FAIRFAX COUNTY PLANNING COMMISSION
TYSONS CORNER COMMITTEE
WEDNESDAY, SEPTEMBER 7, 2011

COMMITTEE MEMBERS PRESENT:

Walter L. Alcorn, Chairman, At-Large
Frank A. de la Fe, Hunter Mill District
Jay P. Donahue, Dranesville District
Kenneth A. Lawrence, Providence District
James T. Migliaccio, Lee District

OTHER COMMISSIONERS PRESENT:

Suzanne F. Harsel, Braddock District
James R. Hart, At-Large
Timothy J. Sargeant, At-Large

FAIRFAX COUNTY STAFF PRESENT:

Rob Stalzer, Deputy County Executive, County Executive's Office
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Barbara C. Berlin, Director, Zoning Evaluation Division (ZED), DPZ
Matthew Ladd, Planner I, Planning Division, DPZ
James P. Zook, Consultant, DPZ
Thomas P. Biesiadny, Acting Director, Department of Transportation (FCDOT)
Daniel B. Rathbone, Chief, Transportation Planning Division, FCDOT
Jay Guy, Senior Transportation Planner, Coordination and Funding Division, FCDOT
Barbara A. Byron, Director, Office of Community Revitalization Reinvestment
Vandana Sareen, Real Estate Finance/Grants Management, Department of Housing and Community Development
Andrea L. Dorlester, Planner III, Planning and Development Division, Park Planning Branch, Fairfax County Park Authority
Barbara J. Lippa, Executive Director, Planning Commission Office
Kara A. DeArrastia, Clerk to the Planning Commission

OTHERS PRESENT:

Arthur Purves, President, Fairfax County Taxpayers Alliance
Bruce Bennett, Chairman, Hunter Mill Defense League Transportation Committee
Carey Sienicki, Town Council Member, Town of Vienna
Christian Deschauer, Director of Government Relations, Fairfax County Chamber of Commerce
David Swink, Hunter Mill District representative, Fairfax County Taxpayers Alliance
Diane Poldy, President, ViennaTysons Regional Chamber of Commerce
Elaine Cox, Hunton & Williams LLP
Elizabeth Baker, Land Use Planner, Walsh, Colucci, Lubeley, Emrich & Walsh, PC
Irv Auberbach, The Lewinsville Coalition
Jill Parks, Esquire, Cooley LLP
Jim Policaro, Managing Director, Lerner Enterprises
Jonathan Cox, Senior Vice President of Development, AvalonBay Communities, Inc.

OTHERS PRESENT (Continued):

Jonathon Kerester, Managing Broker/Director, KW Commercial
Kafia Hosh, *The Washington Post*
Kay Bacharach, Fairfax resident
Keith Turner, Chairman, Tysons Partnership Board of Directors
Laurie Genevro Cole, Town Council Member, Town of Vienna
Loretta Malander, Herndon resident
Louis Freeman, McLean resident
Lynne Goldberg, Corporate Real Estate, Capital One
M. Jane Seeman, Mayor, Town of Vienna
Matthew Robinson, Senior Vice President, MRP Realty
Michael P. McCarthy, Vice President/Director of Acquisitions, Quadrangle Development
Rob Whitfield, Dulles Corridor Users Group
Roger Diedrich, Virginia Chapter – Sierra Club
Russell Marks, Investor/Developer, NVCommercial
Sal Gasher, The MITRE Corporation
Sally Horn, McLean resident
Sandy Green, Abigail Adams Tea Party
Sara Stoller, Alexandria resident
Shane Murphy, Esquire, Cooley LLP
Stella Koch, Audubon Naturalist Society
Stewart Schwartz, Executive Director, Coalition for Smarter Growth
Stu Mendelsohn, Member, Tysons Partnership Board of Directors
Thomas Cranmer, Great Falls resident
VK Fay, Tysons Townes Homeowners Association
Will Radle, Lee District resident

ATTACHMENTS:

A. Tysons Partnership, Inc. PowerPoint presentation
B. Written Statements submitted by speakers
C. Table 7: Transportation Infrastructure, Programs, and Services, As They Relate to the Level of Development in Tysons
D. Letter dated June 14, 2007, from William T. Coleman, Jr., Senior Partner and Senior Counselor of O'Melveny & Myers LLP, addressed to Gerald E. Connolly, then Chairman of the Board of Supervisors, regarding the Design-Build Contract for Phase I of the Dulles Corridor Metrorail Project
E. Townhall.com article dated August 30, 2011, by Rachel Alexander, entitled, "Government Destroying Free Markets With Public-Private Partnerships"
F. Reason Foundation Policy Brief 97, dated February 2011, by Robert W. Poole, Jr. and Peter Samuel, entitled, "Transportation Mega-Projects and Risk"
G. Draft Planning Commission Tysons Committee Schedule
H. Annotated Committee Process and Staff Assignments - revised September 2, 2011

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Chairman Walter L. Alcorn called the meeting to order at 7:06 p.m., in Conference Rooms 9/10 of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, Virginia 22035.

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Commissioner Lawrence MOVED THAT THE TYSONS CORNER COMMITTEE MINUTES OF JUNE 29, 2011 AND JULY 14, 2011, BE APPROVED.

Commissioner de la Fe seconded the motion which carried unanimously.

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LISTENING SESSION ON PUBLIC'S VIEWS, IDEAS, AND/OR RECOMMENDATIONS REGARDING TYSONS TRANSPORTATION FUNDING AND PROPOSED PROCESS

Chairman Alcorn announced that this was a listening session to receive public comment on possible Tysons Corner transportation funding solutions, the process for arriving at a recommended funding solution, the staff's proposed funding proposal, and associated assumptions. He said speakers would be given 5 minutes to address the Committee, with the exception of the first speaker who would be given 15 minutes, and that they could email additional information to plancom@fairfaxcounty.gov.

Jonathan Cox, Senior Vice President – Development, AvalonBay Communities, Inc., delivered a PowerPoint presentation on the Tysons Partnership, Inc.'s proposal, as shown in Attachment A.

Chairman Alcorn pointed out that the proposed public sector transportation contribution for 2010-2030, outlined on the "Burden on the County" slide should also include the Virginia State and Federal governments. He then thanked Mr. Cox for his informative presentation.

Commissioner Lawrence noted that the Committee and staff would continue working with the Tysons Partnership. He stated that the public sector's contribution should predominantly consist of State funds because the State owned the public roads. He said he agreed that it would take a coordinated effort in Richmond as well as with their fellow Tysons stakeholders to achieve any solution.

In response to questions from Commissioner Sargeant, Mr. Cox pointed out that the majority of the Tysons Corner Comprehensive Plan was built around bulk new growth, but he was uncertain whether it would occur within a 20-year timeframe because the real estate market drove development.

Replying to a question from Chairman Alcorn, Mr. Cox said that although the Tysons Partnership's members consisted mainly of competing Tysons landowners, they were trying to

work together to achieve a common goal of ensuring that the necessary infrastructure was in place in order to move forward on their projects.

Commissioner de la Fe commented on the long-term problem of the State neglecting to provide the County with the funds needed for transportation improvements and suggested that the private sector exert influence over State lawmakers to obtain more funds. He said raising the tolls on the Dulles Toll Road was only a small part of the solution. Commissioner Lawrence concurred, noting that coordination from the State was crucial to acquiring the necessary funds.

Will Radle, Lee District resident, emphasized the need for local leaders and communities in the County to understand the strategy of how public policies could work together to obtain the necessary funds to support Tysons-wide road improvements and achieve fair treatment to County taxpayers. He stated that the estimated $1.7 billion in transportation improvements needed in Tysons during the next 20 years should be shifted from the County to the State government. He also spoke in support of staff's proposed public/private share allocation of 68/32 and $991 million investment by the public sector, noting that it would take a strong effort from County residents and a State-wide alliance.

M. Jane Seeman, Mayor, Town of Vienna, read her letter to the Committee, dated August 18, 2011, addressing the Vienna Town Council's position on funding schemes for Tysons infrastructure improvements and on the process of moving forward on implementation issues, as shown in Attachment B.

Chairman Alcorn said he was pleased that Mayor Seeman and Town of Vienna residents wanted to be involved in the implementation of the Tysons Plan. Mayor Seeman pointed out that on Thursday, September 1, at the Vienna Town Hall, County staff and Georgelas Group LLC representatives had held a public information meeting on the first rezoning to be reviewed under the Tysons Plan for development near the future Tysons Spring Hill Metro Station. She said this meeting was well-attended, which demonstrated people's interest in Tysons redevelopment.

Christian Deschauer, Director of Government Relations, Fairfax County Chamber of Commerce, read a written statement from the Chamber providing its position on the funding of transportation improvements in Tysons, as shown in Attachment B.

Diane Poldy, President, ViennaTysons Regional Chamber of Commerce (VTRCC), read a written statement from the VTRCC providing its perspective on funding options regarding the infrastructure improvements for Tysons redevelopment, as shown in Attachment B.

Shane Murphy, Esquire, Cooley LLP, representing Capital One Bank (USA), explained that in RZ 2010-PR-021/PCA 92-P-001-08, Capital One sought additional density to redevelop its existing office campus in Tysons into a mixed-use, transit-oriented development consisting of office, hotel, retail, and residential uses. He indicated that Capital One had paid $3.1 million toward the Dulles Rail Phase I Tax District and suggested that this be factored in the proposed Tysons-Wide Special Tax District of $0.29 per $100 of assessed valuation. He expressed concerns that the proposed proffer cost of $27.95 per square feet would impose a tremendous

burden on the private sector and the proposed 100-percent private sector responsibility for constructing the grid of streets was a considerable cost burden that might not be economically sustainable, although he recognized that Tysons landowners should pay an appropriate share of the cost. Mr. Murphy then presented the following recommendations:

- The transportation programs and infrastructure projects listed in Table 7 that were currently programmed, such as the Virginia Department of Transportation (VDOT) project to widen Route 7 from Rolling Holly Drive to Reston Avenue, needed to be emphasized. (Table 7 is contained in Attachment C.)

- The public sector should be 100 percent responsible for the costs of Tysons-wide improvements that would accommodate through traffic originating from outside of Tysons and terminating outside of Tysons, and the public and private sectors should share equally in the remaining costs of such improvements that would serve traffic originating within Tysons or terminating within Tysons, as suggested by staff.

Answering a question from Commissioner de la Fe, Daniel Rathbone, Chief, Transportation Planning Division, Fairfax County Department of Transportation (FCDOT), explained that the estimated cost of the grid of streets was based on the assumption in the report "Forecasts for Tysons Corner to 2050" prepared by the George Mason University Center for Regional Analysis in September 2008 that 60 percent of new and existing streets would be constructed between now and 2030, with the remaining 40 percent to be constructed between 2030 and 2050. He said it was also expected that the grid segments necessary to maintain acceptable traffic circulation for an individual development would be constructed in conjunction with that development.

Responding to a question from Chairman Alcorn, Mr. Rathbone noted that both onsite and offsite grid connections were included in the $443 million estimate.

Laurie Genevro Cole, Town Council Member, Town of Vienna, provided the following comments on the Tysons Partnership's presentation:

- Town of Vienna representatives were nonvoting members on the Tysons Partnership.

- Tysons landowners would realize the tradeoffs, benefits, and exchanges of paying toward the Dulles Rail Phase I Tax District.

- The proposed public sector transportation contribution did not include ongoing operating costs for County improvements, which County taxpayers would be paying for years to come.

- The cost of initial development was small compared to the cost of maintenance over time.

- Rather than focus on the split total cost of Table 7 Improvements between the private sector and the County, possible funding sources from developers, such as proffers, should be explored.

Ms. Cole expressed concern that at a recent Providence District Council meeting, she had learned that the County's interpretation of the proffers and the Conceptual Development Plan/Final Development Plan (CDP/FDP) accepted by the Board of Supervisors in conjunction with approval of RZ 2003-PR-022, Metro West, had determined that the applicant was no longer obligated to provide improvements at the Lee Highway/Nutley Street intersection and the Vaden Drive Extended/Main Street intersection pursuant to the proffers because such improvements had not been approved by VDOT. She requested that Commissioners be mindful of holding developers accountable to follow through with their binding proffer commitments. She also urged everyone to remain focused on achieving the ultimate vision for Tysons.

Commissioner de la Fe pointed out to Ms. Cole that typical language for proffered improvements would indicate that if VDOT disapproved a particular improvement, an alternative improvement would be proposed in its place, as long as it was in substantial conformance with the proffers and the development plan, subject to final approval by VDOT. Commissioner Hart added that VDOT did not have the authority to amend proffers. He explained that the applicant must seek approval of a Proffered Condition Amendment (PCA) to amend the proffers, which would be subject to public hearings before the Planning Commission and Board of Supervisors. He noted that public participation in the PCA process was beneficial because participants often provided constructive suggestions about the wording of proffers.

Ms. Cole strongly urged the Commissioners and staff to apply the highest level of evaluation and scrutiny toward development applications in Tysons.

Louis Freeman, McLean resident, read his written statement suggesting that serious consideration be given to establishing a private jitney service to provide the needed transit within the Tysons area, as shown in Attachment B.

In reply to a question from Commissioner Harsel, Commissioner Lawrence said the Tysons Plan envisioned a transit circulator system, linking Metro stations and other areas of Tysons.

Answering a question from Commissioner Harsel, Mr. Freeman explained that a private jitney service could be used to transport passengers to businesses and Metro stations before the circulator bus system was established in Tysons. Commissioner Lawrence said this option should be considered.

Replying to a question from Commissioner Hart, Mr. Rathbone noted that private bus lines were expensive to operate. Mr. Freeman pointed out that many bus lines and trolley lines that had started private gradually became public.

Bruce Bennett, Chairman, Hunter Mill Defense League Transportation Committee, read his written statement requesting that County taxpayers be responsible for 25 percent of the Tysons infrastructure costs and that the public portion be capped while the private sector was exposed to the aberrant cost overruns, as shown in Attachment B. He also reviewed the following documents: 1) Letter dated June 14, 2007, from William T. Coleman, Jr., Senior Partner and

Senior Counselor of O'Melveny & Myers LLP, addressed to Gerald E. Connolly, then Chairman of the Board of Supervisors, regarding the Design-Build Contract for Phase I of the Dulles Corridor Metrorail Project; 2) Townhall.com article dated August 30, 2011, by Rachel Alexander, entitled, "Government Destroying Free Markets With Public-Private Partnerships;" and 3) Reason Foundation Policy Brief 97, dated February 2011, by Robert W. Poole, Jr. and Peter Samuel, entitled, "Transportation Mega-Projects and Risk." (These documents are contained in Attachments D through F.)

Arthur Purves, President, Fairfax County Taxpayers Alliance, said he was strongly opposed to the Washington Metropolitan Airports Authority's (WMAA) plan to raise round-trip tolls on the Dulles Toll Road to $20 by 2020 to help fund Phase II of the Dulles Rail line. He questioned the economic benefit of Tysons. He also asked whether the State's $500 million surplus would go toward the unfunded Virginia Railway Express maintenance project. Mr. Purves said Fairfax County residents should not have to pay significantly more residential real estate taxes to fund Tysons infrastructure. He suggested that public service spending be controlled better to help acquire more funds for infrastructure.

Rob Whitfield, representing the Dulles Corridor Users Group, commended the Committee and staff for their considerable time and effort over the last few years in considering numerous planning issues and making many important decisions for the future of Tysons. He expressed concern that the assumptions implicit in the Tysons Partnership's forecasts had not been disclosed; for example, contrary to the Partnership's claim, only approximately $320 million in Phase 1 Dulles Rail Tax District taxes were being levied in Tysons, and $80-plus million of the Phase 1 taxes were being paid by Reston Commercial and Industrial property owners despite the fact that many of the Reston properties were considerably farther from the planned Phase 1 Metro stations than certain Tysons properties that were exempt from the tax district. Mr. Whitfield noted that the Tysons Plan had entitled Transit-Oriented Development (TOD) projects with far higher future development right potentials than currently existed or were likely to exist in Reston. He said he believed that during the next decade, Tysons landowners stood to gain a potential $5 to $10 billion windfall land value increase, which assumed a future land value (say 2016) of $80 per square foot and that an average 6.0 Floor Area Ratio (FAR) with an approximately 50-percent residential component would be approved for projects within one quarter mile radius of Metro stations, versus the existing approved 1.0 to 1.65 commercial FAR for many or most of these properties. He said although he supported some of the Tysons objectives, he emphasized the importance of accommodating a fiscally sound plan that fit different scenarios. He also commented on the poor management of and absence of public hearings on the financing process for Phase I of the Dulles Corridor Metrorail Project.
Mr. Whitfield then presented the following recommendations:

- An evaluation of the County fiscal impacts, including both costs and revenues, that might result under a range of national, regional, and local economic conditions should be conducted.

- Population, housing, and employment forecasts for Tysons, reflecting a range of high, medium, and low growth conditions, including variations in the planned infrastructure

based on several phasing timeframes, funding options, cash flow scenarios, assumptions, projections, and limiting conditions, should also be conducted.

- Because the profit potential from building future TOD projects was yet unknown, any Tysons financing plan for public infrastructure that relied on taxpayers for a majority of its funds, should be rejected by the Planning Commission and Board of Supervisors.

- Before any project subject to the Tysons Plan was approved, an independent analysis of the potential fiscal impact of alternative financing mechanisms for proposed infrastructure improvements and property development alternative scenarios in Tysons should be conducted by a real estate consultant and/or appraiser who understood the nuances of the costs implied with complying with the many requirements of the Plan.

- The possible adoption of a parking tax to pay for both local and arterial street improvements in Tysons should be studied. For example, a daily parking tax, starting in 2012, of $2 per day for vehicles parked before 9:30 a.m. should be investigated. If 100,000 vehicles parked in Tysons before 9:30 a.m. each day, this would bring in parking revenue of $1 million per week or over $50 million per year. Such a tax, which might need legislative approval, should be conditioned on funds being spent only on local road improvements, not for the proposed Tysons circulator or other transit projects, during the subsequent five-year period within one mile of the location of revenues collected. The parking tax rate could also be adjusted every five years, in light of approved development plans and an adopted Tysons Corner Five-Year Road Improvement Plan.

- The State's, County's, private sector's, and Metro users' shares of the Tysons infrastructure costs should be 25 percent each.

Mr. Whitfield pointed out that he could provide the names of several firms in the Washington, D.C. area capable of performing such analyses and forecasts. He also noted that he was willing to provide continued input toward the Committee's deliberations.

Thomas Cranmer, Great Falls resident, expressed strong opposition to public sector contributions toward Tysons infrastructure now and in five years, citing concerns about excessive density; lack of analysis justifying the need for development in Tysons; 15 to 20 percent vacancy rates in the Tysons area; absence of budgeted funds to support such an undertaking; uncertainty of whom and which entities would finance the improvements; and the County's debt service expenditures were projected to be 9.66 percent of General Fund disbursements in 2015, which was close to the 10 percent limit. He recommended that annual projections for the build-out of the Table 7 transportation program and infrastructure projects, including inflation assumptions, be provided. Mr. Cranmer said if the round-trip tolls on the Dulles Toll Road were increased to $20, people would avoid paying these tolls by travelling other roads in the area like Route 7, which would cause substantially more traffic on those roads. He also expressed concern that County taxpayers would be forced to pay $1.6 billion in new property tax revenues between 2011-2030 with no new buildings in Tysons. He questioned why similar development could not be planned in cheaper areas of the County. He also inquired as to the total number of parking lots needed to

accommodate new development in Tysons. He commented that the planning of Tysons had been inadequate and people could not afford such a luxury in this type of fiscal environment.

Stewart Schwartz, Executive Director, Coalition for Smarter Growth, read his written statement reviewing some general observations on the economic and fiscal benefits of the Tysons Plan; suggesting that certain projects in Table 7 that were more regional in nature not be assigned just to Tysons Corner, but be funded through the regional and State plans; and recommending that the State play a much greater role in the funding of both Dulles Rail and Tysons Corner transportation needs as shown in Attachment B.

Commissioner Lawrence concurred that the State should make a major contribution to the transportation needs of Tysons Corner. He noted that an indirect benefit of locating high density development in Tysons and similar places was that this lessened the pressure to redevelop some of the lower density, residential neighborhoods that should remain stable.

Sally Horn, 7837 Montvale Way, McLean, urged the Committee to develop a fair and equitable cost-sharing approach that would address the capacity of the public as well as the private sector to pay for the necessary infrastructure improvements, including transportation and associated capital, maintenance, and operations costs for the 20-30-year timeframe. She said she also endorsed the proposals for funding offered by the McLean Citizens Association (MCA) and Mayor Seeman. She commented that the Tysons Partnership's presentation had emphasized the private sector's contributions toward the Dulles Corridor Metrorail Project, but noted that these contributions had been fixed at a specific dollar amount as well as 25 percent of the original cost estimate. She pointed out that in contrast, the contribution required of County taxpayers had no fixed dollar ceiling, although it had started out as 25 percent of the cost. Ms. Horn expressed concern that this was neither fair nor equitable as the cost to taxpayers and Dulles Access Road users for Metro continued to escalate while the principal beneficiaries in the near term of Metro to Tysons would be the Tysons landowners and developers, whose contribution was fixed. She emphasized the need for fairness and equity in determining Tysons transportation infrastructure costs by noting that either the public sector's share of the cost should be fixed, which was the preferred approach, or both the public and private sectors should be responsible for paying the costs of any escalation, according to whatever infrastructure cost-sharing formula was established. She also noted the importance of getting the State more involved in helping to fund the needed infrastructure in Tysons and stressed the need for Tysons landowners and developers to pressure the State to pay more of the infrastructure costs, as their voices would carry weight in Richmond. Ms. Horn said she was astounded to learn that the public/private share allocation of 58/42 initially suggested by staff had morphed into 68/32. She indicated her support for the 75 private/25 public cost allocation as proposed by the MCA and Greater Tysons Citizens Coalition because it was a more equitable allocation and it was only fair for the private sector to pay more for improvements that would benefit it the most. She cautioned people to examine the statistics regarding Tysons cost estimates and funding more closely. She also pointed out that the burden imposed by increased development in Tysons must be fairly shared among landowners, developers, and taxpayers. Ms. Horn stated that if the Tysons developers and landowners believed that it was not sustainable economically for them to pay their fair share of the costs of constructing the necessary infrastructure, she recommended that instead of increasing the burden

on County taxpayers, the Committee, staff, and stakeholders should revisit the proposed plan for Tysons redevelopment and/or defer its implementation until conditions permitted the landowners and developers to pay their fair share.

Chairman Alcorn thanked all the speakers for their helpful input.

Commissioner Lawrence reminded everyone to submit their comments, concerns, and recommendations to plancom@fairfaxcounty.gov.

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INTERIM PROGRESS REPORT TO BOARD OF SUPERVISORS

Chairman Alcorn stated that the Board of Supervisors had requested that the Planning Commission return to the Board this month with an interim progress report on the process to be used to develop recommendations, the Comprehensive Plan's Initial Development Level (IDL), interim parking at Metro stations, and financing of the transportation infrastructure. He also reminded everyone that the Committee had determined that the issues of the IDL and financing were intrinsically linked, so a recommendation on the IDL would be deferred until such time as it could be done in concert with a financing plan.

Commissioner Lawrence stressed the urgent need to resolve the financing issue first above all other tasks. Chairman Alcorn concurred, noting that funding was the largest implementation challenge and therefore, required the most attention.

Following a brief discussion among Commissioners, it was the consensus of the Committee that State and Federal funding was a critical component in addressing the transportation funding needs of Tysons Comer beyond the Dulles Corridor Metrorail Project; this need for significant State and Federal participation should be identified in the County's legislative program; the Committee Process and Schedule and minutes through July 2011 should be included as attachments to the report; and the Committee would work diligently to identify federal/state/local share funding mechanisms to help implement the Table 7 projects.

Chairman Alcorn noted that the Committee's final report and recommendations were expected to be presented to the Board of Supervisors in March 2012, as outlined in the Committee's schedule and process contained in Attachments G and H.

Barbara Byron, Director, Office of Community Revitalization Reinvestment, indicated that the Board's Community Revitalization and Reinvestment Committee would meet on Tuesday, October 25, 2011, at 1 p.m. to discuss the interim report, and that Tysons Corner Committee member were welcome to attend.

Chairman Alcorn announced that the Committee would next meet on Thursday, September 22, 2011, at 7 p.m., in Conference Rooms 9/10 of the Fairfax County Government Center.

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The meeting was adjourned at 9:36 p.m.
Walter L. Alcorn, Chairman

An audio recording of this meeting is available in the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Kara A. DeArrastia

Approved: October 5, 2011

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Kara A. DeArrastia, Clerk to the
Fairfax County Planning Commission

Introduction

Attachment A

- The Tysons Partnership, Inc.
- Tysons Corner - the Economic Engine within Fairfax County
- The Private Sector in Tysons Corner
- Fairfax County in Tysons Corner
- Alternatives

Tysons Partnership, Inc.

The Tysons Partnership, Inc. is a private, non-profit organization composed of business and community leaders who are committed to advancing and sustaining the “vision of Tysons Corner” as the vibrant, economically successful, diverse, urban core of Fairfax County and to enriching the quality of life for those who work, live, shop and play here. The Tysons Partnership is **the** vehicle for Tysons Stakeholders to actively participate in this revitalization.

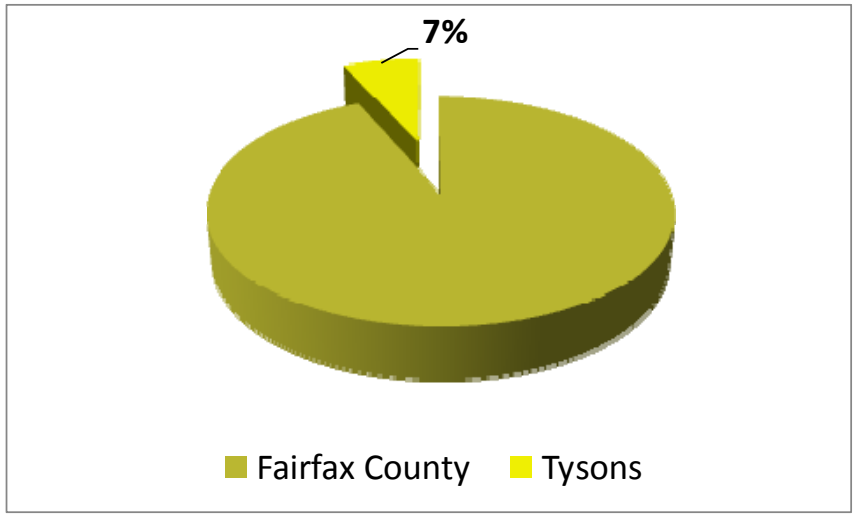
Tysons Partnership, Inc.

A Diversity of Interests:

- AvalonBay Communities
- Beacon Capital Partners
- B.F. Saul
- Booz Allen Hamilton
- Capital One
- Cityline Partners
- Dweck Properties
- Fairfax County Chamber
- Fairfax County
- Federal Realty Investment Trust
- FREDDIE MAC
- General Growth Properties
- Georgelas Cos.
- Hilton
- Holland & Knight
- JBG Companies
- Lerner Companies
- Macerich
- McGuire Woods
- McLean Citizens Association
- MITRE Corp
- MRP Realty
- NV Commercial
- PS Business Parks
- Rotunda Condominium
- SAIC
- Town of Vienna
- ViennaTysons Regional Chamber
- VIKA

Tysons Corner Real Estate Taxes

Total Property Tax Levy



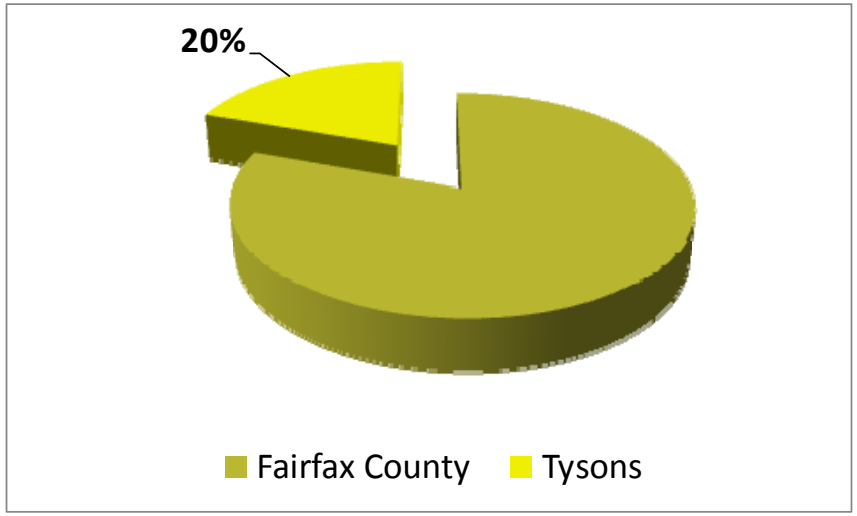
Tysons FY 2012 Real Estate Levy
$144 Million.

Note: Tysons is < 1% of County land area.

* The Pubic Service Corporation assessments are not included in the figures for either County or Tysons.

Tysons Corner Real Estate Taxes

Commercial & Industrial Property Tax for Transportation



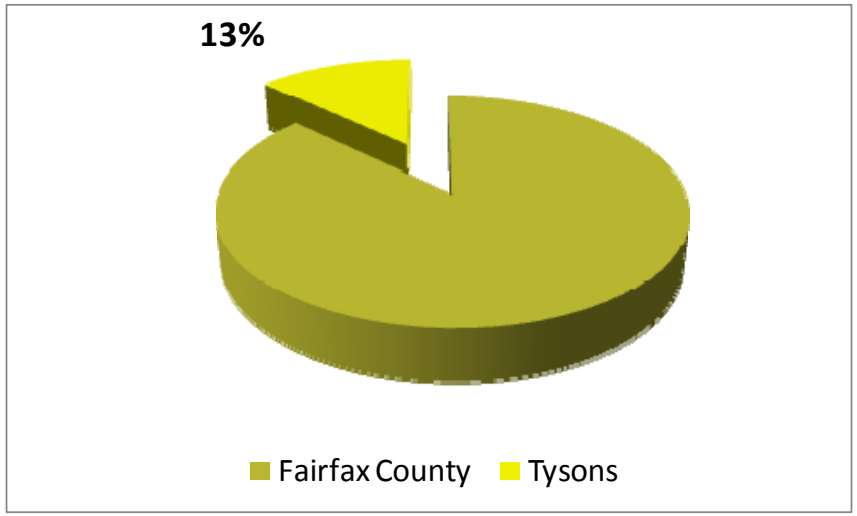
Tysons FY 2012 Transportation Fund Levy
$8 Million.

Note: Tysons is < 1% of County land area.

* The Pubic Service Corporation assessments are not included in the figures for either County or Tysons.

Tysons Corner Sales & BPOL Taxes

BPOL, Local Sales Tax, & Transfer of Title



Tysons FY 2012 BPOL, Sales & TOT Taxes
$41 Million.

Note: Tysons is < 1% of County land area.

Role of the Private Sector

- Tysons Corner has been and always will be driven by the Private Sector.
- The Tysons Partnership is supportive of a Private Sector share of road improvements – new development will obviously impact the road network.
- However, the Private Sector is being burdened by many proffers in addition to transportation.

Burden on the Private Sector

Proposed Private Sector (Transportation Only) Contribution 2010-2030

- Includes the $400 Million for Dulles Rail Phase I Tax District

20-Year Cost Estimate and Funding Proposal

	County		Private		Total
Dulles Metro	$0	0%	$400,000,000	100%	$400,000,000
Comprehensive Plan					
Grid of Streets	$0	0%	$443,000,000	100%	$443,000,000
Tysons-Wide Road Improvements	$547,000,000	68%	$263,000,000	32%	$810,000,000
Transit Service Enhancement	$374,000,000	100%	$0	0%	$374,000,000
Neighborhood Access/Improvements	$70,000,000	100%	$0	0%	$70,000,000
Sub-Total	$991,000,000	58%	$706,000,000	42%	$1,697,000,000
Grand Total	**$991,000,000**	**47%**	**$1,106,000,000**	**53%**	**$2,097,000,000**

Source: Fairfax County

Burden on the Private Sector

Proposed Private Sector Contributions 2010-2030 (Per Comp Plan)

Transportation Improvements	
Grid of Streets	$443,000,000
Tysons-Wide Road Improvements	$263,000,000
Transit Service Enhancement	$0
Neighborhood Access/Improvements	$0
Sub-Total Transportation	$706,000,000
County Proposed Proffers (20-Year Development Level)	
Affordable Housing	$104,000,000
Urban Park Space	$142,400,000
Public Facilities	$137,500,000
Sub-Total Proffers	$383,900,000
Total Proposed Developer Contribution	$1,089,900,000
Cost /Square Foot	$27.95

Note: This compares to an expected Proffer Cost of $10 - $15 psf under the old comp plan and excludes the impact of Dulles Rail Phase I at $0.22 / $100

Source: Fairfax County; Tysons Partnership

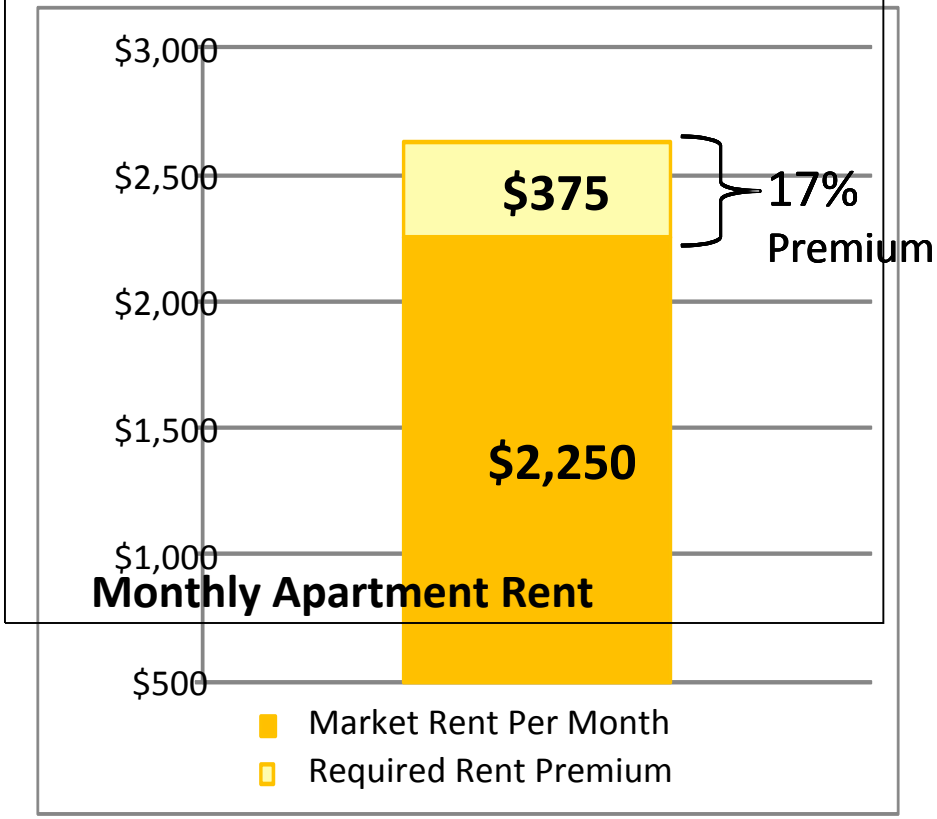
Burden on the Private Sector

Impact on Rents

For a Rental Apartment the Additional $27.95 per s.f. cost equates to an additional $375 per month in rent[1]:

- **Required Rent/Mo: $2,625**
- **Projected Market Rent/Mo with Metro: $2,250**

- **A 17% Premium**
- **A Comparative Disadvantage**
- ***Note: Dulles Rail Phase I Tax increases taxes on a per unit basis by $660 [2]***



1 To realize an 8% Return.

*2 1,000 sf * $300 * 0.0022 = $660 additional tax*

Source: Tysons Partnership

Burden on the Private Sector

Other Burdens

- The Current Tax Rate in Tysons Corner:

Use	Rate /$100 Assessed Value	Share of Tax
General Fund	1.07	76%
Pest Infestation	0.001	0%
Stormwater	0.015	1%
Dulles Rail	0.22	16%
Transportation	0.11	8%
Total	1.416	100%

- "Old Density" (older properties razed and rebuilt) is treated the same as any "New Density" by the Comp Plan and will have to bear the burden of the New Proffers and Table 7 Improvements at $27.95 per s.f.
- New Density is supposed to be a windfall for the Private Sector and enable the property owner to pay for this added burden but New Density went up by 48% and the Proffers and Table 7 Improvements went up around 100%.

Benefit to the Private Sector

Increased Density

- New Comp Plan allows for **a 48% increase in development potential**
  - but Proffer and Table 7 Costs went up ~100%.

- The Private Sector **must invest** to Realize these Development Levels:
  - In 20 years **approximately $10 billion [1] in new RE investment** .
    - *(Note: This is more than **all** of the Assessed Value in Tysons today).*
  - Over the next 20 years **another $7 billion [1] in RE investment** by the Private Sector.

Development Levels in Comprehensive Plan

	Year	Square Feet	Cumulative New
	2010	45,000,000	
	2020	60,000,000	15,000,000
20-Yr Development Level	**2030**	**84,000,000**	**39,000,000**
	2040	96,000,000	51,000,000
	2050	113,000,000	68,000,000

Source: Fairfax County

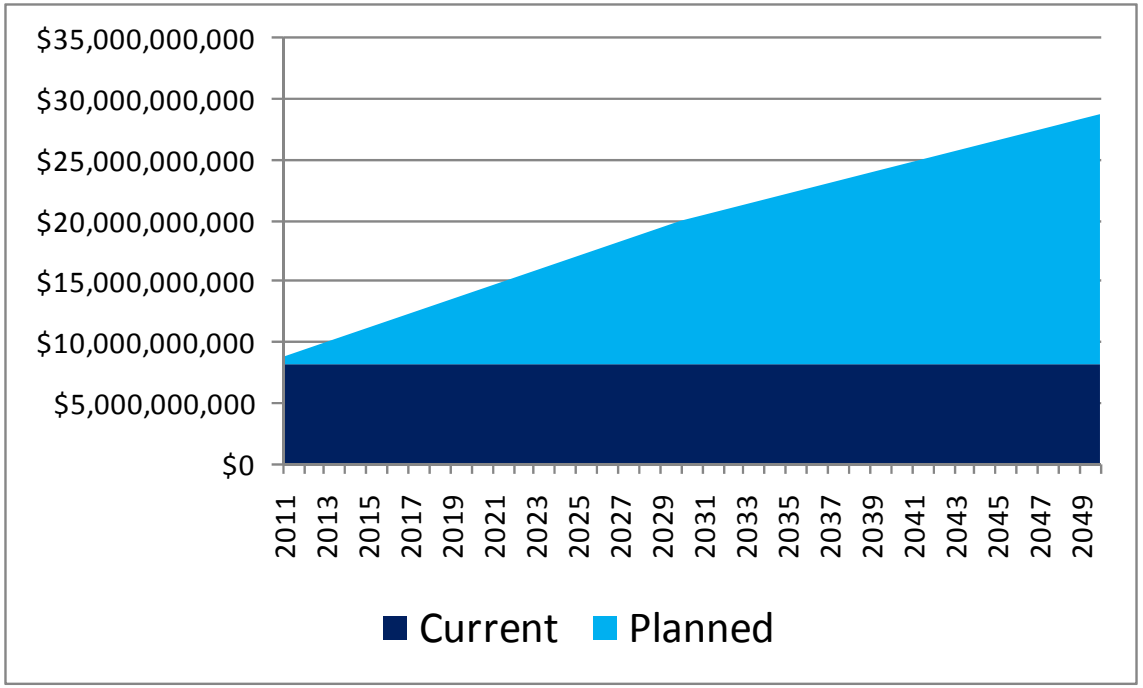
F:\8000s, misc\80068 Tysons\[Tysons_2010_2030_2050_Districts_Summary (2).xls]plan proj

[1] ***Assumes average development cost is $250 per square foot. Numbers are in constant $'s.***

Benefit to the County

Potential Growth in Assessed Values 2011 - 2050 (2011 Dollars)

- Tysons Corner Comprehensive Plan translates into approximately $12 Billion of new real estate value by 2030
- An additional $9 Billion of new value by 2050. [1]



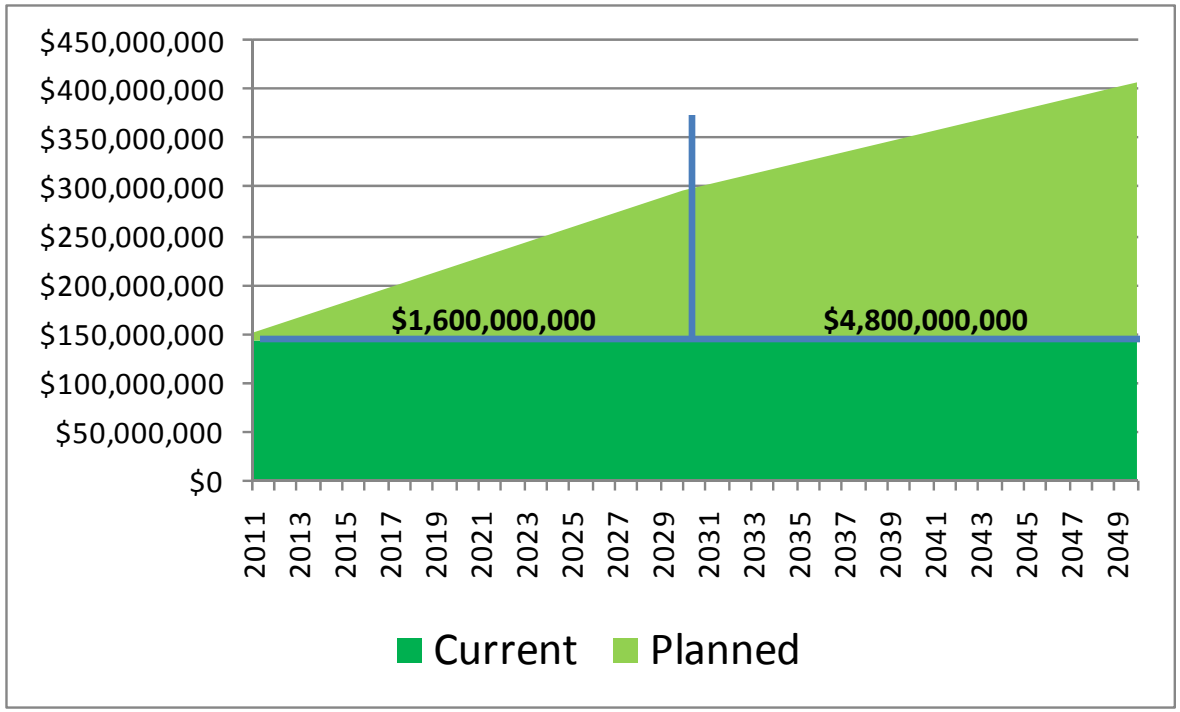
[1] ***Assumes average development value is $300 per square foot. Numbers are in constant $'s.***

Source: Fairfax County; Tysons Partnership

Benefit to the County

Potential Property Tax Levy / Revenues 2011-2050 (2011 Dollars)

- **$1.6 Billion in New Property Tax Revenues to County between 2011-2030**
- **$4.8 Billion in 2030-2050**



- **Additionally (not shown):**
- $100 Million in New C & I Tax Revenues for Transportation by 2030 and $260 Million in 2030 – 2050
- Plus increases in BPOL, Sales and TOT Taxes

Source: Fairfax County; Tysons Partnership

Burden on the County

Proposed Public Sector Transportation Contribution 2010-2030

- Totals $991 Million - Covered by $1.6 Billion in New Tax Revenue by 2030
  - Will benefit other areas of Fairfax County
- Timing will require Fairfax County to be funding costs well ahead of significant tax revenues

20-Year Cost Estimate and Funding Proposal

	County		Private		Total
Dulles Metro	$0	0%	$400,000,000	100%	$400,000,000
Comprehensive Plan					
Grid of Streets	$0	0%	$443,000,000	100%	$443,000,000
Tysons-Wide Road Improvements	$547,000,000	68%	$263,000,000	32%	$810,000,000
Transit Service Enhancement	$374,000,000	100%	$0	0%	$374,000,000
Neighborhood Access/Improvements	$70,000,000	100%	$0	0%	$70,000,000
Sub-Total	$991,000,000	58%	$706,000,000	42%	$1,697,000,000
Grand Total	**$991,000,000**	**47%**	**$1,106,000,000**	**53%**	**$2,097,000,000**

Note: Does not include ongoing operating costs for County improvements.

Source: Fairfax County

The Problems

- **Development comes in spurts and starts** – it does not happen smoothly.
- **Fairfax County will have to spend infrastructure dollars up front b**efore the tax revenues are here to pay for them.
- **The Proffer System** – extracting County-desired improvements as new developments are approved and constructed - **will not provide enough funds** timely enough to build road improvements (needed because of existing conditions) in addition to all of the other requirements under the New Tysons Corner Comprehensive Plan.
- **The Private Sector is already paying for Metro** via the Dulles Phase I Rail Tax District – why would someone who has no intention of redeveloping their property – be willing to tax themselves further?

Potential Solutions

Investigating Alternative Funding Mechanisms

- Tysons-Wide Special Tax District (Fairfax County Staff Proposal)
- Tysons-Wide Special Tax District + Small Area Tax Districts
- Tax Increment Financing or Set Aside Provisions for New Taxes
- C&I Tax + Proffers
- Others?

Fairfax County Staff Proposal

Tysons-Wide Special Tax District

Split total cost of Table 7 Improvements - $810 Million (2008 Dollars):

- Private Sector – 32% or $263 Million
- Fairfax County – 68% or $547 Million

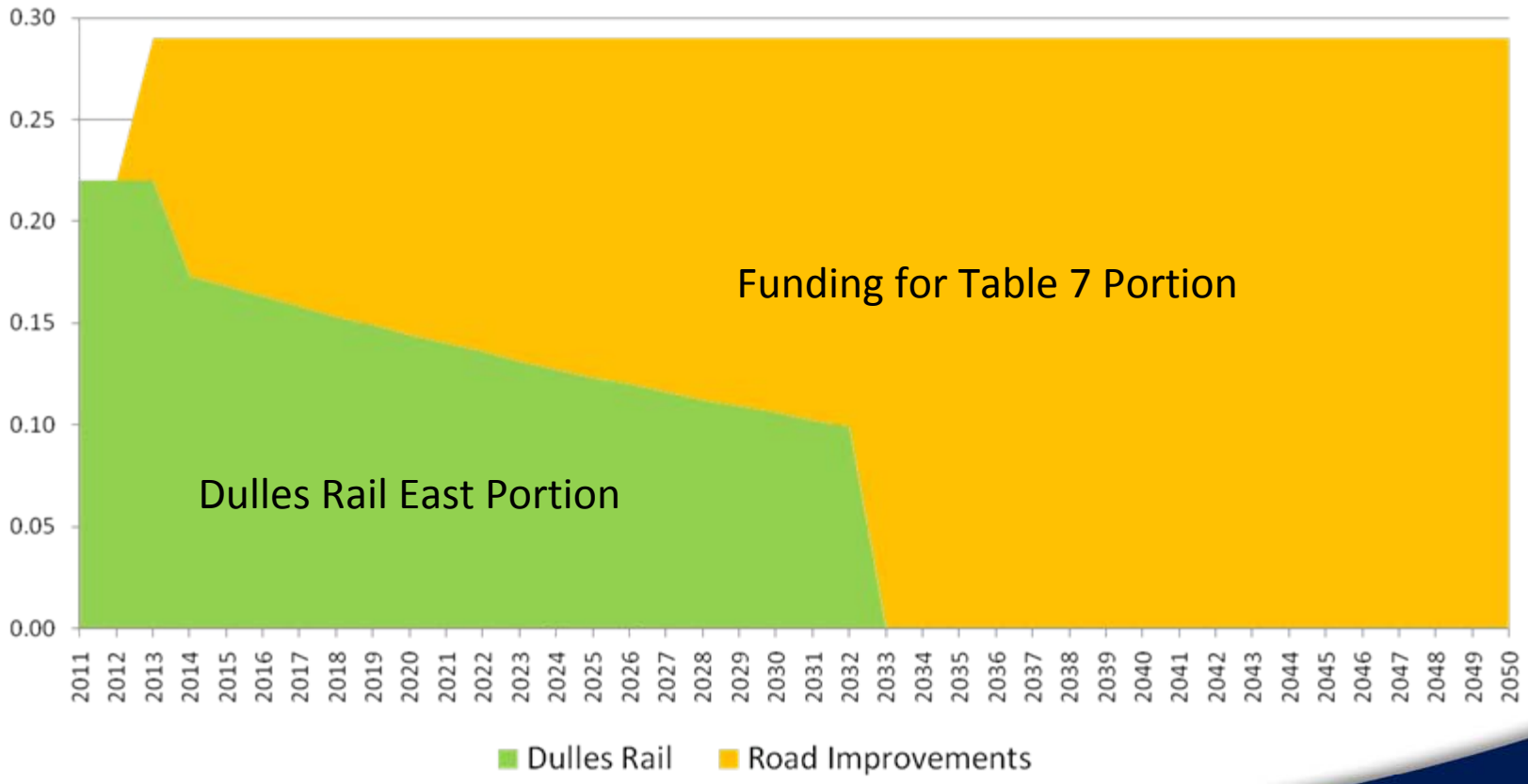
Private Sector approves a Special Tax District set at $0.29 / $100 of Assessed Valuation but only pays the amount in excess of the Dulles Rail Phase I Tax District (currently at $0.22/$100) therefore an additional tax of $0.07/$100.
Premise: The $0.29/$100 should be acceptable to the property owners because they agreed to that ceiling on the Dulles Rail Phase I Tax District MOU.

- As the Dulles Rail Phase I Tax Rate reduces as projected, this Special Tax District rate will increase until it hits the ceiling of $0.29/$100.
- Term is currently undefined because the actual cost is undefined.

Fairfax County Staff Proposal

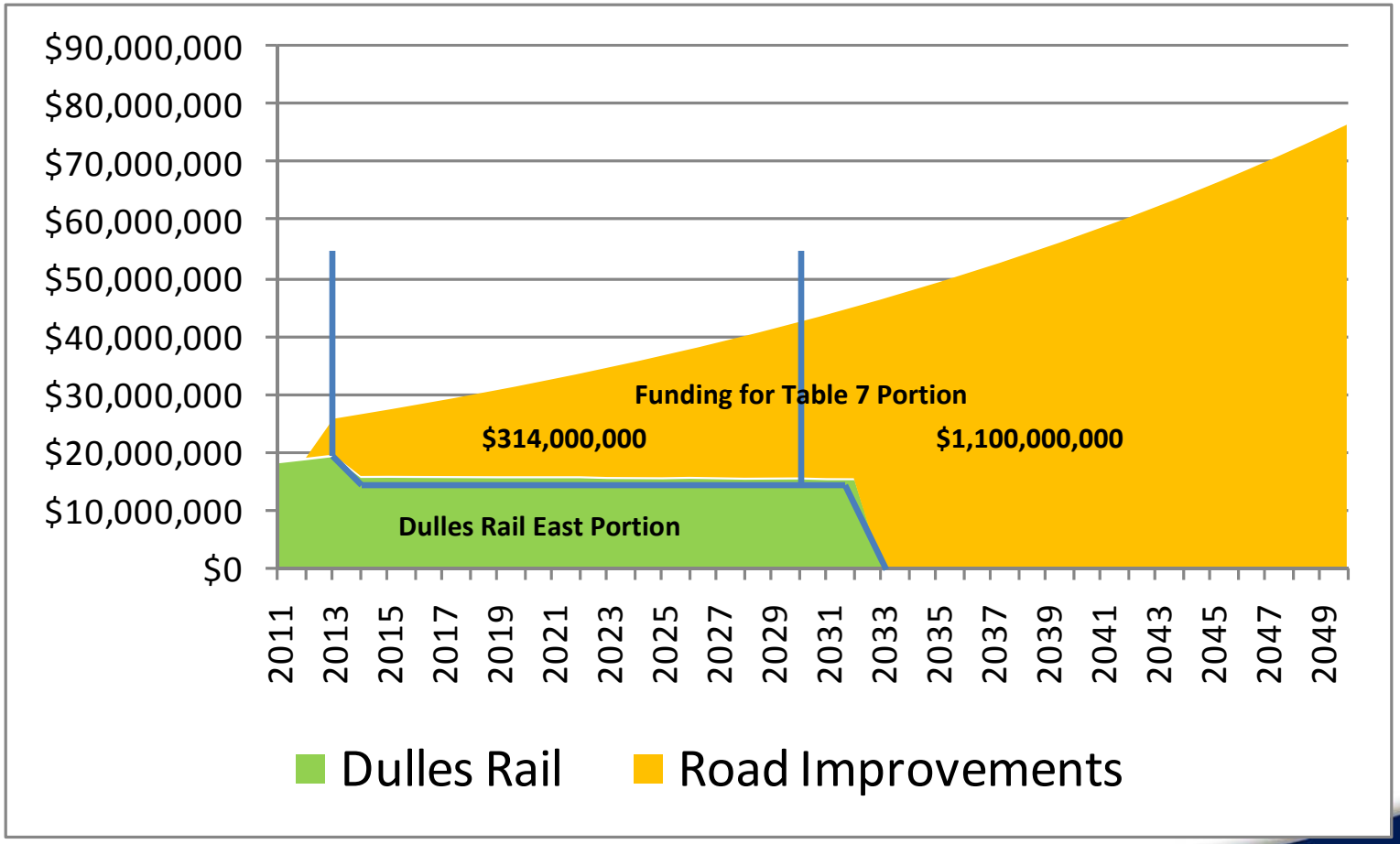
Tysons-Wide Special Tax District

$0.29 / $100 AV - Tax Rate Distribution Over Time



Fairfax County Staff Proposal

Tysons-Wide Special Tax District



Note: Tax Revenues Over Time @ $.0029 ceiling @ 3% Avg Annual Growth Rate of Assessed Value

Fairfax County Staff Proposal

Tysons-Wide Special Tax District

We are concerned about the viability of this proposal because:

- Majority of property owners recognized value of Metro and agreed to Dulles Rail Phase I Tax District to Fund ***Metro*** - not additional transportation improvements.

- If property owners do not intend to redevelop within this timeframe they will not be competitive with properties elsewhere in the County.

- There are significant landowners with approved densities under the prior comp plan – these landowners have little incentive to work with the provisions of the New Comp Plan.

Conclusion

Tysons Partnership

- We are willing to pay our fair share.
- There is a solution and we are ready and able to work with County Staff to determine one that works for all.
- It will take a coordinated effort in Richmond as well as with our fellow Tysons stakeholders to achieve any solution.
- It will take a long term approach to achieve the vision of Tysons Corner.

Attachment B

Town of Vienna Virginia

The Mayor's Office

August 18, 2011

The Honorable Walter Alcorn, Chair
Fairfax County Planning Commission Tysons Committee
Fairfax County Government Center
12000 Government Center Parkway, Suite 330
Fairfax, Virginia 22035

Dear Chairman Alcorn:

As always, the Town of Vienna welcomes the opportunity to participate in the process of charting the future of Tysons Corner and Fairfax County. We have been, and will continue to be ardent advocates for a workable and successful redeveloped Tysons. We firmly believe achieving that success depends on performance of the promise made at the outset of the re-planning process that Tysons' development will be coordinated and cohesive, taking into account regional interests and effects.

The Tysons Committee asked for input as it prepares recommendations for the Planning Commission on funding schemes for Tysons infrastructure improvements, and on the process of moving forward on implementation issues. We are glad to address both.

FUNDING

We understand that there are public as well as private benefits to be reaped from a thriving Tysons Corner. Accordingly, both public and private beneficiaries should contribute to the cost of improving Tysons, to make these benefits possible.

Those of us who live in the Town of Vienna will be contributing our share as Fairfax County taxpayers and Commonwealth taxpayers. *We should not have to contribute more than our share, by being additionally burdened with the cost of transportation improvements within the Town limits that are necessary as a result of Tysons' growth.*

Table 7 on pages68-69 of the Comprehensive Plan for Tysons Corner Urban Center sets out the need for "Intersection improvements outside of Tysons as identified in the Neighborhood Improvement Traffic Impact Study." We contend this is only the starting point for what should be included as Tysons-related improvements.

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The "Neighborhood Traffic Impact Study" was not a comprehensive analysis of all intersection or transportation needs in surrounding areas. Several intersections that were proposed for study were not included (whether for considerations of cost or time). Limiting the scope of "Areawide Recommendations" to only those intersections addressed by the study ignores the real need for other improvements that will be necessitated by Tysons' growth. The Town of Vienna cannot afford to, and should not have to pay the cost of such improvements—which are above and beyond what our residents are already paying for as Fairfax County taxpayers.

We propose that, for planning purposes, the County employ a presumption that all transportation projects within three miles of the Tysons Corner boundary which improve traffic flow or increase access are part of the Tysons "area-wide needs". Projects beyond the three-mile limit which can be demonstrated as being needed because of growth at Tysons should also be funded as part of the Tysons plan. The Board of Supervisors could make such a determination, with recommendations from the Planning Commission.

The three-mile range is consistent with the boundaries of the TMSAMS analysis. It acknowledges the undeniable fact that traffic volume and transit needs will increase in this area as a result of growth at Tysons. Managing that increase, to keep traffic moving into and out of Tysons depends on roads that don't stop at the Tysons boundary. To cut off financial support for necessary improvements outside that boundary will choke Tysons' functionality and its economic potential.

Under no circumstances should the already limited scope of projects in Table 7 located outside of Tysons boundaries be reduced. The regional effects of Tysons' growth demand regional responsibility by its beneficiaries. We disagree with the staff commentary at the July 14 meeting, that characterized "Neighborhood and Access" improvements as "addressing existing conditions" and therefore designating them "100% a public sector responsibility."

How to capture the funds from the beneficiaries and distribute them to meet the needs is a thorny issue. Because needs aren't limited by boundaries, the situation requires a funding mechanism that allows money to be spent beyond those boundaries.

One possible mechanism is proposed by County Staff in the form of a "road club" where Tysons developers contribute a dollar amount per square foot of development, or residence, generating a fund to support projects not on the development site. Another possibility is to identify the value of anticipated revenue from Tysons tax contributions to the County and commit an amount equal to a percentage of that to transportation needs beyond the Tysons boundary. In whatever method is adopted, a commitment to fund the transportation improvements is essential, or the promise of successful Tysons will be broken.

PROCESS

We are running out of words to use to describe the task of implementing the Tysons Plan—"massive", "complex", "overwhelming". Maybe the best analogy is that it is the trying to eat a Carnegie Deli sandwich: there is so much to it, you just don't know where to begin. But begin you must, and so you take a first bite, no matter how imperfect your approach is. And, you work at it from all sides until it is manageable.

The Committee was presented with a proposed approach to tackle implementation issues at its July 11 meeting. Some questions were raised as to specifics, that the proposal didn't address this or allow for that, but overall we find the proposal to be a good map for moving forward. We urge the Committee to adopt if and take the first bite.

MONITORING

As this Committee's work continues, we look forward to addressing another key element to realization of the Tysons Plan, which is "to work with representatives of communities adjacent to Tysons to formulate policies and procedures for addressing traffic congestion, including measurable strategies to be included as part of the overall plan monitoring."

Ongoing performance measurements and accountability are essential to fulfilling the promise of an urbanized Tysons Corner. The pace of growth at Tysons must be modulated to the transportation capacities of the region, not just the network within Tysons' boundaries. Vienna has a vital stake in this aspect of Tysons' future and we are ready to work with County and Commonwealth representatives to establish the necessary "policies and procedures."

The Town of Vienna would advocate a measured implementation strategy and utilizing benchmarked intervals.

We remain committed to working toward the best possible outcome for Vienna and Fairfax County as the realization of the Tysons Plan moves ahead.

Sincerely yours,

M. Jane Seeman

M. Jane Seeman, Mayor
On Behalf of the Vienna Town Council

Testimony of Christian Deschauer
Director of Government Relations, Fairfax County Chamber of Commerce
September 7, 2011

Chairman Alcorn and members of the Tysons Corner Committee, my name is Christian Deschauer and I am the Director of Government Relations for the Fairfax County Chamber of Commerce. I am here before you to share the Chamber's statement on the funding of transportation improvements in Tysons Corner.

Tysons Corner is planned and considered to be the "downtown" of Fairfax and is already home to several of the largest corporations in the County; what's more, the extension of Metrorail through Tysons Corner will significantly increase capacity in the region and create even more opportunities to attract new businesses which will expand the commercial tax base in Fairfax County and create jobs for our citizens.

With increased capacity comes the need for new transportation infrastructure and the question of how we pay for it. The Chamber greatly appreciates the open and collaborative process used thus far to engage the private sector stakeholders in this important conversation.

As the plan moves forward and the specific details are worked out, we ask you to keep in mind two things:

1) The enormous financial contributions already made by the Tysons Corner business community to the County's general and transportation funds and the contributions they continue to make today.
2) The significant increase in tax revenue the County will receive if we are able to develop a transportation financing plan that allows Tysons Corner to reach its full potential.

Tysons Corner is the economic engine of Fairfax County and the revenue generated by Tysons businesses is one of the main reasons for the County's economic prosperity over the past few decades. As mentioned in the Tysons Partnership's presentation, Tysons represents less than 1% of the County's land area yet they contribute 7%, or $144 million, of the total property tax levy. When BPOL taxes, sales taxes and personal property taxes are factored in, it becomes clear that the Tysons business community already contributes a significant amount to the county's general fund which is used to pay for things like education, public safety and human services throughout the entire County. The Tysons area contributes much more in revenues than it costs to provide services to the Tysons area.

In terms of transportation money, the Tysons business community currently contributes 20%, or $8 million per year, of the Commercial and Industrial property taxes collected by the County. Those are funds which are used to pay for transportation projects throughout the entire county with very little coming back to the Tysons area so far. With such little money currently flowing from the state to the County for transportation, the business community's willingness to step up to the plate in this area is that much more important.

As we discuss the costs associated with transforming Tysons into a sustainable urban center that will be home to 100,000 residents and 200,000 jobs by 2050, we must not lose sight of the tremendous opportunity it represents for Fairfax County. The Tysons Corner comprehensive plan allows for approximately $21 billion worth of new real estate value by 2050 which translates into an additional $6.4 billion in new property tax revenues over that same time period. A fully developed Tysons would also bring in an additional $360 million in C&I taxes paid by the Tysons Corner business community over the next 40 years. Some of these new revenues should be made available to fund the required transportation improvements to ensure the success of Tysons Corner.

We all share a common goal: transform Tysons into a vibrant, world-class urban center. In doing so, we must remember that the economic vitality of Tysons Corner hinges on a plan that entices landowners and developers to reinvest in the community and incentivizes large corporate users to remain here. The success of Tysons is not assured, but by the government and the business community working together, it can achieve its full potential. The Fairfax County Chamber of Commerce looks forward to continuing our partnership to reach our common goals. Thank you very much for your time and your service to the County.

The following is the VTRCC statement presented by Diane Poldy, chamber president, to the Fairfax County Planning Commission Tysons Committee at a Listening Session on September 7, 2011.

Good evening Chairman Alcorn and members of the Fairfax County Planning Commission, Tysons Committee. My name is Diane Poldy and I am president of the Vienna Tysons Regional Chamber of Commerce® (the "VTRCC"). I am here this evening proudly representing the chamber and its 450+ member companies. Thank you for this opportunity to provide the chamber's perspective as you prepare your recommendations to the Planning Commission funding options regarding the infrastructure improvements for the Tysons Corner Redevelopment. I would like to begin by expressing our gratitude to this committee for your dedication, and the significant time and effort you have given to replanning Fairfax County's only identified urban center.

The economic importance of Tysons Corner to our community and the entire county cannot be denied. Nor can we deny the coming growth that this area will see in the next few decades. Job creation is expected. Population expansion is foreseen. Growth is inevitable. However, the problems typically associated with such growth, if the growth is properly managed and directed, can be minimized. We are grateful to you and the Fairfax County Planning commission for your dedication to this goal.

The VTRCC shares the common goal of transforming Tysons Corner from a suburban office and shopping center, lacking in cultural and recreational amenities, to a vibrant urban center that incorporates homes, parks, schools, open space, arts and entertainment, as well as the expected commercial development that will continue to power the economic engine of Fairfax County.

You have guided and led all of us through many of the initial visioning stages in this unprecedented project, to the next horizon: how will this great vision be funded? As you listen to the many opinions and pleas regarding how the funds will be provided, who will contribute how much, and how will the whole funding scheme be as fair as possible, I would like to ask you to

remember the vision of the impact that Tysons will have, and has already contributed to a much wider sphere than just the local geography it encompasses.

The impact of Tysons, in fact, on the world was brought home to me last week when I was asked to speak to a delegation of 22 representatives from a province in China, none of whom spoke English. Thank goodness they had a translator. Although they were on their way to tour DC, they wanted to first learn more about Tysons! Because of the great partnership the chamber has with the Fairfax County Economic Development Authority, I was able to access the resource of their Asian Business Development Manager, Andrew Yu. After our presentation, Andrew thanked me profusely for the opportunity to meet with this delegation. He has been trying for 3 years to gain access to the Chinese markets to develop business for Fairfax County, but has been repeatedly denied entry to the country for this purpose. Through this meeting he now has a new resource that may be instrumental in getting him that access. What made the connection? The "Tysons" in our Chamber name.

I offer this little anecdote to illustrate the benefits the whole county is beginning to realize as a result of the redevelopment of Tysons. Already the Tysons project has contributed considerable tax income to the county, most of which has not yet been spent on Tysons at this point. For specific data I refer you to the very thorough analysis and presentation provided by the Tysons Partnership. The influx of jobs, residents, businesses and tourism will increase tax revenues for the whole county, not just produce income for the businesses in Tysons Corner. The amenities the developers will provide in the Tysons corridor will be available to everyone in the county. The transportation infrastructure will enhance the ability to move throughout the county more easily and make business and pleasure more accessible. And yes it WILL relieve traffic congestion as a transit oriented community.

On the other hand, though, it will definitely impact and force some changes in the surrounding small communities adjacent to Tysons. This chamber has been active in developing the great community of Vienna, named, as you all know, one of the best places to live in the United States. We are dedicated to supporting Vienna in maintaining that quality of life and we are now committed, as the chamber representing Tysons, to bring that same community spirit to

Tysons as it rebuilds. Indeed, this is necessary if Tysons is going to work. The Town of Vienna is working toward that same goal; having a "community" of Tysons as a neighbor is certainly preferable to just having an economic engine. The VTRCC joins with Mayor Seeman in asking that you develop a funding stream that doesn't unfairly burden the residents of Vienna but rather derives "public" funding from all possible sources, not just local ones. Tysons will provide major benefits to the State of Virginia and also to the federal government. We urge you to thoroughly and creatively explore all funding possible from these beneficiaries as well, when you look for sources of "public" funding.

My remarks tonight are general since other stakeholders are much better positioned to provide you with facts and details. I am here tonight to simply pledge the support of the ViennaTysons Regional Chamber of Commerce for the great vision of Tysons, and to you as you work to create the strategy, policies and processes for achieving it. Thank you for this opportunity to speak to you on behalf of the VTRCC.

Financing Transit For Tysons, A Suggestion

by Louis Freeman

PC Tysons Committee Hearing, 9/7/11

It is the thesis of many citizens that since the Tysons landowners and developers will reap the profits from the redevelopment effort, they should pay for most of the new infrastructure. The original County staff proposal for funding the transportation infrastructure placed most of the burden for funding on the public purse, presumably the County taxpayers. The cost estimate for Tysons transit, some $374 million, was entirely the taxpayers' responsibility, even though the need for the new transit comes from this same redevelopment.

One way to provide the needed transit would be to establish a private jitney service. Such a service is used successfully in a number of different cities in different countries. In the United States, Atlantic City, New Jersey has had a private jitney service for nearly a century. It is still going on today as part of the Atlantic City system, complementing publicly funded transit service. New Jersey Transit tends to have routes that bring people between Atlantic City and other cities, both neighboring Atlantic City and farther away. The Atlantic City Jitney Association (ACJA) has 4 routes within Atlantic City, plus routes from the train station to the casinos. Still other bus services provide for special needs people.

The ACJA is comprised of 190 individually owner-operated vehicles. The current fare is $2.25 for the general rider on the general routes through the City, with reductions for frequent riders and seniors. Special routes between the train station and the casinos are subsidized by the casinos. The jitney vehicles are 13-seat minibuses. In 1998, New Jersey Transit transferred the routes from the train station to the casinos to the private jitney service, and at that time public money was used to buy new buses as an inducement to take on the routes.

Serious consideration should be given to establishing a private jitney service to provide the needed transit within the Tysons area, taking passengers to businesses and train stations. PS: many hotels and some other businesses provide shuttle service for their customers to and from an airport. There is no reason the Tysons businesses cannot participate in a similar service.

NOTES USED IN Bruce Bennett's testimony
Tysons Corner Planning Commission hearing
9/7/11

Because the Rail to Dulles and the Tysons Corner development are closely associated and have so many similarities, tonight I would like to use the Rail project in my discussion of funding for Tysons Corner infrastructure.

- The original estimated cost of rail PH I was projected at $1.8B or ½ of the combined original PH I & II of $3.6B. The PH I funding was broken down as follows:
  i. 25% Private funding W/Cap $400M
  ii. 50% Federal funding W/Cap $900M
  iii. 25% Public funding W/**No Cap** $???M

- Current PH I rail costs are estimated to be ~ $3.0B. If we subtract the fixed obligations of the Federal and Private segments, $3.0B - $1.3B = $1.7B. that leaves the uncapped public portion at over twice of that to be the Federal and Private contributions, **combined**.

Throughout this whole rail and commercial development process, the public has become disenfranchised. The underlying issue is all of the machinations seem to be designed to lay off ever increasing the costs on us, the public.

One issue that I believe is a serious problem for the taxpayers is the Public Private Partnership (PPP) method to advance these projects.

It is clear the PPP has some real "Carbuncles."

To emphasize my concerns regarding the PPP, I have brought three pieces of information for you tonight.

- The first one is from an Internet publisher, "Town Hall.Com." In that piece the whole process of Public Private Partnership is called into question.

- The second piece is a booklet by Poole & Samuel, "*Transportation Mega Projects & Risk.*"

- The third document is a letter from Mr. William Coleman, who I believe was the Secretary of Transportation under President Ford and who, in this letter, called into serious question the whole contracting process for the Rail. Two examples of which I cite below:
  i. Inappropriate Secrecy Provisions
  ii. A supposed "Fixed Price portion of the contract which is really not fixed price…."

Tonight I was stunned to hear the Private sector is now suggesting that we, the Public Sector, accept 68% of the T/C infrastructure costs while they, those who will, in perpetuity, benefit with an enormous economic windfall; will contribute just 32%.

My request is simple, let us merely switch economic obligations as they were established and applied to the Rail PH I, and have the Public (Taxpayers) be responsible for 25% of the infrastructure costs… and, oh by the way.. this time let the Public Portion be capped and let the Private sector be exposed to the aberrant cost overruns.

Bruce Bennett
Vienna VA
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703 759 5712

COALITION FOR SMARTER GROWTH

September 7, 2011

Testimony to the Planning Commission Tysons Corner Committee on Financing Transportation Improvements

Stewart Schwartz, Executive Director

My thanks to the Planning Commission for the opportunities you have created for public input in the planning process for Tysons Corner. The public can often identify issues and questions and make recommendations that are helpful to decision makers. I thank you too for your dedication and your stamina!

Benefits of Tysons Corner Plan:

I will start with some general observations on the economic and fiscal benefits of the Tysons Corner plan:

First let me note that transit-oriented development can generate significant tax benefits for Fairfax as demonstrated by the Arlington experience. Arlington's two Metro corridors occupy just 11 percent of their land and generate something like 50% of their property tax base, generating revenues that have supported improvements in neighborhoods across Arlington -- recreation centers, traffic calming, parks and schools.

Second, compact, transit-oriented development is efficient in terms of infrastructure as compared to low density suburban and rural development. For most public utilities, your infrastructure can serve more people or units per linear mile at lower per unit cost. This can be seen in roads, water, sewer, and electrical service. I believe Dominion Power, in the event of widespread storm outages like we recently experienced, may even prioritize fixing service first in the areas where the most people will be brought back on line by a repair. Even police and fire service can be more efficient. One study has shown that fewer fire stations are needed to serve areas with a well-interconnected and compact street network and that response times are quicker than with suburban development, which is reliant on just a few arterials.

Third, TOD in Tysons Corner and the Tysons plan help the region deal with population growth, by reducing the amount of regional traffic that will be generated -- because these new or relocating residents will take fewer car trips and drive fewer miles than residents of more suburban areas. At the same time, with population growth, the best place for Fairfax to absorb that growth and prevent development pressures on existing suburban neighborhoods is in the commercial centers and corridors of the county.

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Fourth, changing demographics and market demand are leading to significantly increased demand to live in urban, walkable and transit-accessible environments. The demand is coming from young professionals, empty nesters and retirees looking for these communities. At the same time, in recognition of the high cost of transportation, people of many income levels are looking to lower their transportation costs by living close to work and transit.

Reviewing the Transportation Project Package:

My second set of observations regards the package of transportation improvements. I haven't reviewed Table 7 recently but have long thought that there may be more arterial road expansion in the plan than will be necessary as the benefits of TOD become apparent and people shift their mode of transportation. In addition, it may be that some projects should not be assigned just to Tysons Corner, but are more regional in nature and should be funded through the regional and state plans.

State of Virginia Should Step Up and Set Better Priorities:

My main point tonight, however, relates to the role of the State of Virginia. Tysons Corner is a primary economic engine for Northern Virginia and the state. The state should be playing a much greater role in the funding of both Dulles Rail and Tysons Corner transportation needs. The state should be focusing transportation investments on addressing existing congestion and in supporting existing communities and efficient redevelopment.

We believe the state is currently setting the wrong priorities and failing to support Fairfax and other urban and older suburban areas like they should. Let me start with Dulles Rail. The state is only paying about $250 million toward Phase I and has only tentatively said they will pay $150 million toward Phase 2. They are paying 5 percent or less of the cost of Dulles Rail. Fairfax and Loudoun landowners and drivers from northern Virginia are paying the vast majority of the cost of Dulles Rail. For comparison, on highway projects the Federal government pays 80 percent and the state 20 percent. Local communities are not required to contribute. We have called on the state to allocate $500 million to Phase 2, a number that we arrived at independently of MWAA's recent request for the same amount.

The state is in the process of borrowing $3 billion as part of the addition of nearly $4 billion to the other existing funding streams going into the Six Year Plan. A record $1.5 billion of this is directed to a new Public Private Transportation Act fund projects, but not all of this money is allocated in the Six Year Plan. Tysons Corner certainly involves a public-private partnership to fund transportation improvements and should share in this additional state funding.

Yet, where is the state proposing to spend most of its new funds -- especially the PPTA funds? In areas of the state where the need hasn't been demonstrated. A few examples:

Route 460: This new, limited-access highway is proposed to run from Suffolk to Petersburg

parallel to an existing highway that serves its limited traffic volumes very well. The current highway only faces delays at a few traffic lights in four small crossroads towns. It could use safety improvements, but this could be done at far less than the nearly $800 million in state funds requested by Cintra, the leading contender for the PPTA contract.

Coalfields Expressway: This highway, proposed for two of the most rural and mountainous parts of southwest Virginia would consume hundreds of millions of dollars, mainly to benefit a coal companies, but certainly not to carry significant volumes of traffic.

TriCounty Parkway (Outer Beltway): This controversial road could cost between $250 million and $475 million based on various VDOT documents and is being strongly promoted by Secretary of Transportation Connaughton. Yet, it has been shown that it doesn't address the primary traffic problem of east-west commuting on roads like I-66 and Route 50.

Charlottesville Western Bypass: Secretary Connaughton revived this controversial highway in a matter of a few weeks and just a month after the Six Year Plan was passed, he amended it to divert $230 million to the project (and two other interchanges) despite widespread local opposition and serious questions about its route and benefits. To do this he allocated $70 million in state CPR bonds (from the 2007 bond package) and about $160 million in Federal Minimum Guarantee funds (representing the entire balance in this account, which we have been told was used for project study costs around the state).

In a related issue, our research through MWAA and Dulles Rail records indicates that MWAA may be diverting up to $34 million in Dulles Toll Road revenues to Route 606 on the backside of Dulles Airport. We do not believe that the transfer agreements authorize this and do not believe that Fairfax County supports this diversion. It is not a large amount compared to the rail project costs but it is being taken out of toll revenues at a time when people are concerned about the proposed increased in toll rates. Decisions about where to allocate future toll revenues beyond what are need for debt service on the rail project, should be made in a public process with full agreement by Fairfax County and other relevant local jurisdictions.

RECOMMENDATION:

We recommend that the Planning Commission include strong recommendations to the Board of Supervisors for the commitment of state resources to both Dulles Rail and Tysons Corner transportation improvements. We'll also note that Reston area access studies have shown the need for significant bus, bike, and pedestrian improvements.

Instead of funding projects in areas of the state where the need hasn't been demonstrated, the State of Virginia and VDOT in particular should be addressing the needs of existing communities facing major congestion and redevelopment needs. They should be providing at least $500 million to Dulles Rail Phase 2 and should make a major contribution to the transit, road and bike/ped needs of Tysons Corner and the other future rail stations. Thank you.

Table 7
Transportation Infrastructure, Programs, and Services, As They Relate to the Level of Development in Tysons

Type of Transportation Program or Infrastructure Project	Description of Transportation Program or Infrastructure Project	Area Served by Improvement
I. Transportation Improvements To Be Completed by 2013		
A. Transit and Pedestrian Improvements		
Rail Transit Routes	Complete Phase I of Metrorail Silver Line Phase I	Tysons-wide/ Countywide
Bus transit routes	Neighborhood bus routes; circulator bus routes serving Metrorail stations; express bus routes on I-66 and I-95/I-495	Tysons-wide/ Countywide
Sidewalks	Sidewalks to provide connections to developments within walking distance of rail stations	District
B. Tysons-wide Road Improvements		
Roads – Arterial Widening	Complete widening of Rt. 7 to 8 lanes from the Dulles Toll Road to Rt. 123	Tysons-wide
Roads – Freeway Widening	Widen I-495 from 8 to 12 lanes to provide 4 HOT lanes between the Springfield Interchange and the American Legion Bridge	Tysons-wide/ Countywide
Roads – Freeway Ramp	HOT ramp connecting to Jones Branch Drive	Tysons-wide
Roads – Freeway Ramp	HOT ramp connecting to the Westpark Bridge	Tysons-wide
Roads – Freeway Ramp	HOT ramp connecting to Rt. 7	Tysons-wide
C. TDM Measures		
TDM	Application of aggressive TDM measures (e.g. 45% reduction in vehicle trips for an office development within 1/8 mile of a Metrorail station)	District
II. Required Additional Transportation Improvements to Accommodate 60 Million sq. ft. of Development (2013 - 2020)		
A. Transit Improvements		
Rail Transit Routes	Completion of Phase II of Metrorail Silver Line (from Wiehle Avenue to West of Dulles Airport with three stations in Fairfax County)	Tysons-wide/ Countywide
Bus Transit Routes	Further improvements to neighborhood bus routes; circulator bus routes serving Metrorail stations; express bus routes on I-66 and I-95/I-495	Tysons-wide/ Countywide
B. Tysons-wide Road Improvements		
Roads – Arterial Widening	Widen Rt. 7 from Rt. 123 to I-495	Tysons-wide
Roads – Arterial Extension	Extend Boone Boulevard from Boone Boulevard to Northern Neck Drive	Tysons-wide
Roads – Arterial Extension	Extend Greensboro Drive from Spring Hill Road to Tyco Road	District
Roads – Freeway Ramp	Ramp connecting Greensboro Drive extension to westbound Dulles Toll Road	Tysons-wide
Roads – Freeway Ramps	Ramps connecting Boone Blvd. extension to westbound Dulles Toll Road and eastbound Dulles Toll Road to Boone Blvd. extension.	Tysons-wide
Roads – Freeway Widening	Collector – distributor roads along the Dulles Toll Road from Greensboro Drive extension to Hunter Mill Rd.	Tysons-wide
Roads – Connecting Ramp	Ramp connecting Jones Branch Drive to Scotts Crossing Road	Tysons-wide
Roads – Arterial Widening	Widen Rt. 7 from the Dulles Toll Road to Reston Avenue	Tysons-wide
C. Grid of Streets		
Roads – Grid of Streets	Grid west of Westpark Drive	District
Roads – Grid of Streets	Grid bounded by Gosnell Rd., Rt. 7, and Rt. 123	District
Roads – Grid of Streets	Grid connections to Greensboro Drive	District
Roads – Grid of Streets	Grid of streets east of I-495	District
D. TDM Measures		
TDM	Application of aggressive TDM measures (e.g. 45% reduction in vehicle trips for an office development within 1/8 mile of a Metrorail station)	District
E. Misc. Improvements		
Bicycle Access Points	Bicycle connections into and out of Tysons	Tysons-wide
Roads and Intersection Spot Improvements	Intersection improvements outside of Tysons as identified in the Neighborhood Traffic Impact Study and other studies	Tysons-wide
Metrorail Station Access	Access improvements as identified in the Tysons Metrorail Station Access Management Study	Tysons-wide

Table 7 (Continued)

Type of Transportation Program or Infrastructure Project	Description of Transportation Program or Infrastructure Project	Area Served by Improvement
III. Required Additional Transportation Improvements to Accommodate 84 Million sq. ft. of Development (2020 - 2030)		
A. Transit Improvements		
Bus Transit Routes	Further improvements to neighborhood bus routes; circulator bus routes serving Metrorail stations; BRT routes on I-66 and I-95/I-495	Tysons-wide/ Countywide
B. Tysons-wide Road Improvements		
Roads – Arterial Widening	Widen VA 123 to 8 lanes from Rt. 7 to I-495	Tysons-wide
Roads – Arterial Widening	Widen VA 123 from 4 to 6 lanes between Rt. 7 and Old Courthouse Road	Tysons-wide
Roads – Arterial Widening	Widen Rt 7 from 4 to 6 lanes between I-495 and the City of Falls Church	Tysons-wide
Roads – Collector Widening	Widen Magarity Road from 2 to 4 lanes from Great Falls Street to Rt. 7	Tysons-wide
Roads – Arterial Widening	Widen Gallows Road from 4 to 6 lanes from Rt. 7 to I-495	Tysons-wide
Roads – Connecting Road	Beltway crossing connecting the Tysons Corner Center area to Old Meadow (limited to transit, pedestrians and bicyclists)	Tysons-wide
C. Grid of Streets		
Roads – Grid of Streets	Substantial sections of the grid of streets	District
D. TDM Measures		
TDM	Application of aggressive TDM measures (e.g. 55% reduction in vehicle trips for an office development within 1/8 mile of a Metrorail station)	District
E. Road Safety Improvements		
Roads – Collector Safety Improvement	Improve and enhance the safety of Old Courthouse Road from the Town of Vienna to Gosnell Road	District
F. Misc. Improvements		
Bicycle Access Points	Bicycle connections into and out of Tysons	Tysons-wide
Roads and Intersection Spot Improvements	Intersection improvements outside of Tysons as identified in the Neighborhood Traffic Impact Study and other studies	Tysons-wide
Metrorail Station Access	Access improvements as identified in the Tysons Metrorail Station Access Management Study	Tysons-wide
IV. Required Additional Transportation Improvements to Accommodate 113 Million sq. ft. of Development (2030 - 2050)		
A. Transit Improvements		
Improved Transit	Additional BRT routes, other supporting services including park-and-ride, feeder bus routes to rail stations	Tysons-wide/ Countywide
Urban Transit Corridors	At least two additional urban transit corridors with substantial TOD development: Orange Line Metrorail extension and an additional rail extension	Tysons-wide/ Countywide
B. Tysons-wide Road Improvements		
Roads – Freeway Widening	Widen I-495 (Outer Loop) between Rt. 7 and I-66 by one lane	Tysons-wide
Roads – Freeway Ramps	Ramps connecting Jones Branch Drive to westbound Dulles Toll Road and eastbound Dulles Toll Road to Jones Branch Drive.	Tysons-wide
C. Grid of Streets		
Roads – Grid of Streets	Completion of the grid of streets	District
D. TDM Measures		
TDM	Application of more aggressive TDM measures (e.g. 65% reduction in vehicle trips for an office development within 1/8 mile of a Metrorail station)	District

Note: The order of priority of improvements specified in this table may change based on the geographic location of development when compared with what was assumed in the analysis from which this table was constructed.

Attachment D

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14 June, 2007

The Honorable Gerald E. Connolly
Chairman,
Fairfax County Board of Supervisors
12000 Government Center Parkway
Suite 530
Fairfax, VA 22035-0079

Dear Chairman Connolly:

I and others have had occasion to look at the DTB Design-Build Contract to the extent that the Metropolitan Washington Airport Authority (MWAA) posted it on its web site near the end of the day on 7 June, 2007. I thought, as a lawyer but also as a citizen of Fairfax County, I should send you a memorandum prepared which shows the unusual risks which are in the contract so far as the public has been able to see the contract. I don't wish to be an officious inter-meddler, but as a taxpayer in Fairfax County, I do think there is an interest for me calling the problems to the attention of the Board of Supervisors of Fairfax County so that you can make informed decisions and take appropriate actions as the project advances through the federal system.

"Take care...."

Sincerely,

William T. Coleman, Jr.
Senior Partner and The Senior Counselor
of O'MELVENY & MYERS LLP

WTC, Jr.:ses

Enclosure

Overview

The proposed DTP Design-Build Contract which was negotiated by the Commonwealth and then the Metropolitan Washington Airport Authority (MWAA) without competition on a sole-source basis with Dulles Transit Partners (DTP) – a consortium of Bechtel and Washington Group International -- is not an advantageous contract for the taxpayer, Virginia governmental entities and toll payers who must pay for 100% of the contract costs and for any other final design and construction work.

The proposed DTP Design-Build Contract that was not posted on the MWAA web site until June 7, 2007[1] is full of non-standard provisions that will certainly drive the current Phase I Dulles Corridor Metrorail Project cost much higher than current disclosed budget of $2.647 billion, including:

- Inappropriate secrecy provisions
- Award of the construction contract without a fixed-price
- Award of the construction contract prior to final design approval, without right to bid competitively the approved final design without penalty
- A supposed "fixed-price" portion of the contract which really is not a "fixed price," instead by its written terms adjusting automatically to price changes of major construction items, e.g. steel and concrete
- Uncompetitive procurement procedures for future sub-contractor "allowance" work
- Award of utility relocation work under separate contract and without a fixed-price
- Loose provisions to control "differing site condition" costs
- "Concurrent Non-Project Activities" which are expected to be designed and built as part of the Project but have an unclear relationship to the proposed contract
- Provisions allowing the contractor to cause the conditions for its own Change Orders and Delays Claims that would increase cost to the taxpayer

These non-standard terms and conditions, addressed in detail below, are not found on competitively procured public construction contracts like the standard Washington Metropolitan Area Transit Authority (WMATA) construction contract noted here for comparison purposes. The standard WMATA construction contract -- which has provisions similar to those in other transit authority construction contracts -- was used to procure

[1] http://www.mwaa.com/dulles/about_dulles_international_2/about_dulles_international/dulles_corridor_proposal/p1contract

competitively and build the existing 106-mile metrorail system. There is no reason the standard WMATA form of construction contract could not be used for the Dulles Corridor Metrorail Project (even if awarded to DTP and administered by MWAA, the proposed "project sponsor") (perhaps not permitted by law).

Non-Standard Terms and Conditions

1) **Unprecedented Secrecy Provisions:** The secrecy provisions in the DTP 2004 Comprehensive Agreement (Article VIII of the Comprehensive Agreement) will apply under the proposed DTP Design-Build Contract (Article 12.1). These secrecy provisions are not allowed in a standard WMATA construction contract and are unprecedented in a public contract. The DTP 2004 Comprehensive Agreement establishes the following items as the "confidential," "proprietary," "trade secret," "property" of DTP:

   - the fixed-price,
   - the schedule and completion dates,
   - escalation formula,
   - itemization of the costs,
   - quantity take-offs, and
   - scope of work (among other items).

   All these items are basic project information and are critical to the oversight and accountability of the proposed DTP Design-Build Contract and to the review and negotiation of Change Orders and other Claims. Even much more sensitive pricing documents are customarily subject to public disclosure under a public construction contract.

   Under the proposed DTP-Design-Build Contract, only MWAA (which is not subject to standard Freedom of Information Act (FOIA) rules), not Fairfax County as a funding partner or the public, will have access to the information that DTP considers proprietary, confidential, or trade secret information. DTP will have the right to withhold that information, keep it secret, and, at the end of the job, destroy it.

2) **No Firm-Fixed-Price As Promised:** Under a standard WMATA construction contract, WMATA establishes a fixed-price for all of the construction work prior to construction contract award. The Virginia Department of Rail and Public Transportation (VDRPT) and MWAA however failed to produce a comprehensive firm-fixed-price for the whole construction job as previously publicly promised by public officials. The Phase I budget of $2.647 billion merely becomes a floor, not the actual or ceiling, for further cost increases. To achieve only a partial fixed-price in a design-build contract is the worst of all worlds.

- All pricing leverage is lost because the lead contractor is locked-in (i.e. locking out the competition and any mechanism to go out to bid later if contractor costs get out of hand during final design).

- Potential conflict issues are exacerbated on a design-build contract without a comprehensive fixed-price since the contractor is both designer and builder (i.e. opening the opportunity for the contractor to "write his own ticket" for the items that are not fixed).

3) **Award of Construction Contract Prior to Final Design Approval:** The proposed DTP Design-Build Contract awards the prime construction contract to DTP (without a fixed-price) and does not allow MWAA to terminate the construction phase portion of the contract once the final design is approved (and subsequently competitively bid the approved final design) without a potentially significant penalty. Therefore, there is little leverage to control cost if the DTP's contract price increases during the final design process.

Award of a construction contract prior to an approved final design is an inherent problem in any design-build contract but is exacerbated when the design-build contract has no fixed-price (as is the case of the proposed DTP Design-Build Contract here). This inherent design-build contract problem, however, can be addressed in a "progressive lump-sum" design-build contract like one planned for the "Norman Y. Mineta San Jose International Airport, Terminal Area Improvement Program Design-Build Project" where the public agency can cancel the construction phase of the design-build contract at the end of the final design phase (and competitively bid the construction phase work) if it does not accept the contractor's lump-sum price proposal for construction of the approved final design.[2]

The need and rationale are unclear for awarding a construction contract (or a design-build contract) prior to an approved final design or a full funding grant agreement from the Federal Transit Administration (FTA) -- neither of which is expected prior to February 2008. The FTA does not require, nor does it customarily expect, an executed construction contract at this stage in the federal funding process. At this point all that is required in the federal funding process is a final design contract and an appropriately detailed cost estimate.

Award of construction contracts before complete and approved final design was also an area of serious problems in the "Big Dig" project, also a project in which Bechtel had quite a significant role. In the February 2003 report of the Massachusetts Office of the Inspector General (IG)[3], the IG concluded (page 5) that "more than $730 million in

[2] See http://www.sjc.org/about/Design_Build/briefing.pdf for design-build "progressive lump-sum" contract approach.

[3] See http://www.mass.gov/ig/publ/catglbrp.pdf, Publication No. 18327-50-50-02/03-IGO.

contract modifications were associated with construction contracts initiated prior to final design approval." Further, the IG found "many instances wherein cost overruns were related to design changes that should have been part of the original design."

4) **DTP Fixed-Price Work (Only Partial):** Under a standard WMATA construction contract, the contractor provides a fixed-price for all of the work and all the related costs associated with that work. The proposed DTP Design-Build Contract here, however, strongly provides a "fixed-price" for only $1.075 billion (Exhibit 14.1.1) of the Phase I Project (less than 41% of the budget) and even then only some of the costs related to that fixed-price portion.

   - This so-called "fixed-price" portion of the budget is not actually fixed-price and is far from customary. Normally under a fixed-price contract, a contractor is responsible for all related costs, including all material and equipment costs and any future related price increases.

   - Under the proposed DTP Design-Build Contract, the taxpayer is responsible for all material and equipment risk on the future prices of concrete, reinforcing steel, paving, fuel, and pre-cast concrete (among others), which will automatically change the "fixed-price" based on market fluctuations (Exhibit 14.1.3).

5) **DTP Allowance Work:** Under a standard WMATA construction contract, there is no provision for "allowance" work, i.e. all construction work is done under a fixed-price. The proposed DTP Design-Build Contract however leaves $524 million in "allowances" out of the fixed-price for subcontracting by DTP at a future time -- including basic work such as trackwork, station work, pedestrian bridges, site development, elevators and escalators, communications and security, power systems, and bonds and insurance, among other major items (Exhibit 14.1.1).

   - Under the proposed DTP Design-Build Contract, the taxpayer must take all the risk on the all costs associated with such "allowance" work going forward.

   - While required to "procure" bids for this "allowance" work from subcontractors, DTP is only required to have two (2) sub-contractor bidders (Article 12.2.2) which DTP gets to choose as long as the sub-contractor meets qualifying criteria. DTP is further given what is effectively a unilateral right to award the "allowance" work to whichever subcontractor it recommends, regardless of bid price. MWAA may only object to DTP's recommendation on grounds of "procedures," Exhibit 14.1.6(b).C(3), and must resolve any disagreement within seven (7) days by negotiation only.

   - DTP is not required to procure the "allowance" work on fixed-price basis (i.e. this work can be procured on a "time-and-materials" basis) nor is there any prohibition from using subcontractors who might be working under the "fixed-price" portion

of the proposed DTP Design-Build Contract. Allowing a subcontractor to work on "both sides" of the contract could at the least confuse cost tracking oversight and at the worst create avenues to "game" contractor pricing to the taxpayers' disadvantage.

There is really a large incentive for DTP to increase the Project cost here. Under the proposed DTP Design-Build Contract,

- DTP's fees increase with higher subcontractor prices for the "allowance" work (up to a limit redacted from the publicly available contract, Article 14.1.6(d)) and

- DTP has the right to make a Delay Claim if the subcontractor's schedule for "allowance" work causes DTP's existing critical path schedule to be longer, and further to make such Delay Claim even if the critical path delay is just on "paper" rather than an actual one (Article 13.3.3(2)).

6) **DTP Utility Relocation Work:** Under a standard WMATA construction contract, the contractor is responsible for undertaking utility investigations and utility work as part of the fixed-price construction contract for the project. The proposed DTP Design-Build Contract however only identifies $128 million for utility relocation work (Exhibit 14.1.1) and does not include it in DTP's fixed-price or under the DTP Design-Build Contract. DTP will manage, design, coordinate, build, and procure the utility relocation work under separate amendment to the DTP 2004 Comprehensive Agreement (Article 7.1.2) – amendment not provided to the public.

- The terms and conditions of DTP's utility relocation work are not yet disclosed. Is this work being done on a time and materials basis without a fixed-price and possibly subcontracted to a different contractor?

- Much of this utility relocation work is on the critical path of the Project since it is the first work on the project schedule (utility work is scheduled to start August 2007 prior to expected start of the design-build construction in February 2008). There is a large incentive for DTP to delay the Project schedule and make related Delay Claims since the taxpayer must pay for all utility relocation delays to the design-build work beyond a thirty (30) day critical path delay (Article 13.6) – even for those delays of DTP's own making. DTP can thus, under separate agreement, generate the basis of its own Delay Claims to the proposed DTP Design-Build Contract.

- There is also the potential conflict that the design and construction of the "utility relocation work" will both directly impact and be impacted by the final design and construction of the "work under the proposed DTP Design-Build Contract." Again, this is another potential mechanism for DTP to generate the basis for its

own Change Orders and Delay Claims under the proposed DTP Design-Build Contract.

7) **Differing Site Conditions:** Under a standard WMATA construction contract, when a "differing site condition" is found, work must stop and the WMATA Contracting Officer must investigate that "differing site condition" before work in that area can proceed again. The proposed DTP Design-Build Contract however, after a "differing site condition" is found, allows DTP to proceed with work in the "differing site condition" area (possibly eliminating the characteristics or evidence of the "differing site condition") on the second business day of written notice to the MWAA Contracting Officer, whether or not the MWAA Contracting Officer has seen the "differing site condition" or not.

   Also under the proposed DTP Design-Build Contract, DTP is only responsible for up to $6 million of additional costs associated with what are define as "differing site conditions," taxpayers have to pay all the rest. DTP also has the ability under the proposed DTP Design-Build Contract to assert that site conditions "known" by DTP can nevertheless be considered "differing site conditions" based solely on the "extent of the condition." While "differing site conditions" provisions are a customary part of any construction contract, the way the proposed DTP Design-Build Contract is written materially lowers the threshold that DTP must meet to make and argue for Change Orders and Delay Claims. Please note once again Bechtel's heavy involvement in such Project.

   "Differing site conditions" was also an area of serious problems in the "Big Dig" project. A February 2003 report of the Massachusetts Office of the Inspector General (IG), the IG concluded that "$357 million in cost overruns were incurred due to unexpected 'differing site conditions'" and that "in many cases, the categorization of cost overruns as 'differing site conditions' has been used by B/PB [Bechtel/Parson Brinkerhoff] as a cover story for its failure to perform its contractually obligated duties to assess site conditions during the design stage."

8) **"Concurrent Non-Project Activities":** There are approximately $224.9 million of Project items that have been labeled by MWAA as "concurrent non-project activities," such as Route 7 improvements ($73.7 million); passenger service items such as escalators at all level changes, WMATA standard pedestrian bridge widths, and redundant elevators ($27.3 million); bus bays and pedestrian bridges at Wiehle Station ($11.3 million); Tysons 123 station mezzanine improvements ($10.9 million); among numerous other items.

   - Most of these items are in fact integral Phase I Project work that is part and parcel of the NEPA environmental approvals and Fairfax County approvals of the Phase I Project and are expected by Fairfax County to be included in the proposed DTP Design-Build Contract.

- It is not clear from any written document made public what relationship the "concurrent non-project activities" have to the proposed DTP Design-Build Contract and the Contract Price (Exhibit 14.1.1) and whether they represent potential Change Orders, even before the Contract is signed, with undetermined changes to the proposed Contract Price and Schedule.

Other Contract Issues

1) **Davis-Bacon Requirements:** The proposed DTP Design-Build Contract requires DTP to conform to the Davis-Bacon Act (Exhibit 3.3.15 (12)) with a restated clause 29 CFR § 5.5(b) (requiring at least 1.5x wages for hours beyond a 40 hour workweek, among other items). Davis-Bacon provisions are expected when federal transit funds are involved, but they effectively undermine the Commonwealth of Virginia's Right to Work law by requiring all contractors and subcontractors, union and non-union alike, to submit to rigid job classifications, work rules, and wage rates that are, in reality, union-dictated. The huge volume of paperwork and other compliance costs required of employers by Davis-Bacon often deters non-union firms from submitting bids. Of course, the firms that do participate in Davis-Bacon projects ultimately pass on most of their compliance costs to taxpayers and the public entities. While Davis-Bacon requirements are part of a standard WMATA construction contract, non-union workers and non-union subcontractors worked on WMATA jobs as long as they observed Davis-Bacon requirements.

2) **Virginia Right-To-Work Issues:** Notwithstanding the Davis-Bacon requirements noted above, DTP does not appear to be contractually required in the proposed DTP Design-Build Contract to run the job "open shop" allowing non-union workers to work on the Project, consistent with the Commonwealth of Virginia's Right to Work laws, or to allow non-union subcontractors to bid on the "allowance" work on the Project. DTP is also said to be planning to run the project on a "union only" basis. Note that the Commonwealth of Virginia is a Right to Work state, meaning it has laws that allow workers to unionize, but forbids the union to have a union shop (make membership in the union local mandatory for that job class); qualified non-union workers have the Right to Work alongside of unionized workers.

8/30/2011

Rachel Alexander

Government Destroying Free Markets With Public-Private Partnerships

8/30/2011 | Email Rachel Alexander | Columnist's Archive

We are hearing more and more lately about Public-Private Partnerships (PPPs) as the ideal way to administer the areas of healthcare, transportation, public buildings, water and the environment. President Obama and other politicians are proudly announcing the launch of new partnerships with the private sector. What are PPPs? They are contracts between government and private entities where both share in providing a good or service to the public, while divvying up assets, risks and profits. The average American city now employs[1] PPPs in 23 out of 65 municipal services. In some countries, the majority[2] of civil infrastructure projects are contracted as PPPs. Sounds good, right, for government to assign more areas to the private sector? In theory it seems like less government. In reality it works out to be government granting monopolies to favored corporations which no longer act like free market entities and are controlled substantially by government.

Cash-strapped governments maxed out on taxes and spending have figured out that PPPs are a sneaky way around being forced to cut costs. Government officials deceptively describe PPPs as a way to "overcome budgetary constraints," using the promise of more private sector involvement to make their junk science ideas of "sustainability"[3] projects more acceptable. PPPs allow governments to continue launching large ambitious expensive projects by using a private entity to put up the initial cost in exchange for guaranteed returns. Unfortunately, government ends up in more debt in the long-term because the private entity no longer acts like a private entity in a PPP.

There are a myriad of problems with PPPs. Some or all of the risk is transferred from the private sector to taxpayers, diminishing the incentive for the private entity to perform well. Optimally, the risk should instead be on private financiers who have a direct stake in the outcome. With government guaranteeing payment, there is less motivation for the private entity to cut costs. The private partner has little risk of going under since government will bail it out. Of PPPs that reach the implementation

[1] http://ncppp.org/presskit/topten.shtml
[2] http://www.honolulutraffic.com/PPP_panos.pdf
[3] http://townhall.com/columnists/rachelalexander/2011/07/02/agenda_21_conspiracy_theory_or_real_threat/page/full/

stage, at least 50%[4] end up in renegotiations of the contract due to unexpected circumstances such as less revenue than projected.

One disturbing characteristic of PPPs is the government's ability to seize private property through eminent domain and transfer it to another private entity. Government can pick and choose favorites, giving its preferred private partner privileges over other private entities, even eliminating competition entirely by granting monopolies. Furthermore, it is no secret that government can tailor bid specifications in such a way that only one private entity qualifies.

With government as a partner, private companies lose some of their decision-making authority. Their actions are less likely to be based upon free market considerations. Another problem with PPPs is the lack of transparency. Private companies are not subject to public records laws. PPPs provide a way for government to hide its actions.

Even when a PPP is set up so more of the risk is allocated to the private entity, if the entity fails leaving private investors in the lurch, government often ends up buying back the service or infrastructure. In England, government is taking over more of the risk in PPPs as the debt markets dry up for private companies.

The number of failed PPPs is piling up. A Norwegian study of 258 large PPP projects in 20 countries found that 90% had cost overruns of over 20-45%. Boston's Big Dig[5] transportation project ballooned from an estimated cost of $2.2 billion to $14.6 billion. The Connector 2000 toll road project in South Carolina defaulted[6] on debt service and filed for bankruptcy. A toll road project in Indiana is in trouble[7], with a reported $209 million deficit in 2010. A toll road for trucks in Texas, Camino Columbia[8], produced only 10% of the traffic forecasted, forcing the private entity to default on the debt and file bankruptcy after lenders foreclosed. The city of Chicago was caught leasing[9] its parking meters to a private entity for nearly $1 billion less than they were worth in a hastily accepted deal. Four PPPs for water failed[10] in Puerto Rico, Trinidad, Argentina and Bolivia. The Cross-City Tunnel in Sydney, Australia attracted only one-third of the expected traffic, resulting in the private entity filing bankruptcy.

Some proposed partnerships are now being scuttled[11] as it becomes apparent they would be financial mistakes. The proposed NAFTA Superhighway crossing the U.S. from Mexico to Canada has been mostly abandoned[12]. European governments that embraced PPPs faster than other parts of the world are feeling the effects[13] now with debt crises. Several countries including Ireland are canceling existing PPPs. The World Bank has egg on its face; after promoting PPPs in developing countries for years, the projects have failed to deliver investments.

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[4] http://www.scribd.com/doc/50773364/Public-Private-Partnerships-Risks-To-The-Public-and-Private-Sector
[5] http://reason.org/files/transportation_mega_projects_risk_big_dig.pdf
[6] http://www.tollroadsnews.com/node/4808
[7] http://www.crainsdetroit.com/article/20110801/STAFFBLOG03/110809993/indiana-toll-roads-209-million-shortfall-may-have-ramifications-for-detroit-river-bridge-project#
[8] http://www.ncppp.org/councilinstitutes/calif_presentations/poole.pdf
[9] http://www.huffingtonpost.com/2009/06/02/inspector-general-rips-pa_n_210327.html
[10] http://www.eoearth.org/article/Support_and_opposition_of_public-private_partnerships#gen9
[11] http://www.infrastructurist.com/2009/10/06/public-private-partnerships-another-one-bites-the-dust/
[12] http://townhall.com/columnists/rachelalexander/2011/08/12/rick_perrys_nafta_superhighway_problem/page/full/
[13] http://www.guardian.co.uk/business/2011/apr/24/portugal-greece-european-debt-crisis

The General Accounting Office (GAO) issued a report critical[14] of PPPs in 2008. "There is no 'free' money in public-private partnerships," GAO's report stated. "They are potentially more costly to the public and it is likely that tolls on a privately operated highway will increase to a greater extent than they would on a publicly operated toll road." This is due to government's failure to thoroughly review the costs and benefits in advance, rashly entering PPPs in order to receive large payments upfront to solve short-term problems without properly considering the long-term implications.

Even the federal Department of Transportation (DOT), which GAO accused of rushing into PPPs, cannot hide the track record of PPPs. A recent DOT study acknowledged that PPPs in the area of transportation have a higher cost[15] of capital than public financing.

Do not be fooled by the rhetoric of politicians and bureaucrats claiming PPPs increase privatization. PPPs are nothing more than a new name slapped on the same old concepts of government-enabled monopolization and government control over business. Directing a few large corporations to dominate the market is not the same as a free market. Corporations want to keep out competition, not increase it. Some critics go so far as to accuse PPPs of being part fascist and part socialist due to the quasi-state ownership of the means of production. A real private sector solution would be to get government out of many of these areas entirely.

[14] http://www.gao.gov/new.items/d0844.pdf

[15] http://www.oig.dot.gov/sites/dot/files/PPP%20Final%20Report%207-28-2011%20508%20PDF.pdf

Attachment F

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Transportation Mega-Projects and Risk

by Robert W. Poole, Jr. and Peter Samuel

Reason Foundation

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Part 1

Introduction

Mega-projects in transportation have been uncommon in the United States for the past two decades, following completion of the Interstate highway system and a shift of emphasis in many metro areas from highways to transit. But two recent trends suggest that mega-projects may soon make a return. The first is a growing recognition that major investments in increased mobility are needed, both to relieve urban traffic congestion and to rebuild and modernize major portions of the Interstate system as they reach the end of their original design life. And the second trend is the growth in infrastructure investment funds, with over $150 billion in equity to invest in projects that can produce a reliable revenue stream (such as toll roads, bridges and tunnels).

But the observer may raise a legitimate concern at this point. What about the inherent risks of multi-billion-dollar projects? Isn't there a sorry track record of such projects costing far more than initially projected and attracting far fewer users than forecast? There are indeed such risks, and no recent U.S. project exemplifies them better than Boston's Central Artery/Tunnel project, the first portion of which opened to traffic in 2003, with all portions in operation by 2007. Popularly known as the Big Dig, this project can teach many lessons about risks involved in such mega-projects.

Part 2

Case Study: Boston's Big Dig Mega-Project

Just as American military policy has to contend with the Vietnam syndrome, American infrastructure management has the Big Dig legacy to cope with. When faced with a big, challenging project, elected officials and commentators often immediately say something like: "We don't want to get bogged down in a Big Dig scenario."

To be sure, the Big Dig is something of a paradox. As a pure civil engineering concept, it is a triumph, replacing an ugly and congested elevated freeway with a technically challenging set of tunnels and a new bridge. Indeed, now that it is in full operation, it has more than fulfilled initial promises of saving time by slashing traffic congestion. A recent study by respected consulting firm EDR Group estimated the time savings as worth $177 million per year (2005 dollars), with another $120 million per year in new property tax revenue, thanks to $7 billion in new development made possible by removal of the former elevated highway.[1]

But as an example of management, the Central Artery/Tunnel project (the Big Dig's official name) was a shambles. This $2.6 billion (in 1982 dollars) project ended up costing $14.8 billion (2007 dollars), and its development dragged on for almost two decades. The state (a.k.a. the taxpayer) has been left to carry a huge debt without any revenue to service it. It is a financial disaster. Quality control was also a disaster, as evidenced by defective concrete work, thousands of leaks, and the collapse of a tunnel ceiling.[2] Project administrators were left with near-zero public credibility and confidence. A U.S. Senate report stated of the Big Dig: "These management problems exact a terrible toll on public trust and confidence… A degree of public skepticism toward our government is healthy. Rampant cynicism is not."[3]

A. History of the Big Dig

The concept for the Big Dig was to replace the elevated I-93 expressway through downtown Boston with a tunnel. The concept is attributed to engineer and contractor Bill Reynolds in the early 1970s.[4] Chief proponent Fred Salvucci was a planner at the Boston Redevelopment Authority and then transportation consultant to Boston Mayor Kevin White. Salvucci was appointed state secretary of transportation in 1974 by new governor Michael Dukakis, but made no progress on the Big Dig. When Dukakis was not re-elected, Salvucci spent the next four years at MIT as an

engineering professor. In that period Republican Gov. Edward J. King began planning one part of what later became the Big Dig—the third tunnel to Logan Airport, now known as the Ted Williams Tunnel. Governor King's alignment for the tunnel approach through East Boston caused outrage.

Reynolds came up with the idea of combining the nascent I-93 undergrounding with an I-90 extended alignment through entirely industrial South Boston for the third airport tunnel in 1982. He sold his idea to Salvucci, who was working transportation policy for Dukakis's re-election. Dukakis embraced the idea early in his second term in 1983, and the legislature supported the project that year at the governor's urging. At that time the cost of the whole project was put at $2.2 billion.[5]

The general plan was to replace the elevated six-lane I-93 with an eight-lane, mainly underground, highway system for about three miles north-south, including a new bridge over the Charles River and construction of a new four-lane expressway to extend I-90 from its then-terminus downtown eastward to the airport. The project involved a big, new I-90/I-93 interchange. Though only 7.5 miles in overall length, it encompassed 161 lane-miles of roadworks.[6]

U.S. House Speaker Tip O'Neill became the Big Dig's most powerful proponent once the airport tunnel had been routed away from his East Boston constituency into South Boston. In Washington, DC, O'Neill had to fight the Reagan administration; Transportation Secretary Elizabeth Dole declared the project cost was "not justified on the basis of transportation benefits to the nation." But the Big Dig was incorporated in the Surface Transportation Assistance Act of 1987. Reagan vetoed the bill, singling out its support for the Big Dig as an example of unwarranted federal spending, but his veto was overridden, winning the project federal support.

Responsibility for the project in the state was always unclear. The Department of Public Works headed it initially, although the Highway Department was the recipient of federal funds. At the very height of construction in 1997, the Massachusetts Turnpike Authority gained nominal control of the project. But from its inception in 1985, a joint venture of Bechtel and Parsons Brinkerhoff (B/PB) managed the project, working as consultants to the state on an hourly basis.[7] The B/PB team had their own people doing design, which was also subcontracted by them to other consultants. Despite many years of pre-construction design, the project became notorious later for bids being put out with incomplete designs and sketchy data on existing conditions. Contractors found themselves with hundreds of change orders. The project ultimately consisted of 118 prime contracts.

Salvucci, then state secretary of transportation, said that as soon as federal funding came in sight the politics got more difficult: "Special interest groups, government organizations and individual communities all wanted a piece of the well-funded actions." For example Mayor Raymond Flynn made a splash in 1990 demanding that the Bid Dig fund a rat control program to cover the whole city on the argument that road construction would displace millions of rats and cause them to invade even distant neighborhoods, if they were not put down with federal dollars.[8] Scores of buildings got money for noise control. Indeed, some assessments put "mitigations" of this sort as accounting for one-third of the project's $14.8 billion ultimate cost.[9]

The airport tunnel portion was broken away from the rest of the project in the early 1990s and construction began by the end of 1991. It opened in 1995, without connections, at a cost of $2 billion. On the main part of the project, the undergrounding of I-93 and the I-90 extension approach roads to the Williams Tunnel, the big interchange and the bridge design and permitting process continued for seven expensive years from 1987 through 1994. Amid intense lobbying, new expensive features were being added constantly.

In 1987 project cost was put at $3.2 billion. By 1991, when construction of the airport tunnel portion began, it had grown to $5.8 billion, and by 1994, when the design had firmed up enough for construction to begin on its main portions, the projected cost was officially put at $7.8 billion. But a 2001 report by the Massachusetts inspector general found that B/PB in 1994 had forecast that eventual costs would be in excess of $13.8 billion; however, this finding was suppressed by Gov. William Weld's office, which worked with local Federal Highway Administration (FHWA) officials to reduce the "official" estimate by $6 billion (to $7.8 billion), to avoid jeopardizing requests for continued federal funding.[10]

Before the spring of 2000 the Big Dig's acknowledged project cost had increased to $10.8 billion. Then, in a moment of great drama, then-Govenor Paul Celucci accused Turnpike Chief James Kerasiotes of intentionally concealing $2 billion worth of cost overruns and destroying the trust of the feds. He was fired. FHWA's main office in Washington by this time had discovered the fraud. Costs were now put at $13.5 billion or more. By the time the Big Dig was fully completed with all lanes open to traffic in 2007, the final cost was put at $14.8 billion.

B. Big Dig Lessons

The lessons of the Big Dig have been the subject of many discussions[11] and will be the subject of many more. Many of the lessons are somewhat obvious. Mega-projects need:

- Teamwork;
- Goals, benchmarks and schedules set more precisely;
- Projected costs expressed in construction year dollars and, where uncertain, in ranges of dollars rather than single numbers;
- Contingencies carefully estimated;
- Cooperation of the various stakeholders;
- Champions to fight for these projects;
- Honesty and candor throughout; otherwise bad news will come as a shock, losing public confidence, and
- Vigilance against project creep.

The major source of cost increases in mega-projects is project creep. The scope of the project grows as it is developed, adding unanticipated elements and unforeseen complexity. Special interest groups inject new objectives that serve their agendas on the windfall of funding. Groups

opposing the project need to be appeased to enlist their support. In other words, everyone wants something out of the project.

As Jim Sinnette of the Federal Highway Administration major projects team writes: "Big projects are sometimes perceived as opportunities for piggybacking additional projects, completing multiple projects, or producing prominent public symbols such as a signature bridge rather than opting for a less costly but less prominent design."[12] Sinnette also notes that people expect projects to be "highly responsive to constituents' needs."[13]

Political appointees tend to have very short time horizons. Heads of state departments of transportation and state turnpikes are usually appointed by the governor. They expect to be replaced when the governor's term is up. Massachusetts Turnpike chairmen and chief executives (the two roles were combined during most of the Big Dig's construction) had an average tenure of about two years. Often these people were former legislators or persons aspiring to higher political office. Their preoccupation was to avoid trouble, or more precisely, the perception of trouble, during their short time at the helm. This drive to avoid short-term embarrassment sometimes goes higher still, politically. Massachusetts Inspector General Robert A. Cerasoli reported, "Bechtel Corporation's president and a senior partner flew to Boston in December 1994 to inform the Governor and his senior advisors about B/PB's real cost forecast . . . . Big Dig managers decreased the $13.8 billion estimate to $8 billion for public relations purposes in 1994–1995 by applying a series of exclusions, deductions, and accounting assumptions. This reduced the estimate by $6 billion."[14]

Politicians do not have to live with the consequences of projects like the Big Dig because most of them have left office long before the project is completed, let alone before its viability as an operational project can be subjected to scrutiny. Voters and the media will have long forgotten them by the time it becomes apparent that traffic forecasts were exaggerated, costs were underestimated, and expensive political perks were added.

Part 2

The General Problem of Mega-Projects and Risk

Boston's Big Dig project is not an isolated case. The track record of transportation mega-projects is terrible. The costs are usually significantly underestimated, and traffic is typically dramatically overestimated. Many recent rail projects have similar, well-documented histories. It will be difficult to get public and political support for much-needed mega-projects without better-performing project delivery models.

This challenge was taken up several years ago by Danish academic Bent Flyvbjerg and colleagues in a book called *Megaprojects and Risk* (Cambridge University Press, 2003).[15] They document the global nature of the problem, analyze its causes and offer useful ideas on doing better.

First, Flyvbjerg and colleagues cite studies showing that this is hardly a new problem, nor is it unique to a few countries. One of the most comprehensive studies (from Aalborg University) covers 258 highway and rail projects ($90 billion worth) in 20 countries.[16] Nearly all (90%) suffered cost overruns, with the *average* rail project costing 45% more than projected, the *average* highway project 20% more. Traffic forecasts were also far from accurate, with rail projects generating an average of 39% less traffic than forecast (though highway projects averaged a 9% *under*-estimate of traffic).

Flyvbjerg concludes that the "cost estimates used in public debates, media coverage, and decision-making for transport infrastructure are highly, systematically, and significantly deceptive. So are the cost-benefit analyses." Many other analysts have reached similar conclusions. Flyvbjerg goes on to explain why this comes about. First, he cites two MIT researchers' conclusion that "the incentives to produce optimistic estimates of viability are very strong and the disincentives weak." And the reason for that is a lack of accountability of the parties involved, not a lack of technical skills or insufficient data.

Another key insight is that "risk is simply disregarded in feasibility studies . . . by assuming what the World Bank calls the EGAP principle: Everything Goes According to Plan." But in mega-projects like the Big Dig, the Channel Tunnel or the Los Angeles Red Line subway, things seldom go according to plan, and nobody should expect that they would.

Asking *why* risk is disregarded leads Flyvbjerg to question the conventional approach to project development, in which government is the project promoter and financier, and private firms are only

too happy to do the best-case feasibility studies, produce the designs, and take on construction contracts fattened by numerous change orders. That is sometimes called a "public-private partnership," but it is a perverse use of the term, since that model does not adequately protect the public interest. The conventional approach puts the major risks—of cost overruns and of inadequate traffic—onto the shoulders of hapless taxpayers. If somebody else is picking up the tab, neither government officials nor private contractors have strong incentives to anticipate the kinds of things that will lead to problems and then costly change orders. Not only is this inherently undesirable, but a system set up in this way "is likely to increase the total risks and costs of a project." It leads directly to the kinds of results seen with the Big Dig and documented in the Aalborg University study.

A much better delivery model is a true public-private partnership that more appropriately "allocates risks to parties who have an incentive to reduce the negative impacts," as Flyvbjerg puts it. It would be far better to put commercial-type risks, such as construction cost risk and traffic risk, on the shoulders of investors. But to bring that about requires that there be true risk capital involved in a mega-project. Indeed, one of Flyvbjerg's strongest conclusions is that the decision to proceed with such a project should be based on "the willingness of private financiers to participate in the project without a sovereign guarantee." By *putting their own capital at risk*, such investors will be personally and financially involved in monitoring how the project is done, to mitigate the risk to themselves. And if such private parties shy away from investing in proposed mega-projects, that should be a signal to government that the project may not be fiscally sustainable or even viable.

One recommended model is what Europeans call the long-term concession or build-operate-transfer (BOT) model, under which a private consortium, selected by a competitive process, gains a long-term ownership interest in the project, sufficiently long that it has a reasonable likelihood of making a return on the investment. Because of this long period of responsibility, the consortium will also have strong incentives to build it right in the first place and to minimize lifecycle costs (as opposed to just upfront costs). The point is to create accountability and risk-management, which the conventional government-dominated model simply does not provide.

A private sector consortium with its own funds at stake is also likely to be better equipped to resist expensive additions. It has a clear bottom-line orientation. Its expenditures must be related to the transportation service it provides and for which customers pay (via tolls.) The consortium is limited by what money it can raise in the capital markets to the amount that tolls can service. It is better placed to "just say no" to demands for ancillary expenditures. "We just can't do it," the consortium can honestly say. By contrast, the public tends to view government as some kind of bottomless pit of money. Even government officials themselves, who do not suffer decreases in pay if projects result in cost overruns, have no true incentive to rein in runaway costs. With a private consortium betting its survival on good project management, limits on the capital that can be raised will force the project to be administered austerely.

Basing a project on prospective toll revenues introduces a strong constraint on capital spending that is absent in projects funded by governments, where the argument can always be made that by reordering priorities, borrowing more or getting additional grant funds, extra money can be found. When the private sector takes on a major project and puts a financing package into the capital

markets, it usually only gets one shot. After the financial closing, it has a discrete sum beyond which it cannot spend. This inherent discipline throughout the detailed design and construction of the project argues favorably for transferring risk to the private sector.

Melbourne's CityLink is a tolled mega-project that includes major elevated and tunnel portions through downtown Melbourne, Australia. It was built during the same time as Boston's Big Dig, in a similar urban environment. Both projects had to cope with awful soil conditions: Boston's in bay edge fill, Melbourne's in river and creek beds of deep muck. Both had to go to Herculean lengths to maintain existing rail transit services and underground utilities, and not interfere with traffic during construction. Boston's tunnels were much bigger, but Melbourne's were much deeper, involving enormous water pressures and uplift. Each encountered significant construction problems. Each included a signature bridge. Both projects had smart, competent engineers and managers. Yet Melbourne's was built in one-third the time and at one-third the cost ($27 million per lane-mile vs. $91 million per lane-mile).

A key difference was the project delivery model. CityLink was developed as a long-term concession, by a private firm funded with equity and debt. The chief constraint on cost escalation was provided by the company's need to limit overall project spending to that which could be supported by tolls. There was always a firm limit to which everyone had to work in Melbourne. There never was any limit in Boston, just a constantly growing "estimate" for which no one was accountable.

There is growing empirical evidence that this sort of delivery model has a better track record—in terms of meeting the planned schedule and keeping costs under control, In 2007, Allen Consulting Group and the University of Melbourne studied the performance of 54 large infrastructure projects, nearly half of which were in transportation. Of that total, 21 were done via the private finance (public-private partnership) model and the other 33 via traditional public sector procurement. Cost overruns on the PPP projects averaged 1.1%, compared with 15% for the traditional projects. In terms of schedule, the PPP projects averaged 3.4% ahead of schedule, compared with 23.5% late completion for the traditional projects.[17]

Part 3

Shifting Risk from Taxpayers to Investors

To further understand how much difference it can make to shift the model for mega-project development, consider a $2.5 billion urban tunnel project—perhaps the missing link in the Los Angeles area's Long Beach Freeway (I-710) through South Pasadena. Under the conventional approach, a government agency (e.g., Caltrans or the Los Angeles County Metro) would be the project developer. It would do the preliminary design, go out to bid for detailed design, and once that design was in hand, it would go out to bid for one (or a set of) construction contractors. After the project was built, the agency would operate and maintain the project out of annual budgetary appropriations.

Let's think about the incentives involved. The design contractor will not be responsible for building or maintaining the project, so it will seek to do a straightforward job of design, meeting the required specifications but not being overly concerned about constructability or the ongoing cost of operations and maintenance. That is not its problem. And the construction contractor will bid what it thinks the job will cost, but will know that as problems and unknowns are discovered during construction, it will be able to submit change orders, which the government agency will mostly approve. To the extent that the contract provides incentives to control costs, those incentives typically focus only on initial cost to construct. That incentivizes the contractor to make decisions that may reduce the initial cost at the expense of higher costs to maintain the project in future years—but that's not its problem. Likewise, conventional contracts for large projects seldom provide meaningful incentives for on-time completion (or if they do, they suffer from the same problem of implicitly encouraging initial short-cuts that may carry a higher long-term cost in operations and maintenance).

Now let's think through how the long-term concession model pioneered in Europe and Australia would address the same project. Under this model, the responsible government agency does a feasibility study and preliminary design and then goes out to bid for a firm or consortium to detail-design, finance, build, operate and maintain the project for a long period of time, typically 30 to 50 years. It is up to this consortium to cover all the costs of building, operating and maintaining the tunnel project out of the user-fee revenues it generates (unless a portion of the initial cost will be provided by the public sector, in a transparent and publicly approved process). Consider the very different incentives involved in this model.

First, the fact that businesses have bid on the project suggests that it is fiscally viable and sustainable. The winning consortium will almost certainly use the design-build method, in which a single team designs and constructs the project, thereby facilitating constructability because everyone has the same incentives. Design-build also generally cuts the overall development time significantly.

Second, since the investors who finance the project (banks, toll revenue bond buyers and equity investors) have a very strong interest in avoiding cost overruns, the design-build team will be held accountable to a fixed price that allows for various contingencies. This exerts strong pressures to produce a buildable design and to solve problems efficiently—because it's the consortium's own money that is at stake in cost overruns. (Design-build has an excellent track record of delivering large projects on-time and on-budget; recent examples include California's Alameda Corridor and Utah's rebuild of I-15 in Salt Lake City.)[18]

Third, because the investors are very concerned about toll revenues beginning to flow on time so the consortium can start making the required debt-service payments, they will typically insist on a guaranteed completion date, with significant daily financial penalties (called liquidated damages) if that date is not met.

And fourth, because the team that develops the project will also be responsible for operating and maintaining it (and turning it back to the government agency in good condition at the end of the concession term), it will have strong incentives to design and build the project in ways that minimize not its initial cost but its *lifecycle* cost. This is why toll roads and bridges, in general, are typically built in a more durable way. Stronger and more durable pavement means lower maintenance expenses over time. And furthermore, the investors typically require legally enforceable bond covenants that guarantee proper maintenance of the facility over the life of the bonds, to protect the asset value of their investment.

Table 1 provides a summary of key differences between the concession model and the traditional model.

Table 1: How Project Management Models Compare

	Traditional	Long-Term Concession
Funding source	Highway trust fund	Toll revenue bonds & equity
Procurement process	Design-Bid-Build	Design-Finance-Build-Operate-Maintain
Cost overruns?	Taxpayers	Investors
Schedule slips?	Drivers	Investors
Traffic risk?	Taxpayers	Investors
Maintenance funding	Annual appropriations	Toll revenues
Maintenance incentive	Public complaints	Investors' asset value

Part 4

What Happens if the Project Fails?

One obvious question provoked by this discussion is: what happens, in a concession project, if the investors guess wrong and the project ends up with significant cost overruns and/or much less usage than projected? A good example of such an outcome is the Channel Tunnel between the U.K. and France. Developed privately under a 55-year concession agreement with the two governments, the "Chunnel" opened in 1994, several years late and 80% over its original budget. After six years in operation, its traffic numbers had reached only 43% of the original estimate for the opening year. Clearly, this must rank alongside the Big Dig as a mega-project debacle.

Yet unlike the Big Dig, where taxpayers footed the bill for enormous cost increases, the lower revenues and higher costs of the Channel Tunnel were borne entirely by the investors (mostly European banks and about a million individual shareholders). The project had to be refinanced, with the banks taking a significant "haircut." And the share price plunged to a few percent of what it had been in the project's early days. The only relief offered by the two governments was to extend the life of the concession, so that the investors would, over a very long period of time, have some possibility of receiving an eventual return on their investment.

In two other cases in the past decade, concession projects have actually gone under, after seriously overestimating traffic and toll revenues. The first is a truck-oriented toll road near Laredo, Texas called Camino Columbia. The 21-mile tollway was built to offer trucks a shorter route from a border crossing near Laredo to I-35, a key NAFTA highway route. It opened in 2000, but attracted so little traffic that it declared bankruptcy at the end of 2003, after lenders foreclosed. Principal creditor John Hancock Life Insurance Co. purchased the project at auction in January 2004 for just $12 million for the toll road that had cost $90 million to develop. Five months later, the Texas DOT purchased the toll road from John Hancock for $20 million (about 22 cents on the dollar). It is still in service today.

The other case is a toll tunnel in Sydney, Australia's largest city: the Cross-City Tunnel. Intended to reduce congestion on major downtown streets, the four-lane, 1.3 mile $585 million project opened in 2005, but attracted only one-third of the forecast traffic. By the end of 2006 the concession company filed for bankruptcy. At that point, a syndicate of creditors appointed a receiver, which took control of the tunnel and has kept it in operation while the finances are sorted out.

There are several important lessons to be drawn here. The first is that having to persuade investors to part with capital for such mega-projects will typically produce a far higher degree of scrutiny of the project's underlying feasibility than is all too often the case for conventionally done mega-projects. The second is that even when such scrutiny is overtaken by events and a concession project does badly, it is investors who are at risk, rather than taxpayers. Third, despite financial difficulties, the project remains in service, meeting transportation needs. In extreme cases the original company may go bankrupt and the assets get purchased by new owners (with approval of the government agency that is a party to the concession). By purchasing the asset at a fraction of the original cost, the new owners hope to operate it in a financially sustainable manner (much as happened with failed telecom companies such as Global Crossing and Iridium).

Thus, the case for using the concession approach for transportation mega-projects is a strong one. In the case of typical mega-project risks of cost overruns and insufficient traffic and revenue, experience has shown that the private sector can and will take on those risks under well-drafted concession agreements.

Mega-projects are inherently risky. That doesn't mean they should not be done. But it does mean that public policy should allocate those risks to the parties best able to handle them: those with not only financial incentives for success but with dire consequences for failure.

Endnotes

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1 Economic Development Research (EDR) Group, "Economic Impact of the Massachusetts Turnpike Authority & Related Projects," Vols. I and II, Massachusetts Turnpike Authority, 2006.

2 On Jan. 23, 2008 Bechtel and Parsons Brinckerhoff reached a settlement with the state and federal governments in which they acknowledged serious failures as contract managers and designers, and agreed to pay $458 million to resolve criminal and civil complaints.

3 "Government at the Brink," report by committee headed by Sen. Fred Thompson, cited by Federal Highway Administrator J. Richard Kapka in *Public Roads*, July/August 2004, p. 3.

4 Dan McNichol and Andy Ryan, *The Big Dig* (New York: Silver Lining Books, 2000) p. 35.

5 "Federal Task Force on the Boston Central Artery/Tunnel Project: Review of Oversight and Costs," Federal Highway Administration, undated, no page numbers, at www.fhwa.dot.gov/reports/tunnel.htm.

6 The physical aspects of the project are nicely described on the official website www.bigdig.org.

7 Bechtel's website reports the following: "In 1999, just as construction activity was peaking, the MTA (Massachusetts Turnpike Authority) converted from a traditional program management model to an integrated project organization, which led to the management shifting to MTA. Although adopted for the stated purpose of streamlining the management structure and trimming costs, it also had the effect of blurring accountability and responsibilities, and discouraging proactive project management." (www.bechtel.com/2008-01-23.html.)

8 McNichol and Ryan, p. 43.

9 Nicole Gelinas, "Lessons of Boston's Big Dig," *City Journal*, Autumn 2007.

10 Office of the Inspector General, "A History of Central Artery/Tunnel Project Finances, 1994–2001," Report to the Treasurer of the Commonwealth, March 2001.

11 For example, the July/August 2004 issue of the FHWA journal *Public Roads* is devoted to ten articles on megaprojects, many of which dwell on the Big Dig.

12 "Accounting for Megaproject Dollars" *Public Roads*, July/August 2004, p. 41.

13 Ibid, p. 44.

14 Office of the Inspector General, "A History of Central Artery/Tunnel Project Finances," March 2001.

15 Bent Flyvbjerg, Nils Bruzelius and Werner Rothengatter, *Megaprojects and Risk* (Cambridge, UK: Cambridge University Press, 2003).

[16] Bent Flyvbjerg, Mette K. Holm and Soren L. Buhl, "Underestimating Costs in Public Works Projects: Error or Lie?" *Journal of the American Planning Association*, Vol. 68, No. 3, Summer 2002, p. 279.

[17] The Allen Consulting Group and the University of Melbourne, "Performance of PPPs and Traditional Procurement in Australia, Final Report," Infrastructure Partnerships Australia, Nov. 30, 2007 (http://infrastructureaustralia.org/research/pdf/InfrastructurePartnershipsAustralia_PPPReport_Final.pdf).

[18] SAIC, AECOM Consult, University of Colorado at Boulder, *Design-Build Effectiveness Study, Final Report*, Federal Highway Administration, January 2006.

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Draft Planning Commission Tysons Committee Schedule

Dates and room locations are currently not available for some meeting dates, in these cases the month and session number are identified.
Additional information on each meeting, including agenda and materials presented can be found at: http://www.fairfaxcounty.gov/planning/

September 7th, 7:00pm, Conf Rms 9/10

- Public listening session on funding and process
- Interim report to BOS

September, 22nd, 7:00pm, Conf Rms 9/10

- Task #1 Process; timeframe, final process/outcomes, benefits of Tysons
- Task #2, Improvements,

October, 5th, 7:00pm, Conf Rms 9/10

- Task #2, Improvements
- Task # 3, Existing Tax Districts

October, 12th, 7:00pm, Conf Rms 2/3

- Task #3, Federal/State/Local /Private Shares

November, 2nd, 7:00pm, Board Auditorium

- Task #3, Federal/State/Local /Private Shares, follow-up if necessary
- Task #4, Allocate Category Shares, Grid of Streets/Neighborhood Improvements

November, 16th, 7:00pm, Conf Rms 2/3

- Task #5, Allocate Category Shares, Tysons-wide Road Projects/Transit

December, 7th, 7:00pm, Conf Rms 2/3

- Task #6, Private Sector Funding
  - Review decisions made to date
  - Hear from Tysons Partnership/other stakeholders on options
- Task #7, Federal/State/Local Funding
  - History and options

December,14th, 7:00pm, Conf Rms 2/3

- Task #6, Private Sector Funding
  - Staff response to private sector funding proposals
  - PC Recommended private funding solution(s)
- Task #7, Federal/State/Local Funding
  - Historic levels and funding options

January, Session 1, TBD

- Task #7, Federal/State/Local Funding
    - Staff recommended public funding solution(s)

January, Session 2, TBD

- Task #7, Federal/State/Local Funding
    - PC draft public funding solution(s)

February, Session 1, TBD

- Task #8, Summary
- Task #9, PC Recommendation for funding and IDL approach

February, Session 2, TBD

- Potential public input session on draft PC recommendations to BOS

March

- Deliver PC recommendations to BOS

Annotated Committee Process and Staff Assignments – revised 9/2/11

Previous Meetings

July 14th – STAFF LEAD: **Tom Biesiadny, DOT**

PRESENTATION: **Jim Zook / Tom Biesiadny / Fred Selden / Scott Sizer**

Staff presented work to date on a funding allocation process, considerations, and results (allocation)

OUTCOME

1. Provided an understanding of the rationale/basis for staff's proposal, identified elements the PC/public may want to consider,
2. Reviewed proposed process for going forward.

FUTURE TASKS

1. Requested PC and public provide input on all three topics at the September 7th meeting

Scheduled Meetings

Sept 7th – STAFF LEAD: **N/A**

PRESENTATION: **Public Listening Session**

Receive public and PC thoughts on process, considerations, staff funding proposal and associated assumptions, and what topics the PC should recommend to the BOS.

OUTCOME

1. Receive input from stakeholders on possible funding solutions and process for arriving at a recommended funding solution.

TASKS

1. Distribute remainder of 2011 PC Tysons Committee dates
2. Agree upon preliminary agenda for September 22nd meeting

FUTURE TASKS

1. Summary of public input (DPZ)

Sept 22nd – STAFF LEAD: **Fred Selden, DPZ**

PRESENTATIONS:

1. Discussion of process to achieve recommendations, **Fred Selden**
    a. Elements of recommendations from PC to BOS
    b. Timeframe; 2030/2050
    c. Link between funding recommendations and IDL
2. Benefits of Tysons Corner to Fairfax County, **Jim Zook / Linda Hollis**
3. Review Table 7 transportation improvements and cost estimates, **Tom Biesiadny**
    a. Review Table 7 improvements
    b. Table 7 schedule of improvements

c. Cost estimates

OUTCOME

1. Determine committee's process
2. Understand role of Tysons to overall County tax base
3. Understand planned transportation improvements and cost estimates

TASKS

1. Provide transportation facilities information
2. Agree upon preliminary agenda for Oct 5th meeting

FUTURE TASKS

1. PC Committee to review Table 7 information for discussion Oct 5th

Oct 5th – STAFF LEAD: **Tom Biesiadny, DOT**

PRESENTATIONS:

1. Facilitated discussion of Table 7 transportation infrastructure, **Tom Biesiadny**
   a. Review Sept 22nd material, respond to questions
   b. Discuss whether or not there should be additions or deletions from Table 7 improvements in funding mechanism and rationale for any changes
2. Review of existing Tax Districts in Fairfax County
   a. Compare/contrast Rt. 28 Tax District to Tysons, **Tom Biesiadny**
   b. Overview of other Tax Districts in Fairfax County, **Len Wales**

OUTCOME

1. Determine transportation improvements to be included in funding recommendation
2. Understand previous transportation tax districts used in Fairfax County

TASKS

1. Agree upon preliminary agenda for Oct 7th meeting

FUTURE TASKS

1. Update transportation improvement list for funding solution, including revisions to any total funding levels needed

Oct 12th – STAFF LEAD: **Fred Selden, DPZ / Tom Biesiadny, DOT**

PRESENTATIONS:

1. Facilitated discussion of federal/state/local share vs. private share allocations, **Fred/Tom**
   a. Confirm need to have federal/state/local share vs. private share allocations responsibility proposal (implied)
   b. Review staff assumptions and staff rationale for cost sharing
      i. Explain how County staff calculated Tysons through traffic as 35% of whole, **Dan Rathbone**
   c. Provide review of potential funding mechanisms reviewed, **Len Wales, DMB**

d. Review elements of a successful transportation funding program, **Len Wales / Tom Biesiadny**

OUTCOME

1. Understand allocation considerations
2. Understand elements of a successful funding program and potential mechanisms

TASKS

1. Draft allocation considerations

Nov 2nd – STAFF LEAD: **Tom Biesiadny, DOT**

PRESENTATIONS:

1. Review allocation criteria adopted by Committee on Oct 12th, **Tom Biesiadny**
2. Allocate federal/state/local share vs. private shares based on committee direction, **Tom Biesiadny**
   a. Grid of Streets
   b. Neighborhood Improvements

OUTCOME

1. Allocate funding responsibility for two categories

TASKS

1. Staff's draft allocation for each category based on Oct 12th committee meeting

FUTURE TASKS

1. Update transportation improvement allocation and funding levels for federal/state/local share vs. private share, based upon outcome

Nov 16th – STAFF LEAD: **Tom Biesiadny, DOT**

PRESENTATIONS:

1. Review allocation criteria adopted by Committee on Oct 12th, **Tom Biesiadny**
2. Allocate federal/state/local share and private share based on committee direction, **Tom Biesiadny**
   a. Tysons-wide Improvements
   b. Transit Enhancements

OUTCOME

1. Allocate funding responsibility for two categories

TASKS

1. Staff's draft allocation for each category based on Oct 12th committee meeting

FUTURE TASKS

1. Update transportation improvement allocation and funding levels for federal/state/local share vs. private share, based upon outcome

Dec 7th – STAFF LEAD: **Len Wales / Joe LaHait, DMB**

PRESENTATIONS:

1. Review allocation decisions made to date
2. Identify and discuss private sector funding solutions, **Tysons Partnership**

OUTCOME

1. Confirm funding allocations made to date
2. Understand potential private sector funding proposals

TASKS

1. Summarize allocation decisions for all improvements included

FUTURE TASKS

1. Follow up to private sector funding proposals

Dec 14th – STAFF LEAD: **Len Wales / Joe LaHait, DMB**

PRESENTATIONS:

1. Staff analysis of proposed private sector funding mechanism(s), **Len Wales / Joe LaHait**
    a. Legal review of benefits/constraints to private sector funding solutions, **Jim McGettrick**
2. Potential sources of revenue for federal/state/local funding public sector funding
    a. Federal and State Transportation Funding Received Historically, **Tom Biesiadny**
    b. Updates from PFM, **Len Wales / Joe LaHait**

OUTCOME

3. Recommendation on private sector funding mechanisms(s)
4. Understand potential of federal/state/local funding mechanisms

TASKS

FUTURE TASK

1. Develop potential of federal/state/local funding recommendations

Jan, Session #1 – STAFF LEAD: **Len Wales / Joe LaHait, DMB**

PRESENTATIONS:

1. Potential of federal/state/local funding proposal

OUTCOME

1. Recommendation on of federal/state/local share funding mechanisms(s)

TASKS

FUTURE TASK

1. Draft recommendations and summary of committee decisions to date

Jan, Session #2 – STAFF LEAD: **Fred Selden / Barbara Byron**

PRESENTATIONS:

1. Draft recommendations to BOS

OUTCOME

1. Agreement upon recommendations, subject to revision

TASKS

1. Draft recommendation report

FUTURE TASK

1. Revise draft report

Feb, Session #1 – STAFF LEAD: **N/A**

PRESENTATIONS:

1. Public input session on draft recommendations

OUTCOME

1. Hear comments on committee draft recommendations

TASKS

FUTURE TASK

1. Revise draft report as needed, forward to PC and/or BOS

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