has already occurred, no additional compensation is recommended to be required to be paid by the Applicant for the vacation or extension request.

**Public Notice:** Public notice was given in accordance with the Code of Virginia. Notices were placed in the February 15 and 22, 2011 issues of the Washington Times for the March 12, 2011 County Board Meeting.

**FISCAL IMPACT:** None.

**CONCLUSION:** It is recommended that the County Board enact the attached Ordinance of Vacation as set forth in Attachment 1 hereto.

## ATTACHMENT 1

**AN ORDINANCE TO AMEND AND REENACT AN “ORDINANCE TO VACATE A PORTION OF AN EASEMENT FOR PUBLIC STREET, SIDEWALK AND UTILITY PURPOSES, A PORTION OF WHICH IS WITHIN THE NORTH RANDOLPH STREET RIGHT OF WAY, RUNNING NORTH TO ITS INTERSECTION WITH WILSON BOULEVARD, THEN RUNNING EAST ALONG WILSON BOULEVARD, ON PROPERTY DESCRIBED AS PARCEL A, REES PROPERTY, 4030 WILSON BOULEVARD (RPC# 14-060-036), WITH CONDITIONS,” ENACTED ON JULY 19, 2008:**

**BE IT ORDAINED** that, pursuant to a request on file by Ashton Park Associates IV, LLC, c/o Shooshan Company, LLC (the “Applicant” or “APA”), in the Office of the Department of Environmental Services, a portion of an easement for public street, sidewalk and utility purposes, a portion of which is within the North Randolph Street right of way, running north to its intersection with Wilson Boulevard, then running east along Wilson Boulevard, on property described as Parcel A, Rees Property, 4030 Wilson Boulevard (RPC# 14-060-036), and which easement was established by Deed of Easement dated January 14, 1972, recorded in Deed Book 1777, Page 553 among the land records of Arlington County, which portion of the easement is also shown on a plat dated January 16, 2008, prepared by Bowman Consulting Group, Ltd., entitled “Plat Showing the Vacation of a Portion of an Existing Easement for Public Street and Utility Purposes Located on the Property now in the name of Nehoso Inc., Deed Book 4128, Page 2390, Arlington County, Virginia,” attached to the County Manager’s Report dated February 10, 2011, as Exhibit A, is hereby vacated subject to the following conditions:

1. The Applicant/Property Owner shall, at its own cost and expense, remove, relocate and reconstruct the existing 15” Storm Sewer Pipe located within the easement herein vacated, with new storm sewer facilities of size, dimension and location acceptable to Arlington County (“County”), in strict accordance with Arlington County Construction Standards and Specifications, and all applicable laws, ordinances, regulations and policies.
2. The Applicant/Property Owner shall submit, for review and approval, to the Department of Environmental Services (“DES”), a utility relocation and engineering design plan for the construction, relocation, removal, and/or replacement of the utilities located, in whole or in part, within the easement vacated by this Ordinance of Vacation (“Plan”) in compliance with the Arlington County Construction Standards and Specifications. The Plan shall be subject to approval by the Director of DES, or his designee.
3. The Applicant/Property Owner shall submit to the Director of DES, or his designee, a bond, letter of credit, or other security, in an amount and in a form as determined by, and acceptable to, the County Manager or her designee, to secure the construction, relocation, removal, and/or replacement of the utilities pursuant to the approved Plan.
4. The Applicant/Property Owner shall prepare and submit to the County for review and approval, the Deed(s) of Vacation, and all required plats, subject to the approval thereof by the County Manager, or her designee, and approval of the deeds as to form by the County Attorney.
5. The Applicant/Property Owner shall record all plats and the Deed(s) of Vacation required by the conditions of this Ordinance of Vacation among the land records of the Clerk of the Circuit Court of Arlington County.

6. The Applicant/Property Owner shall pay all fees, including the fees for review, approval and recordation of the required documents associated with the Ordinance of Vacation.
7. All conditions of this Ordinance of Vacation shall be met by noon on July 19, 2014, or this Ordinance of Vacation shall become null and void, without the necessity of any further action by the County Board.



Vicinity Map  
Founders Square - Extension of Vacation Expiration  
4030 Wilson Blvd  
RPC# 14060036

WILSON BLVD.

Portion of Easement  
to be Vacated

14060036

N. RANDOLPH ST.

0 75 Feet



Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.  
Aerial Photography flown February 2009  
Map prepared by Arlington County GIS Mapping Center  
Produced and © February 2011

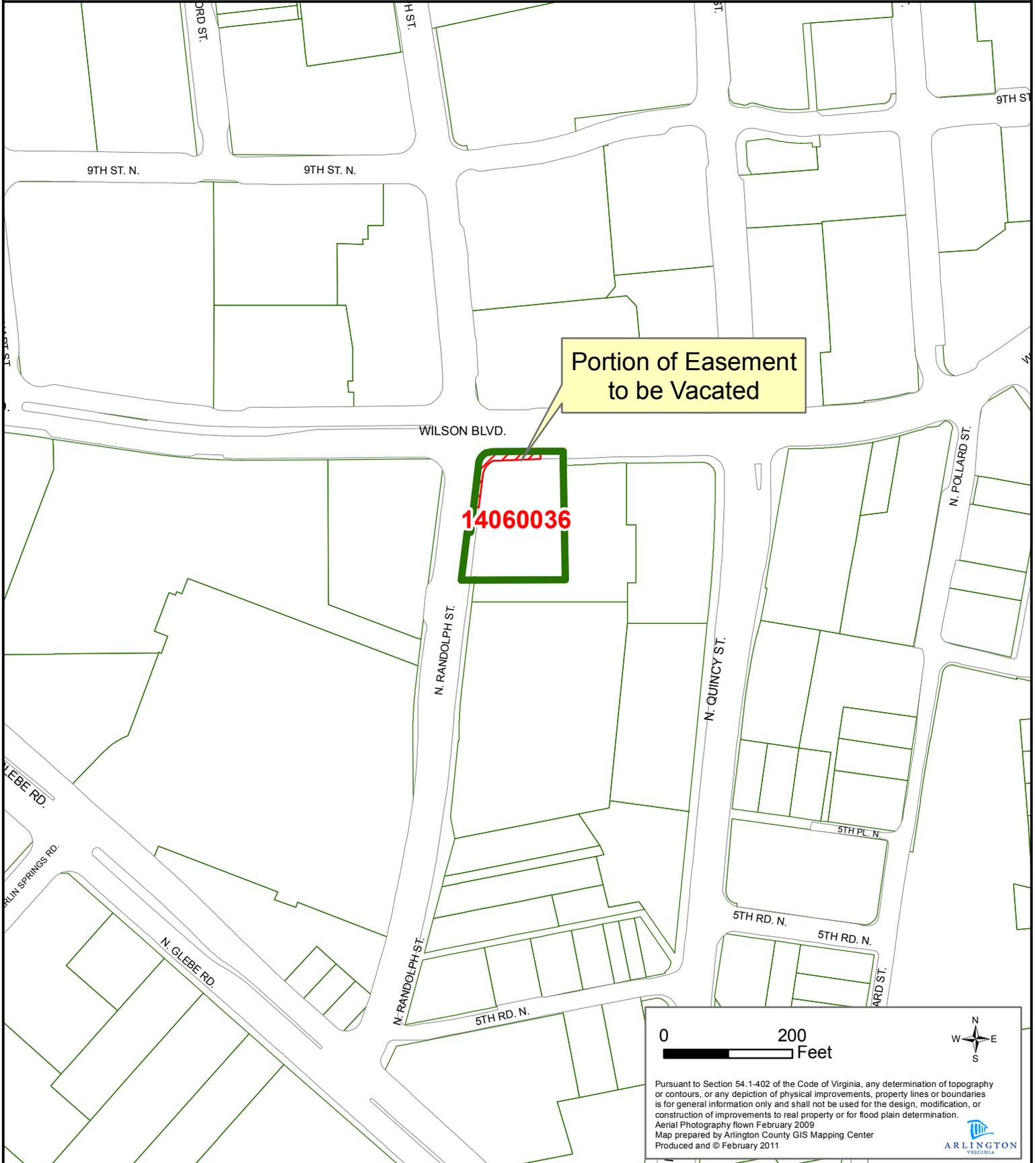


# Vicinity Map

## Founders Square - Extension of Vacation Expiration

### 4030 Wilson Blvd

### RPC# 14060036



0 200 Feet

Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.

Aerial Photography flown February 2009  
Map prepared by Arlington County GIS Mapping Center  
Produced and © February 2011

