

MCPB Date: 11/8/2007
Agenda Item # 10

DATE: October 26, 2007

TO: Montgomery County Planning Board

FROM: A. Daniel Hertz, SilverPlace Project Manager

VIA: Michael F. Riley, Acting Deputy Director of Parks

SUBJECT: Amendment to the FY 07-12 Capital Improvements Program and Supplemental Appropriation to the FY 08 Capital Budget for the SilverPlace Project, PDF No. 048701

FY 08 Supplemental Appropriation to Transfer \$1,143,000 from the Administration Fund and \$3,772,000 from the Park Fund to the Capital Improvements Fund

A) STAFF RECOMMENDATION:

Approval to transmit budget amendments and supplemental appropriation request to County Council and County Executive.

B) EXECUTIVE SUMMARY:

SilverPlace is a public/private partnership through which the Commission seeks to replace its outdated and overcrowded headquarters building while facilitating several public policy objectives including provision of affordable housing, smart growth, and green building. In response to a Request for Proposals seeking exemplary mixed-use development of the Montgomery Regional Office site at 8787 Georgia Avenue, development teams responded with various design concepts and financial proposals.

On January 18, 2007, the Planning Board approved the ranking of proposals from three finalists. Staff has negotiated a Memorandum of Understanding (Attachment 1) with the top ranked firm, SilverPlace, LLC, that sets the mutual understandings of the parties towards the advancement of the project. The SilverPlace, LLC development entity is the Bozzuto Development Company, Spaulding & Slye Investments, a member of the Jones

Lang LaSalle Group, and Harrison Development. The supplemental appropriation to the capital budget funds the design of the project from its current conceptual stage through the schematic design stage, or approximately twenty percent design completion.

C) PROJECT BACKGROUND AND JUSTIFICATION:

In 1998, the Commission acquired the surface parking lot adjacent to the Montgomery Regional Office (MRO) from the County in a land swap for the former Silver Spring Armory site. This transaction helped to facilitate the redevelopment of the Silver Spring Central Business District. Various planning studies commenced shortly thereafter looking at potential for mixed-use development of the Commission's property. In 2003, the Commission completed the "Consolidated Headquarters Study" which was reviewed by the Council. This study:

- Validated the need for a new Park & Planning headquarters;
- Examined several locations in the County for the headquarters and recommended Silver Spring as the preferred location;
- Produced several conceptual design options to locate the headquarters with mixed-use development at the MRO site, thereby leveraging the value of the Commission's land to offset the public costs of the headquarters;
- Established a 30% affordable housing requirement for the residential component; and
- Determined that a public/private partnership was the best method to meet the multiple objectives of the project.

The SilverPlace project received an initial CIP appropriation in FY 04 of \$250,000, which was augmented in FY 05 with an additional \$600,000 to carry the project through the development of a program of requirements, developer selection, and conceptual design.

A Request for Qualifications (RFQ) for SilverPlace was issued in October 2005 and was widely advertised and distributed. A multi-agency evaluation committee determined that three of seven development teams that responded to the RFQ were superior. A Request for Proposals (RFP) was issued to three finalist teams in August 2006.

In January 2007, the Planning Board approved the recommendations of a multi-agency evaluation committee and the Executive Director to commence negotiations with the top ranked team, SilverPlace, LLC. Commission staff and SilverPlace, LLC have negotiated a Memorandum of Understanding that sets the mutual understandings of the parties towards the advancement of the project.

D) PROJECT DESCRIPTION:

The Project will include public and private components. The “Public Improvements” will consist of:

- The Headquarters building;
- Public open space; and
- Related infrastructure.

The “Private Improvements” will consist of:

- Rental apartments;
- Condominiums;
- Retail space;
- Open space; and
- Related infrastructure.

Graphical representations of the conceptual design for the mixed-use project appear in the developer’s proposal which may be found in Exhibit B of the MOU. Please note, however, that the design process envisioned in the MOU mandates a public participatory process to develop a development plan for the project, and that the conceptual design may change significantly as a result of this process.

E) THE FUNDING REQUEST:

The Commission intends to seek Council approval of the public funding for the Public Improvements in two steps:

- 1) A design appropriation to take the Public Improvements through the schematic design phase (approximately 20% design completion); and
- 2) Upon completion of the schematic design, a second appropriation to fund the remaining design and construction.

The first appropriation i.e., the amount required to fund the Public Improvements through schematic design, is the subject of this request. The second appropriation is presently scheduled for February 2009, after the project’s scope and cost are refined well beyond their current conceptual level.

The funding request of \$4.915 million consists of two components, the funding of \$2.950 million to fund the design of the Public Improvements through the schematic design stage and an additional \$1.965 million for a provision of the MOU for “Developer’s Cost Recovery,” which is explained in the following section.

The basis of the \$2.950 million design estimate appears in the estimate attached as Attachment 2, Commission Budget: Memorandum of Understanding Through General Development Agreement Execution.

Developer's Cost Recovery

Following authorization to commence negotiations with SilverPlace, LLC, staff negotiated a provision in the MOU that will permit the Commission to fund portions of the project that are ineligible for tax-exempt financing without seeking an additional public funding source. Under this provision, SilverPlace, LLC will advance the project schedule so that the Commission will receive the first installment of the proceeds from the sale of the land under the Private Improvements at the same time construction begins on the Public Improvements.

There are two important advantages to advancing the first phase of the Private Improvements to proceed in lockstep with the new headquarters building:

- 1) Both the public and private portions of the project will be subject to the public approval process at the same time, thereby allowing the community and the Planning Board to view the project as a unified whole, rather than piece by piece; and
- 2) Receiving private sector funds at the start of construction of the Public Improvements will enable the public sector to minimize its outlay of public funds for the new headquarters.

In order to have money available to pay the first installment of the sales proceeds, SilverPlace, LLC must secure financing for the Private Improvements eight months earlier than anticipated in the schedule submitted as part of its proposal. Since the developer's lender will require "entitlements" (Project Plan, Preliminary Plan of Subdivision, and Site Plan approvals) to be in place as a condition of providing financing, the developer must pursue entitlements for the Private Improvements before construction commences on the Public Improvements, currently scheduled for September 2010.

The developer has agreed to bear the cost of seeking entitlements for the Private Improvements realizing that: (1) if funding for the Public Improvements is appropriated and the project goes forward, these costs will become ordinary project costs funded privately by a combination of debt and equity but; (2) if Public Improvement funds are not appropriated, or the project does not go forward, SilverPlace, LLC will have lost its investment through no fault of its own, and without any source of remedy.

The negotiated agreement on the part of the developer to advance funds which would pay for costs ineligible for tax-exempt financing places the Commission in the highly advantageous position of having money available to fund these portions of the project without seeking an additional public funding source. The developer contends, and staff agrees, that this arrangement compels the developer to put money at risk in a manner unforeseen by either party at the time the developer responded to the RFP.

The cost recovery provision is intended to bridge the gap between reasonable developer “at-risk” expenditures and those expenditures necessary to meet the Commission schedule objectives prior to reaching construction appropriation for the public project. In a private transaction, the developer would have contractual remedies to force the property owner to convey the property so that the pre-construction expenditures are not at risk. By contrast, in this transaction, the Commission’s ability to convey the property for the private portion of the project is subject to the Council’s appropriation of construction funding; the developer does not have the contractual remedy that would be available in a private transaction.

If the Commission chooses not to proceed with the project, then the Commission will make limited compensatory/restoration payments to the developer. These payments are limited to certain eligible third-party expenses actually incurred to advance the private portion of the project up to a cap of \$1.965 million. A list of eligible expenses for cost recovery appears as Exhibit C of the MOU. The cap of \$1.965 million for cost recovery is based on the Commission’s review and negotiation of estimated and allowable expenditures. These costs are subject to audit to assure that they have in fact been incurred, are reasonable, and are for necessary and appropriate activities.

If the construction appropriation is approved and the Commission and the developer enter into a General Development Agreement, then no part of the cost recovery will be payable to the developer, and the \$1.965 million included in the requested supplemental appropriation will become available for this project or for other Commission needs.

Funding Sources for the Schematic Design Appropriation

Attachment 3 is a memo from the Commission’s Secretary-Treasurer to the Board presenting the recommendation for funding this supplemental appropriation with \$1,143,000 of fund balance from the Administration Fund Balance and \$3,772,000 of fund balance from the Park Fund. Ms. Barney also recommends that the Board direct staff to present the SilverPlace project to the Revenue Authority for their consideration of financing with lease revenue bonds. If this approach is approved by the Revenue Authority Board and the County, we would subsequently substitute \$2,950,000 of funding for this supplemental appropriation with Revenue Authority funding. This process would enable the County to advance those funds to the Revenue Authority, as permitted in Chapter 42 of the County Code, until issuance of the bonds thereby freeing up fund balance to assist with the FY 09 Budget. Financing the project with lease revenue bonds has the added benefit of providing flexibility as those bonds can be used for broader purposes than Commission issued debt creating greater opportunities when further defining and ultimately financing this mixed use project.

F) RELATED ISSUES:

Headquarters Program of Requirements

The adopted PDF for SilverPlace cites a headquarters space need of 120,000 gross square feet (GSF) based on preliminary programming work performed between 2000 and 2003. The Commission has retained the architectural firm of RTKL to prepare a detailed Program of Requirements (POR) including a detailed space program. Based on the

current draft of the detailed program, our space need has been calculated as 170,000 GSF, which includes provisions for growth beyond initial occupancy.

The new headquarters is planned to house staff presently working at 6 locations:

- 1) The Montgomery Regional Office at 8787 Georgia Avenue, Silver Spring
- 2) Parkside Headquarters at 9500 Brunett Avenue, Silver Spring
- 3) Leased space at the “Spring Street Annex” at 1109 Spring Street, Silver Spring
- 4) Leased space at the “Dedrick Annex” at 1400 Spring Street, Silver Spring
- 5) The Needwood Mansion at 6700 Needwood Road, Rockville, Maryland
- 6) The Wheaton Regional Park Office, 2000 Shorefield Road, Wheaton, Maryland

The combined space in these facilities is on the order of 100,000 GSF and houses a staff of approximately 370 individuals. A total of approximately 400 staff members is projected to occupy the new headquarters at occupancy.

The POR emphasizes customer service for the general public and stakeholders that interact with the Planning Board, Planning Department, and Parks Department. The Planning Board hearing room, public information counters, and visitor reception areas will be planned and designed with customer service as the priority. The POR also provides adequately sized and optimally configured employee workspaces.

Silver Spring Parking District Land

Commission staff and Montgomery County Department of Public Works and Transportation representatives have continued to advance negotiations for the acquisition of a 0.75-acre site owned by the Silver Spring Parking District adjacent to the Commission’s property (PLD Land). The Commission and the County have each ordered and received an appraisal. Although as of the date this memorandum was written, the County had not completed reviewing its appraisal, the County has committed to continue negotiations once the appraisal has been reviewed. Staff awaits the County’s response and notes that the project schedule calls for a design charrette process to begin in January 2008 and that the Commission must know prior to that date whether or not to include the PLD Land in the charrette process. If the County does not respond in a timely manner, either the PLD Land must be excluded from further consideration or the schedule must be extended to accommodate the County’s response time.

Community Outreach

Community outreach was a significant component of the Consolidated Headquarters Study conducted in 2002-2003 that formed the goals for the SilverPlace project. Staff has met with residents of the adjacent Woodside Community on several occasions since the proposals were ranked. A “SilverPlace Bulletin” has been mailed to residents and stakeholders with information on the status and next steps in the process. A project website has been developed to keep stakeholders and interested parties informed. This information may be accessed at

<http://www.mc-mncppc.org/planning/silverplace/index.shtm>.

In order to increase the level of community involvement in the design of SilverPlace, the Board mandated that the MOU be revised to incorporate a design charette process that would seek input from a wide cross-section of stakeholders. The development process, schedule, and budget have been modified accordingly.

Project Schedule

The project schedule in the form of a Gantt chart appears as Exhibit D of the attached MOU. The major milestones in the project schedule are as follows:

- November 2007 – execute MOU
- December 2007 – obtain CIP amendment & supplemental appropriation for headquarters schematic design
- January 2008 – execute Development Service Agreement; begin development plan design process; & begin due diligence
- May 2008 – conclude development plan process; begin headquarters & Private Improvements schematic design
- October 2008 – complete headquarters & Private Improvements schematic design
- November 2008 – execute General Development Agreement
- February 2009 – obtain CIP amendment & supplemental appropriation for headquarters construction; begin design development for headquarters & Private Improvements
- July 2009 – complete design development for headquarters & Private Improvements; begin construction documents for headquarters & Phase I of Private Improvements
- May 2010 – obtain entitlements for headquarters & Private Improvements
- October 2010 – begin headquarters & Private Improvements Phase I construction
- January 2012 – headquarters & Private Improvements Phase I initial occupancy
- February 2012 – begin Private Improvements Phase II construction
- July 2013 – Private Improvements Phase II initial occupancy

G) CONCLUSION:

Staff recommends that the Planning Board approve the transmission of budget amendments and a supplemental appropriation for the SilverPlace project to the County Council and County Executive.

Attachment 1 – Memorandum of Understanding

Attachment 2 – Commission Budget: Memorandum of Understanding Through
General Development Agreement Execution

Attachment 3 – Memorandum dated October 25, 2007 from Patricia Colihan Barney to
the Montgomery County Planning Board

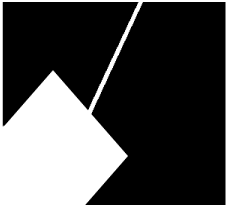
ATTACHMENT 2

Commission Budget: Memorandum of Understanding
Through
General Development Agreement Execution

<u>Budget Item</u>	<u>Amount</u>
Due Diligence	\$127,000
Development Plan (Master Planning, Headquarters Architecture)	\$304,000
Architecture & Engineering (Development Plan Through Schematics)	\$1,387,000
Preliminary Interior Design	\$242,000
Development Management Fee	\$600,000
Commission Consultants	<u>\$290,000</u>
Total Commission Budget	\$2,950,000

ATTACHMENT 3

Memorandum Dated October 25, 2007
From Patricia Colihan Barney, Secretary-Treasurer
To Montgomery County Planning Board



MEMO

THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION
Department of Finance, Office of Secretary-Treasurer

PCB07-053
October 25, 2007

TO: Montgomery County Planning Board

FROM: Patricia Colihan Barney, Secretary-Treasurer

SUBJECT: Funding Source for SilverPlace Supplemental Appropriation

RECOMMENDATION:

Support the funding sources as shown on the capital and operating budget amendments using fund balance of \$1,143,000 from the Administration Fund and \$3,772,000 from the Park Fund. Direct staff to present the SilverPlace project to the Revenue Authority for their consideration of financing it with lease revenue bonds. If this approach is approved by the Revenue Authority Board and the County, we would subsequently substitute \$2,950,000 of funding for this supplemental appropriation with Revenue Authority funding. This process would enable the County to advance those funds to the Revenue Authority, as permitted in Chapter 42 of the County Code, until issuance of the bonds thereby freeing up fund balance to assist in funding the FY 09 Budget.

BACKGROUND:

The SilverPlace project costs are anticipated to be funded through two supplemental appropriations. The first is the design supplemental appropriation for \$4,915,000. This appropriation is to cover \$2,950,000 for design costs and \$1,965,000 for developer cost recovery which would only be paid in the event that we do not move forward with the current development team. The second supplemental appropriation will follow at a later date to fund the balance of the design and the development costs with a combination of debt and land sale proceeds.

DISCUSSION:

Proposed Financing Method -

The current PDF anticipated funding the SilverPlace project through the Commission's issuance of debt in the form of certificates of participation (COPs). This method has been used to finance two other Commission office buildings.

Due to the difficult fiscal situation at the State level and anticipating its impact on the County, the County OMB Director suggested that we consider Revenue Authority lease revenue bonds to finance this project. Using that financing source would enable the County to advance the design cost portion of this supplemental appropriation (\$2.9 million) and free up those funds to assist with the FY 09 budget. The County Finance Director was asked to consider including the developer cost recovery portion as eligible for a County advance since any plan or work product funded by such a payment would become Commission property. She indicated that the County does not provide advances for those costs.

An added benefit of financing with lease revenue bonds is flexibility. Those bonds can be issued for broader purposes than Commission issued debt which may create greater opportunities when further defining and ultimately financing this mixed-use project.

The Board should be aware that if we use lease revenue bond financing, the Revenue Authority would hold title to the building. The Commission would hold a leasehold interest in the building, and our rental payments would cover the debt service on the lease revenue bonds. When the bonds are fully paid off, ownership would transfer to the Commission.

Proposed Supplemental Appropriation Funding Approach –

The funding source for the \$4,915,000 supplemental appropriation is shown on the proposed PDF as Park and Planning consisting of \$1,143,000 of Administration Fund Balance and \$3,772,000 of Park Fund Balance. Based on prior estimates of usage of space in the building, the Administration Fund should contribute significantly more to the appropriation, but the Administration Fund was limited to the fund balance currently available. If we are able to use the revenue bonds and the temporary County advance for the \$2,950,000 of design costs, substantially all of those funds will become available to the Park Fund. If the Commission is not required to make a Developer Cost Recovery Payment, the \$1,965,000 would become available for this project or for another Commission funding need in the Administration and Park Funds.

SUMMARY:

As it is critical to obtain additional funding for this project now, I recommend that the funding source on the proposed amendment to the PDF be shown as Park and Planning representing Commission Fund Balance. If we are successful in obtaining approval to use Revenue Authority financing, we will switch the funding source for the \$2,950,000 of design costs at a later date.