KINCORA

The Crossroads of Commerce and Knowledge

July 8, 2009

The Honorable Jim Burton
Office of the Loudoun County Board of Supervisors
1 Harrison St., S.E., 5th Floor
P.O. Box 7000
Leesburg, VA 20177

RE: Response to your comments with respect to Kincora Proposed Financing Plan

Dear Supervisor Burton,

I would like to respond to some of the comments you have made with respect to Kincora's proposed financing plan for road infrastructure for our rezoning application and the minor league ballpark. While our financing plan has not yet been presented to the Board for consideration, and there is still much work to do should the Board determine that a minor league ballpark can be built on the site, several of your comments cast a negative pall on our efforts to present a great cultural and economic development opportunity for the citizens of Loudoun County. I offer these responses to clarify our proposal, but also with the hope that they will lay the groundwork for a constructive dialogue, as well as a critical analysis, of our plan. We would welcome an opportunity to meet with you to discuss these matters in greater detail as our rezoning application and the CDA progress over the coming months.

1. *"The applicant's estimated costs for the stadium and road improvements are over $100 million; as yet, the applicant has failed to produce a viable plan to raise that money."*

We have presented a preliminary plan for financing the road improvements and the ballpark to County staff. The plan is viable, but not final and complete at this point. Completion of the plan will take the input and analysis of outside legal and financial professionals and the County's staff and financial advisors. While we will be bearing significant consulting costs and offering to reimburse the County for its reasonable costs associated with the analysis of the plan, it is premature to devote those resources to our plan and the other available options for financing the ballpark until we know that the ballpark is a permitted land use at Kincora. This is true for almost every land use application acted upon by the Loudoun Board. As an example, the zoning approvals for a mall at Dulles Town Center were granted prior to the Community Development Authority being approved for the development of its infrastructure. This special exception for office uses and a minor league ballpark should not be held to a different standard.

2. *“ . . . I cannot in good conscious support a project that has such a risky financing plan – and one which the County tax-payer might ultimately be called upon to bail-out at some future date.”*

The conclusion that the plan is “risky” presupposes that the analysis of the plan is complete even before Staff and the Applicant have had an opportunity to pursue discussion of the plan in any detail. As indicated in the response to the previous comment, the analysis, at this point is our proposed concept for how best to finance both critical regional road infrastructure for our rezoning (and County residents generally) and the ballpark proposed with our pending SPEX application. We have stated expressly that we are not seeking the Board’s support for any specific financing plan at this juncture. We only ask that you and your colleagues remain open-minded about the potential benefits of our plan once it has been completed with input from your Staff and is being presented to the Board.

As you know, the § 15.2-5158(A)(2) of the Virginia Code regarding Community Development Authorities expressly provides that revenue bonds issued by a CDA “shall not be deemed to constitute a debt, liability, or obligation of any other political subdivision, and shall not impact upon the debt capacity of any other political subdivision.” By statute, any bonds issued by the Kincora CDA would only be the obligation of the current and ultimately future owners of Kincora. There would be no obligation on the County or its taxpayers.

3. *“Thus, the first outstanding issue with this proposal is whether or not the Virginia Code would allow the applicant to finance the construction of a privately-owned commercial stadium in this manner.”*

The conceptual proposal furnished to the Staff does not propose a “privately-owned commercial stadium.” The ownership of the ballpark is proposed to be held by a community non-for-profit entity with an ultimate ownership option available to Loudoun County once the CDA bonds have been paid in full. If the option is not exercised the facility would continue to be owned and managed by the not-for-profit entity.

4. *“The first proposed revenue stream is an annual payment by the baseball team: $1 million in the first year with an approximate annual cost of living adjustment (COLA) over thirty-eight years. What happens if the team moves to another market or the league fails?”*

The rental obligation of the baseball team will extend for the entire term of the proposed CDA bond financing. If the team wanted to relocate in the future, it would remain legally obligated to make this rental payment unless the parties were able to agree to an appropriate buy-out of the lease that preserved the ballpark owner’s ability to pay the debt service on the ballpark. You are correct that the team’s ability to pay rent is related to and dependent on its success. However, baseball use is only anticipated to represent approximately 50% of the stadium activity. It would remain a popular attraction available to County residents for other sports, cultural and civic events which would contribute revenue towards its debt service until a new anchor tenant could be identified.

We concur with the Atlantic League’s analysis of the attractiveness of the Loudoun County market as the home for a successful franchise. The 10 mile radius surrounding Kincora would qualify as the 30th largest metropolitan area in the country – and one of the most (if not the most) affluent. With no home town team in its midst, it represents an excellent location for a minor league ball team. We are confident that, were this franchise decide to move for whatever reason, others would leap at the opportunity to serve this outstanding sports market.

5. *Dealing with the conceptual plan of finance as it relates to multifamily units -"These fees would range from $20,000 to $70,000 ($70,000 upfront on each of the first 300 units). These fees would be dedicated towards debt repayment. However, each unit would also be subject to the following County requirements:*

    • A buy-out fee from the Route 28 Transportation Improvement District, the exact amount of which is calculated based upon the acreage of the parcel and the amount of the district's outstanding debt (used to finance the road's widening to six lanes and the ten interchanges).
    • A proffer contribution of $20-$40,000 per unit to help offset the capital costs to the County created by the new residences, such as schools, libraries, playing fields, and public safety centers.

    Thus, in addition to construction costs, the builder must offset all of these fees (probably close to $150,000 apiece) before calculating any profit. A sufficient number of units must sell each year to generate sufficient revenue to cover the yearly principal and interest payments on the debt. Is there enough of a market for condominiums at such a price point over the next few years? To me, this seems a questionable assumption."

At the end of the day, all projects must be subject to the analysis of whether the burdens placed on the development, in terms of proffers, special assessments or other locally imposed taxes leave the development competitive with other market opportunities available to commercial and residential buyers and tenants. The market, not a stack of financial projections, ultimately will determine the success of a project.

Indeed, a total burden of $150,000 in such fees and taxes per each multifamily unit is not something the current "market" will support. However, we do not believe the total burden will be $150,000 and we do not intend to see the actual total burden applied and passed along to purchasers of every multi-family unit proposed at Kincora.

First, with respect to the Route 28 buy-out, Kincora represents roughly 2.7% of the land area within the Route 28 Tax District. Assuming a maximum of 25% of our re-zoned project is developed as multi-family units, approx. 0.675% of the District bond obligations would have to be paid at the time of rezoning to "buy-out" the residential component. With all interchange improvements fully financed, there will be approximately $250 million in outstanding Route 28 District bonds, resulting in a total "buy-out" amount of approximately $1.7 million for Kincora's proposed multi-family component. Distributed over 1,400 units, that would be approximately $1,200 per unit. While the calculation of the buy-out for the residential portion of vertically integrated buildings might necessitate some interpretation of the mechanics of the "buy out" provisions of the statute, the economic principle is not complicated.

Second, Board policy permits the offsetting of the proffer contributions ("Capital Facilities Charges") recommended in the comprehensive plan to offset the capital costs to the County of the Kincora multi-family units where the Applicant is providing substantial regional transportation improvements beyond what typically is provided with similar applications. We intend to substantially enhance the County's transportation network but providing such improvements with the extensions of Gloucester Parkway and Pacific Boulevard with costly bridge connections over the Broad Run. With the dedication of 167 acres for a County nature preserve park, the construction of significant trail connections, dedication of a critically-needed public safety center site and other public benefits proposed for the development, the County Staff concluded with the previous Kincora rezoning that no additional cash contributions for capital facilities were required. In the previous rezoning application, Staff concurred that the Kincora proffers provided at least two times what would be anticipated under the comprehensive plan. So this additional per unit cash burden is not anticipated.

That leaves the $20,000 charge on the 1,100 non-ballpark related units and $70,000 charge on the 300 units related specifically to the ballpark financing. These charges are proposed to be paid, by the developer, prior to issuance of the building permits for the residential units, to prepay the proposed CDA assessment with respect to all units, much in the same way that the Route 28 buy-out is accomplished.

By adding these three factors, we are anticipating a significantly lower per unit charge than you identified:

	1,100 Units	300 Units (Ballpark)
Pay-down of CDA residential component	$20,000	$70,000
Route 28 Buy-out	1,200	1,200
Capital Intensity Charge	20,000	20,000
Offset for Kincora road proffers	(20,000)	(20,000)
Total burden per unit	$21,200	$71,200

We believe these figures are within acceptable current market norms and will leave the project competitive within the marketplace. The higher charge for the 300 "Ballpark Units" reflects our commitment to apply the value of those units directly to the financing of the ballpark.

6. *"they (the Rating Agencies) would expect the County to step up to the plate and bail out a failed CDA in order to retain our AAA bond rating."*

Bonds issued by Community Development Authorities fall within the County's overlapping debt limitation – roughly $600 million when we reviewed it last. In the case of Loudoun, this would include the Route 28 Tax District. Were the County's total overlapping debt to exceed that amount, rating agencies might re-visit the County's AAA credit rating. When a jurisdiction exceeds its overlapping debt limits, it is a good indication that the jurisdiction is offloading its governmental infrastructure responsibilities to these third-party entities, such as special taxing districts or community development authorities. However, the County's current overlapping debt is nowhere near this limit – a commendation to the stewardship of this and past County Boards. The entire debt proposed with the Kincora CDA would leave the County well under its limit.

As mentioned before, the County is not permitted by statute to assume the debt of a CDA. Nor would there be any reason for a jurisdiction to need or want to agree to do so given the underlying construct of the bonds issued by a Community Development Authority ("CDA Bonds"). CDA Bonds are financed on a loan to value ratio of approximately 3:1 at the outset. It is like a homeowner taking out a 33% mortgage on the value of a home. In that scenario, the homeowner has 67% equity in the home. Even in the stress of today's financial markets, it is highly unlikely that one would ever walk away from such a conservatively-leveraged asset; but if one did so, the lender (or bondholder in the case of a CDA Bond) would be fully repaid from the realized value of the real estate asset on its disposition.

7. *"The history of CDA's is spotty – some are quite successful, however, many could be described, at best, as disastrous."*

There have been thousands of successful Community Development Authorities and similar special districts throughout the United States. You have referenced 23 CDA failures. We would like an opportunity to review those failed projects with you if you provide the names of them. I suspect that the CDAs that failed were predominately residential in scope and were used to finance schools and other public infrastructure that a resident would normally perceive to be a basic governmental responsibility. In the proposed CDA financing for Kincora, no residential units would be subject to the special assessment. All units would be bought-out by the developer prior to occupancy.

8. *Speaking of the adjacent Dulles Town Center Community Development Authority, "This project, however, had no residential component, no significant competition for tenants, a stronger economic environment, and an owner with a solid balance sheet, deep pockets, and a long-standing business relationship in the County."*

All one has to do is drive around the Dulles Town Center area to see that its economics are based on a substantial multi-family residential element. Just as in the case of Dulles Town Center, there will be no special assessments against an occupied residential unit. We developed a process with the County Attorney's Office and Loudoun's Financial Advisor during the previous rezoning that permitted the County can to enforce this requirement before the multi-family units are transferred to purchasers for occupancy.

With respect to the issue of competition, the County-reviewed Limited Offering Memorandum which accompanied the Dulles Town Center Community Development Authority bonds in 1998 stated:

> "In general, the regional shopping mall and shopping center markets are highly competitive and are affected by competitive changes in geographic area, changes in the public's spending habits, population trends and traffic patterns. Key competitive factors in the industry are the quality and diversification of the tenants located in a shopping mall, advertising, name identification, location and attractiveness of facilities. Each shopping mall competes directly and indirectly with a large number of regional shopping malls and shopping centers as well as with other locally owned retail establishments.
>
> The shopping mall in the Development is currently located in a highly competitive market. Fair Oaks Mall, an approximately

> 1,400,000 square foot regional shopping mall with a similar mix of anchor stores, is located in Fairfax County, *Virginia,* approximately 15 miles south of the Development. Tysons Corner Center, an approximately 1,900,000 square foot regional shopping mall with a higher level, but overlapping grade of tenants, is located in McLean, Virginia, approximately 14 miles to the east of the Development. In addition, Tysons Galleria, an approximately 800,000 square foot regional shopping mall with a clearly upscale orientation, also located in McLean, Virginia, is approximately 14 miles to the east of the Development. <u>The ability of the DulIes Town Center Mall to compete in this competitive market is dependent upon the quality and diversification of its occupants and a variety of other factors about which no assurance can be given.</u>"

Kincora will likewise have to stand up to extensive market scrutiny and market analysis before it will be able to issue its CDA Bonds. We look forward to undertaking this process in cooperation with the County at the appropriate time.

As for the "Owner's solid balance sheet" and "deep pockets," there is no mention of any such resources being available in connection with the payment of special assessments associated with the Dulles Town Center CDA in the Limited Offering Memorandum associated with those bonds. The Limited Offering memorandum for the subject bonds provides:

> "The timely payment of the 1998 Bonds depends on the willingness and ability of the Land Owners or any subsequent land owners to pay the Special Assessments when due. Failure of the Land Owners or any subsequent land owners to pay the annual Special Assessments when due could result in the rapid, total depletion of the Reserve Fund and the Additional Reserve Account and a default in payments of the principal of, and interest on, the 1998 Bonds."

In fact, the existence of such a private guarantee of the CDA Bonds by the Owner would have voided the federal tax exemption for the Bonds.

Our rezoning application contemplates a substantial proffer package for the benefit of residents and commercial tenants alike. The broader constituency of Loudoun County is benefited by the completion of two critical CTP roads for which no County CIP funds and no VDOT funding exist. The use of a CDA is the quickest and most efficient method to provide this significant transportation infrastructure. We believe that this opportunity deserves careful and thoughtful consideration by the County – a process we look forward to in connection with the processing of our rezoning application in the fall.

The inclusion of the proposed ballpark in the CDA does represent a difference between the current concept for the CDA and that endorsed for further consideration by the County Staff in our 2007 zoning case. While we believe recent statutory changes permitting rents from such a facility to be applied to CDA Bonds is a positive change that merits serious consideration of the ballpark's inclusion, we remain willing to work with County Staff to identify other alternatives to finance the ballpark should the approach not ultimately be determined to be desireable.

Respectfully yours,

Michael W. Scott, Managing Member

Cc Members, Loudoun County Board of Supervisors
Ben Mays, Management and Financial Services