



To: CA Board of Directors

From: Phil Nelson

Subject: Formation of a Trust for Symphony Woods Development

Date: **February 13, 2013 – Updated from February 7, 2013 re: Recommendations**

Background:

- CA recently received important approvals from the County Planning Board of its Final Design Plan for Symphony Woods Park. The approvals included the Merriweather/Symphony Woods Neighborhood Concept Plan, the Merriweather/Symphony Woods implementation Plan and the Final Design Plan for the first phase of Symphony Woods Park. These approvals provide the important foundation for the development, subsequent submission, and approval of park site development plans.
- The Planning Board placed conditions on the approvals related to: (1) the preservation of existing trees, routing of pathways and grading; and (2) the need for continued coordination between CA and the Howard Hughes Corporation. This past fall, management asked the CA Board for a pause in the process so that CA could work collaboratively with Howard County and Howard Hughes and gain a better determination as to what enhancements the Howard Hughes Corporation was going to make to Merriweather Post Pavilion, which comprises ten acres in the Merriweather/Symphony Woods Neighborhood, as designated in the Downtown Columbia Plan. During the Howard County development approval process it became quite apparent that the County, Howard Hughes, and other community leaders favored what has been referred to as the “McCall Plan” as a master plan for the entire neighborhood.
- While there has been talk about developing a joint venture to include CA, Howard County and Howard Hughes, development of the joint venture may be premature.
- Representatives of the Howard County government have indicated that they would like to proceed with development of the Merriweather/Symphony Woods Neighborhood via partnership of several different entities to form a multi-party trust.
- Management’s recommendations herein are based on unanimous Board straw votes at the October 11, 2012 Meeting where the Board expressed support for the following actions:
 - Look at the possibilities of entering into a Trust.
 - Whether to continue with the plan approved by the County Planning Board or investigate other options for continuing through the County’s approval process.
 - Consider placing a CA Headquarters Building in Symphony Woods Park.

When the straw votes were taken, Board Member Cynthia Coyle was absent. Management is aware that straw votes are not Board policy, but rather express the general sentiment of voting Board members.

- **In pursuit of a strong vision for Symphony Woods, and to maintain the Columbia Association's leadership position in this project, Management would propose that CA develop its own separate trust that would be responsible for implementing a park master plan for CA-owned property in the Symphony Woods/Merriweather Post Neighborhood.**
- Management has consulted with two law firms, and the general basis for the Trust would be a 501(c)(3) IRS designated non-profit organization.

Legal Considerations:

- If the Board chooses to form a trust, all relevant state statutes, local laws, and laws of the corporation will have to be followed.
- If the Board chooses to form a trust, the Board adopted joint venture policy (copy attached) should help to guide the Board and the proposed trust in future business dealings.

Budget Considerations:

- Over the current planning period, 2010 to 2030, CA will have to invest millions of dollars in upgrading and/or building new facilities. In order to stay within budget and financial capacities, CA might have to postpone some projects beyond what CA Management and the community would like in order to keep from taking on burdensome debt totals. As a possibility of reducing the amount of potential debt, the CA Board could consider the implementation of a Trust that could ease some of the capital and operating investment for the future.
- By initiating a trust, CA could be a charter member of a future entity to take on new projects without having to shoulder all of the burden of capital financing and the later load of operational costs.
- CA would have to provide the initial seed capital for Trust start-up for the Symphony Woods project. However, depending on how the Trust is set up, one of the primary functions would be to raise funds for improvements to the park, or to draft applications for grant money. In essence, the more outside funding generated by the Trust, the less money CA would have to invest.
- In this pursuit, Management recommends that the Board consider moving capital funds proposed for improving Symphony Woods in future Capital Improvement Program years to the Trust. Currently, there is an estimated \$1.6 million in budgeted but not expended funds from previous budget years in the Symphony Woods Fund.
- In the event there are capital intensive projects being developed for Symphony Woods Park, the Board might be asked to consider issuing longer-term debt financing as the Trust will not have the capability of issuing bonds. It should be noted that debt issued by CA would be added to CA's debt total and that interest charged would be spread against the operating side of the budget.
- CA might want to explore the idea of working with Howard County to determine possibilities of utilizing the County's Revenue Authority.

- Management would emphasize that the CA Board would essentially “hold the purse strings” for the proposed Trust and, in doing so, maintain significant power over the future existence of the Trust.
- *If the Board chooses to proceed with construction of a new CA Headquarters building, CA would be responsible for financing the construction and operating costs of the proposed building.*
- *Other venues shown in the Inner Arbor Plan, with the exception of the dinner and children’s theaters, could be jointly financed through partnerships and the proposed Inner Arbor Trust. There are other sources of revenue that the Trust could consider to finance portions or all of project costs. Revenue possibilities could include: Medco Bonds (economic development), State Bond Funds, and in-kind matching for services or materials.*
- *There seems to be some confusion as to ownership and construction costs for the parking structure shown on the Inner Arbor Plan. Neither CA nor the Trust, will finance construction of any proposed parking structure.*
- *There also seems to be some confusion that the proposed Library is on CA property. The proposed library site is in fact situated on the proposed realigned South Entrance Road and is totally on County owned street right of way.*

Policy Implications:

- Based on previous staff presentations concerning financing, stabilizing revenues and other operational and capital financing topics, Management recommends the Board create a Symphony Woods Trust.
- Forming a trust would shift day-to-day decision making for constructing improvements in the park to a separate entity under an over-arching Inner Arbor conceptual master plan.
- The County has made explicitly clear that such delays would not be enforced on future developments under the Inner Arbor Plan.
- By developing a trust, CA **will not** relinquish ownership of property.
- Changes in land uses will be under the purview of the proposed trust.
- Should other agencies/entities, such as the trust, need CA land for development of other uses, CA could utilize legal instruments such as long-term leases or perpetual easements to allow uses of land without relinquishing ownership. CA could also charge annual fees for the use of land by other entities.

Options:

Options # 1—That the CA Board develops and approves a development corporation that would become the caretakers of CA owned property and who would make decisions on development of the park. This option would also designate the Inner Arbor Plan as the basis for the comprehensive development of the Symphony Woods portion of the Symphony Woods/Merriweather Post Neighborhood.

Option # 2—That the CA Board opts to do-nothing.

Recommendation(s) (Updated as of 2-13-13):

Based on the information addressed in this memo, and more specifically the straw votes taken during the October 11, 2012 Board Meeting, management makes the following recommendations:

I. Formally adopt the McCall Plan or Inner Arbor Plan as the conceptual plan that is the foundation of all future Symphony Woods planning and design.

II. Formally adopt Symphony Woods as the preferred location for the CA Office Building.

III. Formally instruct Management to establish an entity or entities to pursue implementation of the Inner Arbor Plan (the "Inner Arbor entities") under the following terms:

a. An entity will be structured to accomplish charitable and educational purposes and will apply to the IRS for qualification as a 501(c)(3) corporation, able to accept charitable donations and grants.

b. The anticipated 501(c)(3) corporation is tasked to implement the approved Inner Arbor Plan. In keeping with the easement described below, any material deviations from the Plan will require CA Board approval.

c. The anticipated 501(c)(3) corporation will be governed by a five (5) member Board, of which:

i. The CA President and CEO will be an Ex Officio voting Board Member;

ii. Two (2) Board Members will also be CA Board Members; and,

iii. Two (2) Board Members will not be CA Board Members, but will, nonetheless, have a strong record of community involvement and service.

d. If necessary, Management may form a for-profit affiliate of the anticipated 501(c)(3) corporation to carry out aspects of the Plan that counsel to CA or the anticipated 501(c)(3) corporation, or the IRS, determine do not constitute charitable or educational purposes satisfying the requirements for 501(c)(3) status.

IV. Formally authorize Management to enter into an agreement granting to the Inner Arbor entities a perpetual easement for the development and use of Symphony Woods (and such other related documents as may be required), which will obligate those entities to implement and comply with the requirements of the Inner Arbor Plan. In connection with authorization of the easement agreement, the Board is hereby requested to adopt a resolution making the following specific findings:

i. that the execution and performance of the easement agreement is taken exclusively for the promotion of the social welfare of the people of Columbia;

ii. that the easement agreement contributes to a circumstance that produces substantial and significant civic betterments and social improvements for the people of Columbia, including the development of a park and related improvements that provide artistic, cultural and educational opportunities, events and works available to the public consistent with the 2011 Downtown Columbia Master Plan; and

iii. that the easement agreement produces benefits for the people of Columbia that are necessary incidents to the accomplishment of CA's purpose to promote the social welfare of the people of Columbia.

V. Funding of the Inner Arbor entities:

a. CA will transfer to the Inner Arbor entities the existing budgeted amount for Symphony Woods of \$1.6 Million. The CA Board should recognize, however, that use of funds in this manner may constitute an operational expense rather than a capital expense.

b. CA will provide future grants in amounts allocated in future operating or capital budgets adopted by CA's Board.

c. The CA Board must approve all additional funding or financial obligations made from CA funding sources.



COLUMBIA ASSOCIATION, INC.

JOINT VENTURE PARTICIPATION POLICY

This document states the policy of the Columbia Association, Inc. ("CA") as to CA's participation in a joint venture or similar arrangement with any for-profit or private interest. For the purposes of this policy, the term "Joint Venture" is defined as any arrangement, including contractual or more formal arrangements undertaken through a limited liability company, partnership, or other entity, through which CA and another entity/(ies) jointly undertake any activity or business venture, or otherwise agree to joint ownership of any asset(s). A joint venture may include both taxable and tax-exempt activities.

I. Applicability.

This policy applies to any joint venture where CA and another entity/(ies) jointly undertake any activity or business venture, or otherwise agree to joint ownership of any asset(s). A joint venture may include both taxable and tax-exempt activities. This policy excludes investments of cash or marketable securities or other joint ownership arrangements where the primary purpose of CA's participation is investment. This policy is subject to CA's Charter and By-Laws.

II. Policy.

Before making any decision to participate in a joint venture, CA will ensure that the joint venture furthers its exempt purposes and will negotiate at arm's length contractual and other terms of participation that safeguard CA's exemption from federal income tax. It is the policy of CA that appropriate provisions be included in the terms of all joint venture arrangements covered by the policy so as to protect CA's tax-exempt status.

1. All joint venture operating agreements or similar documents shall contain a binding statement of charitable purpose that ensures, and explains how, participation in the joint venture furthers the tax-exempt purposes of CA.

2. All joint venture operating agreements or similar documents shall contain clear, binding provisions sufficient to ensure that charitable purposes are furthered by

joint venture activities and that CA does not effectively cede control of joint venture activities to for-profit interests.

A. CA may participate in a joint venture that furthers charitable purposes if it maintains majority voting control at all times, or

B. CA may participate in a joint venture that furthers charitable purposes if it maintains at all times 50 percent voting control and the joint venture operating agreement or similar documents contain adequate reserved powers to establish that CA does not effectively cede control of joint venture activities to for-profit interests.

C. CA's General Counsel or designee shall review all joint venture operating agreements or similar documents in accordance with CA's Non-Procurement Contract Policy and Procedures, prior to execution and shall, in any instance described in paragraphs 1 and 2A or 2B, above, determine the adequacy of provisions governing majority voting or applicable reserved powers after considering the effect of any other applicable governance provisions or arrangements, including, without limitation, any management agreements.

D. CA shall not participate in any joint venture covered by this policy with voting control that is not described in paragraph 2A or 2B, above, without advance approval of the Board of Directors of CA.

3. All transfers of property or existing charitable or business activity to any joint venture by CA shall be valued at fair market value, and CA shall receive fair market value consideration or appropriate credit to its capital account for such transfer.

4. Any provision of services by CA to any joint venture covered by this policy shall require the payment of fair market value consideration to CA, and shall otherwise be on arm's length terms.

III. Prohibited Activities.

All joint ventures in which CA participates shall include in their operating agreement or similar documents an express prohibition on joint venture participation in political campaign activities and political campaign contributions, including contributions to any political action committee.

IV. Board Approval.

CA shall not make any loan to any joint venture or to any other participant in any joint venture without advance approval of the Board of Directors of CA. CA shall not enter into any joint venture with an initial investment value of greater than \$25,000 without advance approval of the Board of Directors of CA.

V. Transparency

CA shall publish a list of all joint ventures in its quarterly Board Reports.

Approved by the Board of Directors: September 13, 2012