

ATTACHMENT #9

MEMORANDUM

TO: M-NCPPC Commissioners and Staff

FROM: DIANE FOX, President Chelsea Tower Condominium
and Chairperson of People for the Preservation of Parks

RE: Proposed Indoor Baseball Facility at Cabin John Park

DATE: July 23, 2003

I am astounded that the proposal for an indoor baseball facility at Cabin John Park has progressed to this stage given (a) the conflicting information within the materials prepared by P&P staff and the materials provided by the proposed developer, (b) the shaky financial structure of the proposed facility, and (c) the conflicts between the proposed facility and the Park, Recreation & Open Space Master Plan (PROS).

My understanding is that a private developer approached the Commission in December of 2000 to develop an indoor baseball training facility at Cabin John Park. At that time the P&P staff was concerned about traffic and parking demands and how the new facility would impact on the surrounding communities. My further understanding is that the originally-proposed facility was to be much smaller than the one currently under consideration.

In the July 27, 2001, Staff Report memorandum from Terry Brooks to the Planning Board seeking approval to release RFPs for an indoor baseball training facility at Cabin John or Olney Manor, it was recognized that "public demand has increased for more use of both the softball and baseball fields within Montgomery County's parks". In addition, according to the Staff Report, the PROS master plan recognizes the need for additional ballfields, and identifies ballfield development as "one of the most significant recreational services needs in the park system with a demand of an additional 88 ballfields by 2005 and another 101 by the year 2010."

No one disputes either of those observations; but how creating an indoor baseball training facility for the primary use of B-CC Baseball, a private entity, addresses either of those needs is incomprehensible to me.¹ Nevertheless, the Commission apparently agreed that an indoor baseball facility would respond to those needs, and issued an RFP (#P22-205) in September of 2001; and a subsequent proposal (RFP #P22-209) was issued in December of 2001. Apparently sometime between December 2001 and October 2002, Montgomery Lane, LLC submitted a proposal in response to the December RFP; and on October 28, 2002, Jana Harris, a Senior Procurement Specialist at P&P sent a letter to Montgomery Lane that states "the

¹ If the young children of B-CC Baseball whose parents can afford indoor baseball training, do get good indoor training, where would they go to play "real" games to see if their training paid off?

Commission has decided to cancel the solicitation [referring to RFP #P22-209], because it is not in the Commission's best interest to award a contract...for the Construction and Management of an Indoor Baseball/Softball Training Facility under the terms of the [December 2001] RFP." I do not know what changed since October of 2002, that resulted in poorly publicized "community meetings" in January and February of 2003², and to induce Montgomery Lane to submit its Business Plan & Financial Projections dated March 17, 2003. But here we are.

Issues:

1. Financial/Taxpayer Concerns.

A. Rent. The July 27, 2001 Staff Report provides that "the developer would be required to pay an annual minimum lease fee of \$40,000 plus a percentage of all profits generated by the facility". Nevertheless, the first RFP (#P22-205) issued by the Commission in September of 2001, required a ground rent of only \$30,000 per year, which was modified by Addendum No. 1 dated September 25, 2001, which states that "In regards to the payment of the \$30,000 base annual [sic, monthly] rent, the Commission would "be open to a payment schedule which would allow the base amount to be paid [sic, payed] over the course of the lease term [however] the Commission would still need to achieve the average of \$30,000 per year [sic, month]." Interestingly, the December 2001 RFP (#P22-209) provides for minimum base annual rent [to be] as negotiated by the Commission and the Proposer. The September 2001 RFP required that, in addition to the base annual rent, the Commission was to receive, at a minimum, 5% of the gross revenues in years one through five, with provisions for increases in the following years; and RFP P22-209 requires that the proposal must include a provision that the Commission will receive a percentage of the gross revenues as negotiated by the Commission and the Proposer.

The proposal dated March 17, 2003, submitted by Montgomery Lane provides for annual rent payments beginning at \$5,000 and escalating to \$110,000 over 40 years, or an average of \$44,125 per year. P&P does not even begin to receive \$30,000 per year until the 17th year of the term of the lease. In addition, B-CC Baseball, the primary user of the facility, would pay P&P \$2,500 for the first year, with 3% escalations. Assuming the amount shown as "Fee to MNCPPC" on B-CC Baseball's pro forma statement represents "the additional amount for a percentage of gross revenue", that amount has been reduced to 1%. In contrast, based on the developer's forecasted cash flow statement, the principals of the developer will be receiving between \$105,249 and \$605,426 per year over the course of the 40 years, which translates to a return based on gross revenues (excluding interest income) ranging from 31% in the first year to 67.9% in the 40th year. This is astounding!

² Note that these "community" meetings pre-date the date of the developer's Business & Financial Plan.

I am a commercial real estate attorney in Bethesda, and have recently represented two landowner clients who have leased their land. In one case, the annual ground rent for a 48,000 square foot parcel (approximately 1.10 acres) in Bethesda is in excess of \$500,000 and provides for 2% annual escalations. In the other case, the annual ground rent for a 99,752 square foot parcel (approximately 2.29 acres) near the Rockville Metro station is approximately \$200,000 for the first five years, increases by 12% for the second five years, and for the next five years is based on a percentage of the fair market value of the land.

Does P&P really believe that an average of \$44,125 plus 1% of gross revenues (an average of an additional \$5,732 per year for 10 years) is the market rent that can be received for one acre of land in Potomac/West Bethesda? Or is P&P looking for a way to subsidize two private organizations at the expense of the County taxpayers? I believe parks and open green space are important for the well-being of all Montgomery County citizens, not for the private gain of one or two private enterprises. It seems obvious to me, that if an indoor baseball facility of the nature proposed by B-CC Baseball and the developer was, in fact, a profitable enterprise in the open, private-sector market, there would be no need for this subsidy by P&P.

B. Pro-Forma Operating Statements.

1. General Observations. Neither the pro forma statements provided by the developer or B-CC Baseball appear to have been prepared by an accountant. In fact, the developer's Business Plan & Financial Projections dated March 17, 2003, specifically states that "A separate Pro-Forma analysis was originally prepared by RSM McGladrey, Inc. [sic, McGladrey] (certified public accountants), upon assumptions and cash flow projections provided by Montgomery Lane, LLC [but] those assumptions and projections have been revised by Montgomery Lane based on changes being made to the size and use of the facility."³ Given that projections are, in general, unreliable and inconclusive, don't you think it would be prudent business practice to review accountant-prepared projections and pro forma statements so that P&P (and the County taxpayers) can find some comfort that a professional has evaluated the financial information and assumptions proposed by B-CC Baseball and the developer?

2. Specific Financial Observations.

(a) The B-CC Baseball pro forma, which only covers the first 10 years of operations⁴, seems to assume that users other than B-CC Baseball will be flocking to use this facility during the limited times it will be available to the public. Query: Why does B-CC Baseball believe that sufficient numbers of corporate employees will be able to take three

³ RSM McGladrey, Inc. is a highly-regarded accounting firm in Montgomery County.

⁴ Note that the developer's proposal states categorically that B-CC Baseball will sign a 20 year lease, however the non-binding letter of intent from B-CC Baseball states that B-CC Baseball will consider a 20 year lease with a 20 year option.

hours off (allowing for drive time, changing clothes, playing basketball, showering, dressing and driving back to work) during the middle of the day for corporate basketball to generate \$50,000 per year in revenue? How were the projected amounts of revenue calculated for birthday parties (\$10,000 per year), summer camps (\$30,000 per year), and vending (\$6,000) per year arrived at?

(b) The narrative portion of the developer's proposal states that income for the peak season (November through March) is projected at \$269,925, whereas, the Proposed Usage & Fee Schedule reflects only \$224,375 (including the projected income from B-CC Baseball and Georgetown University Baseball).

(c) The developer and B-CC Baseball seem to believe that all of the various entities that have submitted non-binding letters of intent (including Georgetown University Baseball, which is estimated to provide \$46,875 of annual income) will, in fact, commit to use the facility at the rates and at the times shown in the pro forma statements.

(d) In addition to the amounts paid to the principals of the developer as noted above, the developer is to receive a payment for "facility management staff" ranging between \$60,000 in the first year to \$129,885 in the 40th year. What is this for?

(e) On what basis were the real estate taxes and insurance premiums projected to be paid by the developer established? The real estate taxes on one acre of land in West Bethesda and insurance premiums on such a facility would each probably exceed the projected amounts for taxes and insurance premiums combined. Again, this projection might be more accurate if reviewed by a professional accountant.

(f) With regard to the cost of constructing the facility, the developer in one place states that the cost of construction will be \$1,831,703 (financing amount of \$1,481,703 plus \$350,000 from the developer), in the Pro-Forma Assumptions states that the total cost will be \$1,856,703 (an increase of \$25,000), while the Cost Estimate prepared by Hardy Construction Company says the cost is \$1,549,403. Which is correct? And, can or will P&P make a decision based on conflicting information?

(g) If Georgetown University Baseball is to generate \$48,875 from the use of this facility from 1:00 to 4:00 p.m. each day from November through March⁵, what will they do since, accordingly to an e-mail I received from the developer, the "training portion is only large enough to accommodate an infield and the only games that could conceivably be played there would be for young children that don't need to have outfield practice". I believe the participants in Georgetown University Baseball are older than "young children."

⁵ See Proposed Usage & Fee Schedule attached to the developer's Business Plan & Financial Projections.

C. Financial Failure.

As is customary in the public-sector business environment, will there be letters of credit and/or personal guarantees posted by B-CC Baseball in favor of Montgomery Lane and by Montgomery Lane in favor of Montgomery County to assure to the taxpayers of Montgomery County that the County (and therefore the taxpayers) would not end up acquiring or expending significant amounts for this facility if the projections of B-CC and the developer fail to materialize? Will this become another Soccerplex or Black Rock, each of which started out with presumably rosy projections, and each of which ended up costing the County (and its taxpayers) millions of dollars when each was unable to meet its projections? It seems to me that the developer and B-CC Baseball, both private enterprises, should bear the risk of failure, rather than the taxpayers.

The Market Assessment of the developer's proposal indicates that B-CC Baseball has approximately 4,500 members. In a stagnant or down-turning economy, where is the assurance that each individual member of B-CC Baseball can absorb another \$77 to \$96 per year per child (rent to Montgomery Lane plus fee to MNCPPC for the first and last years divided by 4,500)? Where is the assurance that the membership of B-CC Baseball will increase in size over the course of the proposed lease, and therefore be able to continue paying escalating rent and other costs over 40 years, particularly when the PROS shows that the most significant increases in population will be in Gaithersburg, Germantown and Clarksburg? In addition, where is the assurance and evidence that these members are able to absorb and pay for the cost of fully equipping and fitting up the proposed facility? Note that in an article in the July 16, 2003, issue of The Gazette, Denise Gorham, Executive Director of B-CC Baseball, stated that chipping in an extra \$3.00 per person to help fund increases in permit fees assessed by P&P would make it more difficult for B-CC Baseball to break even. If that is the case, how are they going to absorb another \$77 to \$96 per child?

2. Other Facilities.

A. Other Indoor Baseball Facilities. The July 2001 staff report states that "staff conducted national research on the Internet to find how similar facilities were developed and managed"; and attached to the staff report are copies of webpage material from several other facilities around the country. Nowhere in that material, however, is there a description of how those facilities "were developed and managed", and nowhere in that material is there any indication of whether those facilities are profitable or whether they are subsidized by governmental agencies. Has this information been obtained? If so, how do the developer's and B-CC Baseball's projections compare? It seems to me that a review of this information would enable P&P to make an intelligent decision about whether, in essence, donating land for this venture was likely to be a prudent use of parkland.

B. Demand for Ballparks. As noted above, the PROS clearly indicates that the population growth centers in Montgomery County through 2010 will be in Clarksburg,



Gaithersburg and Germantown. Consistent with that, the PROS indicates that the high needs for ballfields are in the Travilah, Gaithersburg & Vicinity, Clarksburg & Vicinity and Germantown planning areas. Ballfield needs in the Potomac planning area, in which Cabin John Park is located, are designated as having been met.

C. Alternative Locations. The PROS does indicate there is a shortage of ballfields in the Bethesda planning area but also recognizes that it may be difficult to resolve that problem because of the scarcity of available vacant land and that "high priority should be given to renovating local and neighborhood parks to serve these more densely developed areas." One way to try and alleviate this, as recognized in the PROS, is through partnerships with Montgomery County Schools to increase the usability of school fields and other facilities. I believe the lease is expiring on the old Brookmont Elementary School on Sangamore Road in Bethesda. This site is down county, on a main road and should not interfere with adjacent residential areas. Perhaps P&P could take over that facility either for construction of more ballfields or for construction of an indoor baseball facility. Other schools in the down-county area which have closed or are closing might be another possibility. This would not use up any parkland, but instead would expand it.

3. Regional Park Conservation. The PROS defines a regional park, like Cabin John, as being "large, typically over 200 acres, [containing] a wide range of recreation opportunities and facilities, while retaining 2/3 of the park for conservation." It has been reported by Terry Brooks that P&P considers the proposed location for the indoor baseball facility to be already developed and that the facility would merely be replacing that developed area. Query: How does construction of a 120 x 200 square foot pre-fabricated metal building, approximately four stories high, equate to the current development by a volleyball pit and handball/tennis practice courts, both of which still leave plenty of open space areas for the citizens of Montgomery County?⁶ If P&P does want to re-develop this area, perhaps a dog park or a park for the disabled or even another ballfield, would be more appropriate. At least all citizens of Montgomery County would then still be able to walk around on grassy areas, and otherwise participate in passive recreational uses, such as picnicking, wildlife viewing/appreciating, nature photographing, wildflower viewing, and the like.⁷

⁶ I have seen nothing about the relocation of the volleyball pit and handball/tennis practice courts which are free and open for use by all Montgomery County residents and other park visitors.

⁷ The PROS master plan recognizes that "[t]he need for people to enjoy passive recreational activities in peace, quiet, and solitude will become increasingly important as their daily lives become more hectic and the County becomes more developed...Protection of...areas within parks that provide quiet trails and the buffering effect of natural settings is an important yet often overlooked concern that will be incorporated, to a greater degree, in future park development decisions."

4. Tree Preservation Regulations. It is my understanding that Maryland's Conservation Act requires a forest conservation plan for all new development projects as well as all park rehabilitation projects that result in 40,000 square feet of land disturbance. In all of the information that has been provided to me by the developer and P&P, nowhere is there mention of a forest conservation plan for this proposed development on a 40,000 square foot parcel..

5. General Questions:

A. Why did only one developer (who is not even listed on the list of eleven developers plus Bruce Adams [a former president and a current director of B-CC Baseball] who received a copy of the RFP) respond to P&P's proposal? Might it be that other developers know that even with the P&P land subsidy, the proposed facility is not economically feasible? Were the other developers only looking at the required \$40,000 or \$30,000 annual ground rent and not told they could reduce their initial payments to \$5,000?

B. Why are Derek Hacopian and Triple Crown Baseball, both of whom would be competitors of this proposed facility, listed as potential users? Is it assumed that if the new facility is constructed, these entities will close their doors and their members will become users of the new facility?

C. The RFP (#P22-209), in section 5 A on page 17-18, in section 7 a on page 18 and section 8 a on page 19, requires that certain information must be included in any proposal submitted. I do not see any of that information in the developer's Business Plan.

D. How many and what size trees will be removed to build the facility?

E. What type of outdoor lighting will be required, and how will that impact on the neighboring communities?

F. Who will be obligated to construct and maintain the proposed storm water management pond which is shown on the Concept Plan prepared by Dewberry & Davis, but is not included in the construction cost estimate prepared by Hardy Construction Company?

G. What type(s) of noise and light buffers will be erected for the benefit of the adjacent communities?

H. Was an environmental assessment performed?

I. My understanding is that Chelsea Tower and other areas of Westlake Terrace were permitted by the County to be developed because Cabin John Park was there to provide the green space in what has become a vast expanse of concrete and asphalt. Now, the County, by seeking out a developer for an indoor baseball facility, seemingly wants to take away more of that green open space to construct another substantial structure.

J. Although the traffic report which was prepared for the developer concludes that the intersections most likely to be affected by the proposed facility are projected to operate within acceptable congestion limits after construction of the baseball facility, the writer of that report does acknowledge that there are no trip generation rates available for the specific use proposed in either the LATR Guidelines or the ITE's Trip Generation Publication. Therefore, the conclusions of the traffic planner are his "best guesses." In addition, since the traffic study was performed in May of 2003, the writer of the report could not properly advise P&P of how much traffic backs up on Westlake Drive from the Westlake Drive/Westlake Terrace intersection to the Cabin John Park (indoor baseball facility) entrance during the holiday shopping period (November through December) from people going to and from Montgomery Mall for holiday shopping. I live there, and know that it will be difficult for parents bringing young children from lower Montgomery County to turn left into the indoor baseball facility in the evenings and for other users of the facility to turn left coming out of Cabin John Park onto Westlake Drive.

6. Conclusion. As stated in the PROS, "Lands and facility under the control of The Maryland-National Capital Park and Planning Commission are held as a public trust for the enjoyment and education of present and future generations. The Commission is pledged to protect these holdings from encroachment that would threaten their use as park land." In addition, a document created by the Department of Park and Planning Strategic Planning Division, dated February 2003, and entitled "Looking Ahead...Strategies for Planning, Developing and Managing Parks in the Future" cites staff recommendations as "[M]aintain our primary mission while exploring partnership with the private sector. However, not allow private-public partnerships to erode our mission. Formulate stringent guidelines for partnerships. Be aware that private-public partnerships can have a negative cost. (emphasis added) and "Carefully consider requests from private companies to do business on parkland,...and permit them where the benefit of private opportunities is balanced across the County and the service provides what the people want."⁸ I do not see how construction of an indoor baseball facility, taking away approximately one acre of parkland, to benefit one or two private enterprises, is consistent with Park and Planning's mission, and I urge you to vote against this facility.

⁸ See page 4 of Appendix 2, Results of Staff Focus Group.