Answers to Recent Questions Regarding Symmes Project

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TO: Arlington Email List and Others
FROM: Kevin O'Brien, Director of Planning
SUBJ: Symmes Project
DATE: June 20, 2007

There has been a lot of discussion lately and many opinions expressed and many questions asked about the Symmes Project. Much of this has taken place on the Arlington Email List and other sources. I asked people to forward me the questions and comments so that I can answer the questions and correct any mis-information that may be circulating. This is not an attempt to express my opinion or challenge anyone else's opinion. This is merely an attempt to get everyone operating with adequate and accurate information.

If people have questions, and you contact me directly, I will attempt to answer them as time permits. I can be reached at kobrien@town.arlignton.ma.us

(Q) Tom Dudley suggested that because trash collection and snow plowing will be privately supported that public access to the Vista Park and open space would be restricted.
(A) Brian Rehrig's response neatly explained the permanent public access (here).

(Q) I believe he also asked how the project costs could be kept off the tax roll.
(A) Joe Curro accurately responded to this one here. I would add that the ARB has financially modeled numerous scenarios and has agreed to a Land Disposition Agreement that will keep the project off the tax roll, in other words will pay its own debt service. The project is financed by bond anticipation notes which do not require the payment of principal (given our special legislation requested by Town Meeting). Under this arrangement, the funds remaining after debt service are at a minimum when we are required to bond the remaining indebtedness in 2012 (and are then required to make principal payments). In the worst case scenario (but one in which the project is completely built), the project can still contribute over one hundred thousand dollars to the Town budget in that year. Thereafter debt service remains level and tax revenue continues to grow.

(Q) Mike Atlas indicated that Sandi Bourgeois reported that JPI is paying E. A. Fish $12M for a 72% share in Symmes Redevelopment Associates.
(A) The amount is $6M. The remaining $6M to which I assume she was referring goes to the Town.

(Q) Sandi also stated in the Mike Atlas email referred to above that the "ARB is being asked to waive certain rights under the LDA".
(A) I-- am not sure to what this refers; the rest of her account of the meeting in question is basically accurate.

(Q) Michele and some others have stated that E. A. Fish has proposed building something completely different than what Arlington voted for.
(A) Arlington voted to authorize a debt exclusion to buy and redevelop the Symmes site. The Selectmen set some goals at that time and I think most people thought there would be office uses developed along some affordable housing. The Town Meeting then formed the Symmes Advisory Committee (SAC) to figure out more specifically what the Town wanted and what was actually possible. The SAC spent the next two years figuring this out. It is important to note that E.A Fish had not even heard of the Symmes site at this point. The SAC determined that there was no market for office development and asked Town Meeting to request proposals for residential development and a medical office use (equal to or more than currently existed). In response, E. A. Fish proposed 255 residential and medical office. The other applicants proposed from 230 to 313 residential units. Despite what was anticipated at the time of the Debt override vote, this is what Arlington asked for!

The chosen proposal has changed since then. The ARB asked E.A. Fish to provide a different kind of affordable housing – not concentrated in one place and restricted to seniors. This, by the way, had serious implications for the financing of the medical office building. Later the special permit for the project was appealed. The appeal was settled by E.A. Fish agreeing to reduce the number of residential units (from 255 to 200). The ARB decided to accept the change which reduced the size of the project, but this further restriction, clearly reduced the value of the land. Most recently Fish asked

that the LDA be changed to allow rental units. This is the first change requested by E.A. Fish.

(Q) Aram Holman wrote a long opinion piece.
(A) I won't offer different opinion, but wish to point out relative to his speculation that perhaps office use should be reconsidered, he says "While the office market crashed, it's coming back.?", the independent appraisal that was done just recently on the property acknowledged that the office market is coming back, but said that it had not reached the point where new construction is justified because supply still far exceeds demand.

(Q) Tom Dudley asserts that the developer has never been held to the promises that were originally made and the developer was never held to his side of the contract.
(A) See above. Also, it's hard to know what is meant by this, but let's look at an example where the agreement was changed. When the special permit was appealed and E. A. Fish worked out a settlement with the appellants, they proposed eliminating 20% of the units in the project. They then approached the ARB and said that they could build the smaller project, but only if they paid less for the land. The ARB could have said a deal is a deal, build what you can build or walk. The developer could have walked without us being able to sue them because they didn't have a "finally issued special permit" as required in the LDA. We would then have to remarket the land which would take a long time especially as we would be selling damaged goods. The developer could have decided to stay and go to court, where they most likely would have prevailed in the appeal, but it would have taken at least a year in court. In both of the above scenarios, the Town would have had to continue paying almost $2,000 per day in carrying costs. The Redevelopment Board decided instead to agree to the smaller project and reduce the purchase price by $1.3M (less than 20%, by the way), not much more than the cost of holding the property for an additional year.

(Q) Lorelei Kolegue asserts that there is still financing available for condominium development.
(A) She then lists a few projects that were financed more than a year ago and even points out that the Revere project that will break ground next year must get 40% presales before financing will be advanced. This is exactly the point. Our appraisal of the property pointed out the softening of the residential market beginning in mid 2005 and confirmed that there is no financing for condominiums now, "According to developers I consulted including E. A. Fish, it is very difficult, if not impossible to secure construction financing for new residential development at the present time, as most banks and lending institutions are requiring a certain percentage of pre-sales of units. Due the current uncertainty in the residential market, however, developers have not been able to secure the requisite number of pre-sale deposits. In general people are wary of losing deposits to near term depreciation if values decline over the next 12 to 18 months."

(Q) Kevin Carter asks how can the Town break even when we've spent $12.5M and the developer is only paying $6.2M
(A) It was always represented to Town Meeting that some of the indebtedness would be repaid from the tax revenue that would be generated in the future. We were very optimistic at the time that proposals were received that we would pay back most of the indebtedness from the sale price. The changes in the project requested by the ARB and the by the appeal, coupled with the delay caused by the rezoning of the land having to be corrected and then the softening of the housing market, have increased our costs (to almost $12.2M, not $12.5M) and reduced the value of the land.

(Q) Chuck Kazarian offered some thoughtful questions which probably can't be answered to his satisfaction without him reviewing all the contract documents (which, of course, he is welcome to do). It appears however that he is just rhetorically asking questions that anyone would need to ask in order to understand the situation and be able to judge it. Certainly they are the questions the ARB had to answer. Let me try to respond to his questions.

(Q) (from CK) What is the exact current status of the deal with Fish...?
(A) I assume this was asked in context of other people's comments and I'm not sure what those were, but I'll try to say something relevant. His question was asked June 10th so I assume it is within the context of the ARB amending the Land Disposition Agreement a few days earlier. I believe you are well aware of the problem that the rental scenario posed for the Town. The value of the project as a rental is significantly less than as a condominium development. Funds we expected to receive from property tax would be significantly less and it would take the Town longer to pay off its debt. The amount of property tax was never part of our agreement with SRA, but price concessions that we had made in the past were based in part on our expectations of property tax revenue which would pay off the debt. Fortunately, some parts of our agreement with SRA were dependent upon the condominium structure that had been anticipated. This meant that SRA could not proceed with the rental scenario without changing our agreement. We thus had the opportunity to try to recoup some of the property tax loss.

Perhaps the real question people should ask is why Fish would ask for this change if it didn't need to. It ended up with a new deal in which they had to pay additional money and pay it all at closing. Somehow there is the impression that this is a

better deal for SRA, but clearly it is not. The previous agreement called for three land payments totaling $6.75M over three years, the current agreement calls for the present value of that amount $6.24M to be paid next week. The previous agreement obligated SRA to pay half the cost of the designated town representative up to $50,000, the current agreement has them paying the $50,000 next week. The previous agreement has no payments relative to other burdens the Town has, the current agreement has them paying $600,000 next week to defray some of the loss in tax revenue.

(Q) (from CK) What is the legal recourse to new or modified course of action not contemplated in the original documents?
(A) The LDA is an agreement between the two parties. I'm sure Mr. Kazarian is aware in general of the remedies when one party does not fulfill its side of the deal. The LDA does not have any extraordinary penalties for non-performance by the developer, basically, we can take the property back and keep his deposit (also the $500,000 MOB penalty that has been discussed quite often). The important point here, however, is not non-performance; the ARB agreed to changes because it wanted to, because it thought it was better for the Town.

(Q) (from CK) What alternatives were considered,... and whose input was solicited?
(A) Over the four or five months, there were many alternatives considered by both parties. The Redevelopment Board has drawn upon a broader group of experience in conducting these negotiations. The ARB represented by Ed Tsoi has joined with Charlie Foskett from the Symmes Advisory Committee and Finance Committee, The Town Manager, Town Counsel and Planning Director and is represented by counsel from Foley Hoag and use the services of RKG Financial Consultants and Hunneman Appraisal and Consulting Co.

(Q) (from CK) Why is Fish trusted as to the economics of the current market? Fish has been sued many times.
(A) While I do consider E.A. Fish trustworthy, we do not depend on their assessment of the market to guide us. See the above answer. I'm not sure what to make of the database search, we haven't come close to wanting to sue, nor has it been threatened. SRA has paid its bills and kept their word in all our dealings

(Q) (from CK) Why can't Fish face risk?
(A)If we are to believe their figures (which we don't have to, but which JPI seems willing to believe) Fish has invested $6M in the project so far and is slated to invest another $4M or so during construction. All before getting any rent or purchase payments. They have now arranged for JPI to significantly reduce their risk, but at the cost of significantly reducing their return.

(Q) (from CK) re: "can't get financed," and "don't want to get financed", is there a financing cost cap?
(A) Clearly, as they say in the development game, you can finance anything as long as you are willing to put enough of your own money into the deal. This might be changed to say you can finance a little part of any deal. Fish is not willing to put 30 or 40 million dollars in cash into this project, we cannot compel him to do so, and we never expected him to do so. We could have been able to compel him to stick to the previous version of the LDA and in such a case, they would have built the project a bit at a time. (In fact it was in the context of that scenario that the idea of a hybrid project – part rental and part condo – came about.) The ARB concluded that one of the worst things that could happen in this project was that it not get built or even not get built quickly. A method that allowed it to be built completely and all at once is far preferable relative to property tax revenue (even if it is rental for a while) and to insulate it against the vagaries of the market. Not incidentally, the impact of construction on the neighborhood will be minimized also.

(Q) (from CK) Have we done our own analysis of the economics of the market?
(A) We spoke to realtors and lenders, did our own research, and like everyone else read the newspaper and trade journal accounts of the market decline. Members of the Redevelopment Board, and others mentioned above, all looked into the question on a routine basis, not finding any reason to doubt Fish's representation. The real question Chuck should be asking is why would Fish want to finance the project as a rental when they have to pay more to the Town and when the finished product gives them no return on their investment (our analysis of their figures on the performance of the rental project is that their projections are optimistic and they just barely pay their operating cost and debt service).

The appraisal report we commissioned before voting to change the LDA confirmed Fish's analysis and our understanding of the market and conclusions about the profitability of the rental project.

(Q) (from CK) Do we have the right to cancel the deal, does Fish? What are the economic consequences? Sharon Shaloo also asked this question
(A) The Redevelopment Board has contracted to sell the property. The Land Disposition Agreement is like a Purchase and Sale agreement you make when you buy a house. If the developer walked away from the agreement, we would sue him

and try at a minimum to recoup costs we incurred while we held the property for him and probably win the suit. If we backed out of the agreement, we would, no doubt, be sued, and would lose. Some consequences are circumstantial. I assume the question was asked because people want to know if we could just cancel the deal and start over. If we could, we would be starting $12M in debt. More realistically, we would be sued by SRA and start the process over $18M in debt.

(Q) Robert Kuhn posed a scenario for the unscrupulous developer selling a rental project to a subsidiary who then converts it to a condo project cheating the Town of profit sharing.
(A) First a small correction: I don't know if Roly Chaput mis-spoke or Robert Kuhn mis-quoted, but the second round of profit sharing is also for $5M not $2M. Brian Rehrig accurately responded here to Kuhn's scenario, but I just wanted to point out that in all our financial projections, we have never included any money received from profit sharing. There are too many ways for the developer to not realize enough money for us to ever get to the profit sharing. If things go well however, there is the potential for the Town to reap a windfall some years down the road.

(Q) Gwendolyn Richter in an email sent to the Board made the point that the Town has given the land more value through its dealing with Fish and now Fish is reaping the rewards.
(A) It's not entirely clear to what she is referring, but it is generally agreed that the actions of the Town to require the open space on the property and require the medical office building, and limit the square feet of development has done things to lower the value of the land. This is borne out in the recent appraisal of the property which among other things indicates that the value of the Medical Office Building site is zero. On the other hand, by going through a very expensive permitting process, the developer has increased the value of the property. A permitted property is always worth more than one on which a buyer does not have permission to build.
(Q) Mark Weisz circulated an article about the construction companies (Suffolk and Peabody) owned by two of Ed Fish's sons. Perhaps we should be comforted that the Symmes project was recently intended to be built by Dellbrook Construction owned by a different Ed Fish son, and is now slated to be built by JPI Construction Services, a very well regarded company.

(Q) Peter Szerlag (sp?) asked what the interest rate on the BANs was.
(A) It changes every year as the BANs are renewed. Most recently it was 5.462%.

(Q) Michelle Barry offered her opinion and reminded people of what was stated at the time of the debt exclusion vote.
(A) Her questioning of going back to the vote was responded to above. I would like to comment on her remark about the ARB rolling over every time Fish has another proposal. Please remember as pointed out above, that the recent changes to the LDA require Fish to pay more money for the land and that the ARB didn't have to agree to the changes but did so because it felt it was in the best interest of the Town.

I'd also like to comment on a poorly understood aspect of Lahey Clinic's participation that she mentioned, "With Lahey Clinic expecting to remain as a tenant..." When the Town purchased the property, there was great optimism that Lahey would continue its medical presence. Accordingly as part of the purchase and sale agreement they (and Healthsouth) were given advantageous lease terms. After choosing E.A. Fish, they with our participation negotiated (at first exclusively) with Lahey to participate in the new medical office building. At one point near the end of the process, I calculated that the funds we had spent maintaining the property for their use, subtracting what they paid us, cost the Town $2M. In the remaining months when they argued they couldn't move out (after the expiration of their lease), their rent was increased more than a thousand dollars per day in order to cover the cost of maintaining the property. When people wonder why our current debt is so high, they should remember this piece.

(Q) Tom Dudley opined about the original reasons for doing the Symmes project, but made a couple of mis-statements.
(A) He said "Our select men and women will try to tell you that part of the reasons for the extra costs is because a group of taxpayers had to take the developer to court to preserve open space." I don't know how these things get started, but if the appellants told you it was to preserve open space, they sure didn't tell the ARB or the developer and I doubt they told the Selectmen. The only clear message the ARB got about the reason for the appeal was that the buildings were too high. The open space has never changed.

I can't tell if he is speculating when saying "If E. A. Fish found out after he agreed to develop the property that it needed to have more houses on it..." or does he think that really happened. Just to be clear, Fish proposed 255 units, the number of units has declined at least twice, first in the normal process of developing more specific plans (because of the square foot limitation the ARB placed on the development) and second because of the neighbors' appeal. The ARB did make an adjustment to the purchase price on the appeal reduction as explained above.

(Q) Aram Hollman asks how much has been spent on the project and under what circumstances does it go on the tax roll.
(A) The Town has spent almost $12.2M on the project. Given that we don't have to pay principal because of the special legislation that allows us to use bond anticipation notes until 2012, we can keep borrowing more money up to our $14M limit in order to pay interest and keep it off the tax rolls until then. That is obviously not a good strategy unless we have a way of paying for that increased debt thereafter. That brings us to the conclusion that the only way to keep it off the tax roll permanently is to get something built that will provide tax revenue.

(Q) Joe Curro answered a lot of questions over the weekend: a very credible job (here). I'd just like to nit pick a couple of his statements.
(A) In talking about the rental / condo situation he mentions that converting rental to condo would make the project subject to profit sharing. Please know that even in the rental configuration, the project is subject to profit sharing. It is however highly unlikely that a rental project would ever make enough profits to share.

In talking about the MOB, Joe indicates that in the event of a failure to build an MOB, the developer pays its $500,000 penalty and there could be an attempt to build more residential units on the MOB site, and then says ...or the land will revert back to the Town. Please understand that before anybody builds more residential units on that site, the land reverts back to the Town along with the penalty payment. Then, as Joe points out, Town Meeting decides what to do with it.

I would like to thank Annie LaCourt, Alan Jones, Brian Rehrig and Joe Curro for getting their reasonable and accurate expressions on the email list. I hope this helps.

The following emails were referred to in my responses above. I reprint them here for those not on the Arlington Email List.

-Kevin O'Brien
-Director of Planning

(email from Brian Rehrig)
The last plan version I saw had something like 15 spaces dedicated to the park. There's also on-street parking.

Put simply, the park is meant to be a gathering place, and the woods a place to pass through. It's not to be an active park in the sense of being a ballfield (it's not big enough for a ballfield anyway). Here's part of the section on public access from the 22-page Conservation Restriction document; Grantor is the developer and successors; Grantees are the ConCom and Land Trust:

"The Grantor grants to the Grantees and to the general public an easement to pass and repass upon the Conservation Area for purposes of public assembly, walking, hiking, cross-country skiing, snowshoeing, nature study and other recreational uses, subject to reasonable rules and regulations adopted by the Grantor and Grantees from time to time concerning the terms and conditions (including the time of day and the type and the manner of the uses permitted) under which the Conservation Area may be so used, provided that the Grantor shall not impose any charge or fee for such use and enjoyment of the Conservation Area, and provided further that any such rules and regulations are consistent with the purposes and intent of this Conservation Restriction and Public Access Easement."

Note that there can be rules about public use, but the

developer/condo association doesn't get to make them unilaterally; they have to be "adopted by Grantor and Grantees".

With respect to the park it then goes on to adopt the townwide rules of the Parks and Rec Commission, which generally define the things one can except to do there.

Best regards,
~Brian

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Brian Rehrig
Sent: Tuesday, June 12, 2007 6:57 PM
To: arlington@arlingtonlist.org
Subject: Re: [arlington] hitting the tax rolls [a response regarding Symmes][rather long]

All:

Whew ... I just caught up with a few days' worth of the List. When it rains, it pours. It's great that people are engaged in a debate about this project, although I think some inaccurate information has made its way into the discussion. I've heard from Kevin O'Brien, the Town's Director of Planning, that he would like to respond to significant questions raised here. He asked me to forward to him the recent queries on Symmes, which I'll do tonight and I hope he'll offer some responses in the next day or two.

Meanwhile, I can offer a couple of data points from the perspective of having been on the Symmes Advisory Committee through the several arduous years of public process and Town Meeting votes that shaped the project:

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1. To "tom"'s assertion that devoting the tax revenues from the site to pay off the related debt results in a burden of paying for municipal services provided to the residents of the site:

First, there will be no trash collection, road maintenance, street cleaning, plowing, or stormwater system maintenance costs to the Town. All of those expenses are the responsibility of SRA (Fish's redevelopment entity) and its successors such as an eventual condo association. They are also responsible for all maintenance of the public "Vista" park.

That said, this issue was addressed by special legislation voted by Town Meeting and subsequently approved by the Legislature as part of the approval of the project. All revenues of the project (sale proceeds and tax revenues) are sequestered in an Account. Those revenues are dedicated to service Current Debt of the project. What constitutes

Current Debt is a function of the scheduling of the bonding, which is under the control of the Selectmen and the Treasurer. They could schedule the debt for payoff as quickly as possible, using all of the revenue to do so. Or, they could stretch out the debt repayment as long as possible, reducing Current Debt and lowering the annual debt service, and in any given year whatever funds are not required to service Current Debt would fall out to the General Fund of the Town.

The middle road between those two choices is the objective of the legislation and the Town Meeting vote: for BoS and the Treasurer to schedule out the Current Debt such that there is available each year an excess of revenue over Current Debt service roughly equal to a projection of costs of Town services for the residents of the parcel. That excess will flow to the General Fund, and relieve the Town budget of those estimated costs. This is no exact science, and will have to rely on assumptions about what a resident costs the Town, how fast units come on line and are occupied, and the prospect of conversion to condo ownership if some or all of the units are first rented. The conversion to permanent debt (from the current temporary debt, or BANs) doesn't have to happen until 2012, by which time there is likely to be a very clear picture of those timelines.

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2. To Robert Kuhn's "Fractured Fairy Tale" (nice subject line!) of SRA flipping the property at a phony bargain-basement price, to avoid the Town receiving potential profit-sharing if the project does well:

The LDA specifically forbids SRA from selling the property to any entity of which it directly or indirectly owns or controls more than 19%. If it flipped the property, it would be giving away (at least) 81% of a large number to save 90& of a much smaller number. If you run the math I think it turns out this scenario would hypothetically work to SRA's advantage *only* in a very small (and unlikely) range of values. [Also, it seems like the numbers Robert used in his example leave out the costs of construction and the values of the buildings constructed, but that doesn't change anything.]

More importantly, it is not in SRA's interest to have the units remain rentals longer than necessary, or in fact to ever be rentals in the first place. This is about the ability to finance the project by demonstrating to lenders the safety net of the *ability* to lease the units for a time if market conditions at the time remain unfavorable to sales. SRA makes money on sales. Leasing is biding time, and not very profitably. Their incentive to sell the units is inherent in the project, and aligns their interests with the Town's. I think it's also important to remember that the units will be built to condo size and spec, just as designed and approved. There may be finish difference -- SRA has said, for example, it might put in carpet rather than hardwood initially on leased units, saving the wood

floors to go in on conversion -- but these will fundamentally be condo units masquerading temporarily as rentals.

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3. To the question by Kaj and others about the original debt exclusion vote proposal versus the eventual shape of the project:

As Kaj points out the original conception was to control the site and limit it to about 220,000sf of office and commercial use, largely by renovating the existing structures, and building on the order of 60 units of housing (either new or renovated, perhaps the nurses' building), and retaining some medical use.

Let's also recall that the original conception promised the voters that their tax bills *would* increase. It wasexpected that the costs of this scenario *would* hit the tax rate for a period of a several years before stabilizing and beginning to return net revenue to the Town. Whatever priorities most voters had in mind when they approved the $14 million debt exclusion, they were clearly expecting to pay something in the short term for controlling the site.

We could talk for a very long time about the evolution of the project, but two things I think make up its essence:

First, the objective of creating that much commercial use on the site proved unacceptable with respect to the traffic and parking loads it would generate, and unfavorable in the real estate market. Through the very long and very public Symmes Advisory Committee process from 2002 to 2005, the outline that evolved moved to a largely residential model. Town Meeting repeatedly voted to support that model. The Town invested in retaining Lahey on the site during that period, for long enough that it could transition (via Lexington) to another Arlington location, keeping their desired services in town. The objective of preserving a significant amount of the site as open space was preserved.

Second, moving to a residential model entailed selling the site with controls on its development. That made it possible to structure the finances of the project such that it has *not* hit the tax rate. The debt exclusion has served only as the authority to do the project, but the project has remained self-contained withing the "Account" that is the urban renewal project. You and I have not yet contributed tax dollars to the project. Even under worst-case scenarios, that continues to be true.

People may rightly be critical of the project for a litany of reasons, most of them valid, and many of them in direct conflict with one another. From my view, it consists of some successes and failures, but more of the former than the latter. As a Town we *have* controlled the amount of development on the site. Had the Town not intervened by buying the parcel and being able to dictate the fundamental

parameters of development with tools stronger than Massachusetts' feeble zoning laws, I contend that the likely outcome would have been a residential development of no fewer than 400 units. (For example, when the SAC convened a panel of urban planners and disinterested developers to critique the planning process for the site, the general reaction was that we were looking to allow *too little* building, and that the market would demand denser development, the traffic burden notwithstanding.) A public process, guided by Town Meeting votes, resulted in the selection of Fish and a development of about 250 units. The three abutters who sued the Town brought about a reduction to 200 units. No matter how one might feel about their actions or the cost of delays in the project, they certainly achieved an end result that is a better project to live with; clearly less of a burden on the Town, the neighborhood, and our infrastructure than the free-market alternative that would have come from *not* taking the action of controlling the site. We retain Lahey in town, and we continue to retain the possibility (but no guarantee) of a modest health care presence on the site. We protected nearly half of the site unbuilt in perpetuity, and gained the public amenity of a park.

I contend that each of those features has positive value. I haven't paid an extra nickel on my tax bill for that value. For a bunch of years, we will be *foregoing* some potential net tax revenue from the site in order to pay for that value. For myself, I'm grateful we've made that tradeoff.

Best,
~Brian Rehrig

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Date: Sun, 10 Jun 2007 16:05:36 -0400
From: "Alan Jones" <jones@carr-jones.com>
Subject: Re: [arlington] Symmes Land Deal revised
To: <arlington@arlingtonlist.org>
Message-ID:
<905E6AFAB5E63247ABFEDC62ADC602810B0AC2@cji-srvr1.carr-jones.local>
Content-Type: text/plain; charset="us-ascii"

It appears to be true is that the longer this transaction takes, the worse it gets for us. If the deal had closed as planned two years ago before the condo market collapsed(*), we would have had all owner-occupied units, higher taxable valuation ($600,000/year), two fewer years of carrying costs, and an earlier break-even point after which we can start to benefit financially from the new growth. I don't have any reason to believe that further delays will improve the situation. I would like to see the deal done and over with ASAP. I am really concerned that this deal will fall through (we have no significant hooks in this Fish), and the ARB will be pressured to simply close a deal with the first highest bidder.

-- Alan

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Date: Tue, 12 Jun 2007 11:49:35 -0400
From: "Joseph A. Curro, Jr." <jcurro@alumni.tufts.edu>
Subject: Re: [arlington] Symmes land deal revised
To: arlington@arlingtonlist.org
Message-ID:

<79620e1d0706120849x25b26c14h6bd466fd1808cd95@mail.gmail.com
>
Content-Type: text/plain; charset=UTF-8; format=flowed

I do not know offhand what the current figure is. Under an all-rental scenario including a pessimistic scenario of no eventual condominium conversion, no medical office building, and no profit-sharing, short-term lending will be used to prevent cash flows from going negative (i.e., hitting the tax rolls). With these assumptions, at one point in the next few years the project is forecast to come within about $100,000 of hitting its $14 million borrowing authority.

Joe

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Date: Sun, 17 Jun 2007 22:45:47 -0400
From: "Joseph A. Curro, Jr." <jcurro@alumni.tufts.edu>
Subject: Re: [arlington] Symmes, the point - LONG
To: arlington@arlingtonlist.org

The two Symmes lawsuits were filed in mid-October 2005 and settled 5-1/2 months later. (For comparison, this was a shorter delay than that caused by the zoning "mistake" around medical use... 7 months as I recall.) The settlement cut the size of the project from 245 to 200 units, with commensurate reductions in height and square footage.

There have, I believe, been subsequent discussions regarding the implementation of the settlement agreement, but there have been no further reductions in size since the April 2006 settlement. In connection with the settlement, there was a $1 million reduction in the sales price for the property. This reduction was to be funded through a transfer fee applied to condo re-sales.

An unfortunate side effect if the project remains 100% rental (as allowed by the current land disposition agreement) is that this transfer fee will never be realized. Likewise, the Town will never see the profit-sharing that is associated with initial condo sales and was instituted to offset a previous reduction in sales price (ostensibly to encourage the elusive medical development). And, if conversion from rental to condos never occurs, property tax receipts will be 45% lower than they otherwise would be.

JPI, the new majority owner of Symmes Redevelopment Associates, has said that they will evaluate in 12 months or so whether to go to market with the project as a rental or home ownership property. I hope they mean this, because if the project does roll out as a rental project, there will be steep disincentives to ever convert. Conversion would mean nearly

doubling their tax rate, becoming subject to profit- sharing, and subjecting condo purchasers to the transfer fee if they ever sell their units. There are also administrative requirements that could require the developer to assist renters of affordable units to find new homes. (You will all recall that one of the goals of the Symmes project was to create affordable home ownership opportunities.)

During recent ARB meetings, the method of tax assessment for the project was discussed. An initial reading from the Assessor was that the entire project must be assessed one way or the other. This, of course, would tend to lock in the disincentive to condo conversion. One of the redevelopment board members found some case law from Boston supporting the proposition that the project could be assessed variably (i.e., with different rates for different buildings). This is quite important, because -- if one accepts that the market is bad for condominium development -- one might nevertheless reasonably believe that the townhouses on the site would stand a better chance than units in the larger buildings of being marketed quickly under a home ownership model.

Last I knew, the Board of Assessors had not made a final determination on this matter. Nevertheless, the ARB approved requested changes to the deal before this key piece of information was known. The Board of Assessors' decision stands to materially alter the dynamics of the project. If the project remains 100% rental, the ARB's own financial projections show the Town coming within $100,000 of the $14 million borrowing authority for The project.

I'm afraid that the Symmes dilemma is going to remain with us for some time. I predict that we have a good chance of facing one or both of the following possible problems:

- Assuming the ARB's financial projections are accurate, if the project stays rental indefinitely (especially if the Board of Assessors decides that the entire property is subject to a single assessment method), it will not take a very large unexpected event to push us toward putting part of the project debt on the tax levy or increasing its borrowing authority. (I don't even remember if the second choice is an option or what mechanism is needed to do this; I think it requires a home rule petition and amendment of the urban renewal project for the site.)

- Medical use on the property seems to be going nowhere. There was reportedly a large health care provider interested a number of months ago, but this fell through when they faced a change in management. Menotomy Medical Associates -- the group of Arlington doctors that was originally part of the SRA team -- seems to have quietly faded away. The independent appraisal that was just performed for the property evaluated it as having no value for medical use (equivalent to saying that medical use is infeasible). The agreement between Fish and JPI contains benchmarks (for the exercise of a buyout option) around the completion of residential development, none for medical; JPI freely admits to lacking expertise in this area. Fish's representative talks more frequently these days of the possibility of nothing happening on the medical portion of the site, and SRA is paying a $500,000 penalty for failure to deliver the medical piece at closing. All this points to the possibility that there will either be an attempt to exercise a clause of the LDA to develop more residential units on the medical portion of the site (in which case, the ARB has promised via a non-binding resolution in 2004 to come back to Town Meeting) or that the land will revert to the Town, and we will have to figure out what to do with it. For that portion of the site, we will be

back to Symmes Summer(2002, I believe), when the bulk of the community forums and early visioning for the project took place.

I fully agree with the writers who have said that we need to look to the future, rather than rehashing the past. I offer the above as two possible issues that we need to prepare for. I don't know what the solution is, but I am sure there will be a lot of debate.

Joe

Full disclosure: I am a neighbor to the project, who has followed it Very closely since the 2001 debt exclusion vote, and I am the current chair of the Symmes Neighborhood Advisory Committee, which was created in 2004 by Town Meeting.