

SSTTDC PRESENTATION  
TO  
WEYMOUTH TOWN COUNCIL  
February 10, 2014

Joseph Connolly, Chairman

Jeffrey Wall

# Board of Directors

## Governing Documents

### Contracts

- Reuse Plan – approved by the three Towns
- Master Plan – approved by the three Towns
- Zoning Ordinances – approved by the three Towns
- Enabling Legislation
- Master Developer Agreement – DDA
- Parkway Agreement with the Commonwealth
- Bond Indenture

# Plain Language of the Governing Documents

- SSTTDC is authorized to:
  - Acquisition of land and Development of SWNAS
  - Consistent with Reuse Plan
  - Consistent with Tax Plan and Statutes
  - Benefit of Three Towns
  - Impose no costs on the towns for
    - Police
    - Fire
    - Water and Sewer
    - School
    - Road and highway
    - Other
  - Make Agreements in the exercise of its functions
  - All Changes to Reuse Plan, Master Plan and Zoning
    - Board of Directors
    - Three Communities
    - Timeline spelled out in the Enabling Legislation

# LNR South Shore, LLC

## Played key role in creating Governing Documents

- LNR South Shore, LLC = Starwood
  - Wrote and advocated for Master Plan, Reuse Plan, Zoning Ordinances and Enabling Legislation in each of the three communities
  - Parkway Agreement with Commonwealth of MA
    - Wrote and advocated for claw-back
  - LNR was an active participant writing of DDA
  - Starwood spent one year of due diligence studying controlling documents and expenditures prior to buying shares in LNR (April, 2013),

# LNR South Shore, LLC incentives

- Named exclusive developer of the SWNAS
- Transfer Navy Land to LNR South Shore, LLC
  - 324 acres cost = \$ 0.00
  - 557 acres to be transferred = \$12,000,000.00
    - » Additional profit sharing with Navy, none paid to date
  - Total land sales to date = \$22,500,000.00
- Reimburse for Developer Costs
  - LNR South Shore, LLC received \$9.8M for some costs of infrastructure
  - SSTTDC authorized debt for \$12.55M
  - Weymouth is being asked to assume this debt for the next 25 years at a cost of \$33,000,000

# LNR agreed to

- In exchange for the incentives, it agreed
  - To develop in accord with the Reuse Plan
  - Create jobs as part of the development
  - To pay a portion of the Parkway debt service if development is not built in a timely fashion

# Status of Development

- Fiscal Year 2011:
  - First year constructions permits requested
  - Construction begins in January, 2011
  - Permits issued:
    - » Residential units = 240
    - » Commercial Space = 8,700 sq. ft.
- Fiscal Year 2014
  - Total Permits issued through December, 2013
    - » Residential units = 629
    - » Commercial space = 55,342 square feet
- Average Residential Permits: 180 per year

# Current Status

- Remaining Residential permits in Phase I
  - » 371 residential units
- Remaining Commercial permits in Phase I
  - » 244,658 square feet.
- No plans for future progress have been submitted by Master Developer (controls future development)
  - Last plan submitted on January 28, 2013 for Corcoran Building Project IV for 72 residential units
  - Developer has voluntarily stopped construction progress
  - Results:
    - No increase in new growth for FY15 and little in FY16
    - Parkway obligations not met



# Current Status (cont'd)

- LNR South Shore, LLC
  - Has not paid over \$80,000 in water and sewer charges dating back to July, 2013
  - Failure to pay water and sewer charges:
    - Enterprise funds must remain solvent
    - Falls back to other 95 rate payers or (~\$980/yr)
  - Has not paid \$375,686 as its part of the Commonwealth Parkway clawback obligation

# Current Status (cont'd)

- LNR/Starwood inaction required SSTTDC
  - Hire a commercial real estate consultant
    - Funneled four excellent prospects for commercial purchase
    - LNR South Shore, LLC has not called them back
      - » on December 19 Mr. Barry indicated that there were competitive bids for this land
      - » LNR has not returned our consultant's calls

# Current Status (cont'd)

- LNR inaction required SSTTDC
  - To remind LNR/Starwood that it is our partner
  - Indicate that it has failed in its primary objective to develop the land
  - Reminded LNR/Starwood, in writing, that it has 13 points where SSTTDC and LNR/Starwood agreed and that those points should be enacted immediately
    - » No action

# Results of Master Developers Failure to Proceed

- Development has stalled
- Momentum lost
- Commonwealth of MA has required implementation of Parkway Assessment on Master Developer
- Results consistent with my presentation before Town's Budget Management Committee in March of 2012
- Banking community is now uncertain as to direction of project

# Solutions

- **Sewer**

- As far back as August, 2009; I participated in conversations with LNR/Starwood where SSTTDC would not be able to afford sewer connections
  - Response was clear, there was “no way” that LNR was going to pay for or contribute to a sewer solutions
- We agree with LNR/Starwood current proposal to finance sewer treatment plant at no cost to current residents

# Solutions

- **Water**

- SSTTDC has Agreement with Weymouth to provide water for Phase 1
- We have actively engaged communities to provide a permanent solution with
  - » Weymouth
  - » Joint Abington and Rockland Water Works (pipe is in the ground)
- MWRA option is viable with legislation currently being vetted at State House
  - » Widens MWRA service area
  - » Provides for attractive financing options

# Solutions

- **Parkway claw-back**
  - SSTTDC has expressed this concern since December, 2011 (first year it was calculated)
  - I raised this concern to this Council in March, 2012
  - It has been raised each year since 2011
  - Under-Secretary of Administration and Finance
    - Shares concern about impact
    - SSTTDC shared solutions with AnF who has taken the matter under consideration
    - We are not looking to shift our responsibility to the Commonwealth
  - This matter would be eliminated if LNR developed the land in accord with the Reuse and Master Plans adopted by the three Towns

# Solutions

- **Parkway – remaining phases**
  - DDA states: SSTTDC shall be the proponent of the Parkway “Except that financing the Parkway shall only be to the extent of an State funds”
  - LNR wants state funding of Parkway for \$40M to \$45M
    - » Eliminate on MBTA parking lot
    - » Build a bridge over RR tracks
    - » Move Coast Guard Buoy Station
  - BOD believes that \$6M to \$8M is needed to complete these roadways



# Solutions

- LNR proposes to eliminate **Golf Course** as stated in DDA Agreement with LNR/Starwood:
  - LNR has advertised since 2010 that the property will contain a golf course
  - Owners bought with golf course as a consideration
  - LNR should proceed forward with this aspect of the project
  - If they do not perform, then \$1M penalty for the creation and/or maintenance of open space

# Issue

- **Commercial Tax Rate:**

- Commercial tax rate is not the highest as asserted by Mr. Barry, in fact e.g., Quincy = \$31.23, Randolph = \$32.11, Framingham = \$40.92, Dedham = \$34.72
- LNR and SSTTDC agreed to this in 2011
- SSTTDC agreed to give each commercial owner a financial incentive in the form of real estate tax breaks
  - Known as TIF (Tax Increment Financing) specifically authorized in current enabling legislation approved in 2008
- LNR and SSTTDC together informed:
  - Secretary of Housing and Urban Development in 2011 of this approach
- Reaffirmed in writing in December, 2013
- Nothing has changed

# What Remains in LNR/Starwood Proposed Legislation

- LNR proposed a **change in placement of commercial zoning**
  - If it had been proposed in October, 2013
  - Time line in Enabling Legislation would have the proposal already before the three Towns for consideration
- LNR proposed to **rescind all service contracts**
  - SSTTDC believes Towns should not be exposed to liability for providing services to Southfield
- LNR proposed that Weymouth **accept SSTTDC debt service**
  - SSTTDC disagrees

# What Remains in LNR/Starwood Proposed Legislation

- LNR/Starwood proposes to **rescind Master and Reuse Plan**
  - Allows Master Developer to build any type of product at its own pace
  - Eliminate 2005 Town approved tie of commercial to residential building
    - » Needed to keep cost of services in line with tax revenue
    - » One house with one school age child in Weymouth
      - Taxes from \$400,000 home ~ \$5200
        - Cost of Education ~ \$6900
      - Need 6000 square feet of commercial space
        - Generates ~ \$12,000
          - Educational costs for home
          - Pays for other services for this one home plus 6000 square feet of commercial space
  - SSTTDC disagrees, it has not been given a chance to work

# What Remains in LNR/Starwood Proposed Legislation

- LNR proposes to **increase SSTTDC borrowing limit** to \$175M
  - NO proven need
  - Valuation:
    - Weymouth = \$5.8 billion
    - SSTTDC at full build out ~ \$1.1 billion
    - SSTTDC currently \$110M
  - Outstanding debt
    - Weymouth ~ \$72M
    - SSTTDC current \$12.55M
  - Debt Service to Valuation
    - Weymouth ~ 1.2%
    - SSTTDC at full build out ~ 1.1%
    - SSTTDC currently ~ 11.41%

# What Remains in LNR/Starwood Proposed Legislation

- LNR proposes changes in **Zoning approval process**
  - Enabling Legislation establishes three communities must agree
  - Protection afforded each community with respect to impacts
  - One voice, one outcome
    - » Recall that in discussion on proposed legislation, both Rockland and Weymouth want the commercial property
  - Clear methodology for notification and adoption of any changes in zoning
  - Insures that 3 Towns control outcome for all changes in zoning map

# What Remains in LNR/Starwood Proposed Legislation

- LNR proposes **Dual Tax Rate**
  - Could mean higher taxes for current Southfield Residents
- LNR proposes requires Board of Directors **to collect fees** “on behalf of Master Developer”
  - No oversight on fees charged
- LNR proposes **Changes** in Advisory and Board of Directors
  - SSTTDC expresses no opinion

# Part II

## **Specific Responses**



# Specific Responses

- LNR/Starwood would have one believe that there is only one salary in each of two budgets
  - CEO Budget
    - 2 FTE salaries
    - Recording Secretary for public meetings
    - Publication of legal notices
    - All non-finance consultants
    - Property Insurances
  - CFO Budget
    - 3.75 FTE salaries
    - MUNIS costs for special assessments
    - Assessors costs including valuation and IT interface
    - Special Assessment Costs (MUNICAP and Wells Fargo)
    - Insurance Bonds in accord with statute and bond indenture

# Specific Responses

- FY14 budgeted to be paid to the Towns for services:
  - Police: \$290,000
  - Fire: 290,000
  - Education: 500,000 (transportation not included)
  - Water and Sewer: \$573,378
  - Total: \$1,898,788

# Specific Responses

- **Existing \$12.55 bond issue with \$33M cost**
  - Process for Weymouth
    - Home Rule Petition to the Town to assume debt
    - Accept Debt Service by vote: 8 of 11 Councilors must agree to accept the debt service
    - Signed by Mayor
    - May be subject to Citizens Petition to overturn vote of Council
  - Results if Weymouth does not agree
    - Creates chaos as to how is debt to be repaid
    - Creates chaos as to whom should pay the debt given that the debt is tied to real estate tax revenue
    - LNR is not responsible for Water and/or Sewer

# Specific Responses

- **Debt Service**

- Each Year must be recalculated to incorporate development
  - Cost associated with the service ~\$100,000
- Each year the actual debt service payment increases:
  - Started at \$669,159 in 2011
  - High of \$1,169,781 in 2028
  - Total repayment = \$33 million

# Specific Responses

- **Appellate Tax Board**

- As recently as February 3, LNR through Mr. Glantz stated before the Rockland Board of Selectmen that the commercial property currently has no value
- SSTTDC subject to same assessing laws as the Three Towns
  - » Submitted to DOR Bureau of Assessments each year
  - » DOR certifies FINAL values
  - » Final Values receive public hearing
  - » Town then approves tax classification
  - » It is unlikely, absent a ATB ruling, that DOR will change its assessment requirements

# Specific Responses

- **“Insolvency”**
  - I can only see cash flow issues
    - » Non-performing Developer
    - » Developer does not pay real estate taxes
    - » Developer does not pay Parkway Assessment
    - » Developer does not pay Navy for land
    - » Board is prepared to take action
      - Litigation
      - Foreclose on Properties
      - Foreclose on Developer’s mortgage
    - » Current Legislation allows for these actions and to remove recalcitrant Master Developer
    - » Proposed Legislation fixes Master Developer as LNR/Starwood

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January 24, 2014

TO: Kevin Donovan  
James Wilson

FROM: Louis Rizoli

RE: Home Rule Amendment

Based on the Roadmap Regarding Bond Provisions written by Kris Moussette, Esq. you have asked me to opine as to whether the legislation proposed by Starwood complies with the provisions of Section 8 of the Home Rule Amendment (Mass. Const. amend. art. 2, as appearing in amend. art. 89). Said Section 8 provides in pertinent part:

*The General court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities, or to all towns, or to all cities and towns, or to a class of not fewer than two and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city or the town meeting of a town, with respect to a law relating to that city or town; or (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor;*

The proposed Starwood legislation as drafted on November 7, 2013 raises serious questions concerning compliance with the home rule amendment. However, it appears that it will be necessary to amend this draft so that Weymouth can assume the debt obligations on the bonds. Currently, Weymouth does not have authority to issue debt to either refund/repay/defease the Tri-Town bonds, nor does it have the authority to step into the shoes of Tri-Town and assume its obligations under the Bonds. Therefore it will be necessary to add a section to the proposed legislation which would notwithstanding Chapter 44 of the General Laws so that Weymouth can incur or assume indebtedness to refund or to pay in the ordinary course, the Tri-Town Bonds.

Now it is abundantly clear that at least those sections providing Weymouth with the statutory authority to incur debt to refinance and thereby assume bonds would fall under the Home Rule Amendment.

In Opinions of the Justices to the House of Representatives 356 Mass. 775; 250 N.E. 2d 547; (1969), the Massachusetts House of Representatives propounded by order questions to the court regarding the constitutionality of the provision of Mass. House No. 5486, a bill that provided for the financing, construction, maintenance, repair, and operation by the Massachusetts Turnpike Authority of public facilities consisting of a stadium complex, a vehicular tunnel, a toll road and an arena. The order stated that there was grave doubt as to the constitutionality of the bill under Mass. Const. amend. art.89.

The Court held at 787-788:

*We do not interpret the words 'to act in relation to cities and towns' as precluding the Legislature from action on matters of State, regional, or general concern, even though such action may have special effect upon one or more individual cities or towns. If the predominant purposes of a bill are to achieve State, regional or general objectives, we think that, as heretofore, the Legislature possesses legislative power unaffected by the restrictions in art. 89, sec. 8. On the other hand, in instances where the primary purpose of a major and severable portion of a bill, otherwise enacted for State, regional, or general purposes, is to legislate 'with respect to...[the] local government,' or 'local matters,' of a particular city or town, it may be necessary to consider whether in the particular circumstances that severable major portion complies with sec. 8 of art. 89."* (emphasis added)

In 1981 when the Legislature passed the general appropriations act for fiscal year 1982 (1981 Mass. Acts ch.351) it included a specific limitation on the distribution of local aid funds conditioned on the City of Boston maintaining certain levels of police and fire protection. The Mayor of the City of Boston sued. In Mayor of Boston & another v. Treasurer and Receiver General 384 Mass. 718; 429 N.E. 2d 691 (1981) the court held that this provision violated the Home Rule Amendment. Mass. Const. amend. art. 2, the court held at 720

*We agree that the limitation exclusively imposed on Boston was adopted in violation of the Home Rule Amendment and is invalid. We do not agree, however, that the proviso can properly be severed from the grant to Boston and Boston's funds then distributed to it free of the limitation. Moreover, we agree with the Attorney General, arguing on behalf of the defendant Treasurer and Receiver General, that if the limitation on Boston is unconstitutional, the entire allocation of \$348,000,000 in additional local aid must be struck down. We have no hesitancy in concluding, however, that the unconstitutionality of the limitation on Boston does not invalidate any other portions of the budget, which we believe the Legislature would have adopted in any event.*

The Court further held at 722-723

*A straight-forward reading of the Home Rule Amendment indicates that the restriction on legislative action imposed by that Amendment has been violated by the limitation*



*concerning police and fire protection in Boston. There are procedures described in the Home Rule Amendment by which the limitation might have been lawfully enacted. The procedure followed here is not one of them. Although 'the scope of the disability imposed on the Legislature by the [Home Rule] [A]mendment is quite narrow' (Arlington v. Board of Conciliation & Arbitration, 370 Mass. 769, 733 [1976], that disability is total and its scope is explicit. It would be ironic if so recently after careful attention has been given to preventing the budgetary process from being misused to reduce the constitutional authority of the Governor, FN7, this court should endorse a budgetary device that seriously undercuts the protections of the Home Rule Amendment.*

Thus it will be necessary for the Council and Mayor of Weymouth to approve a Home Rule petition for the proposed legislation or the Governor would be required to submit such legislation in order to be in compliance with the Home Rule Amendment.

# Specific Responses

- **Tax Revenue**

- General Laws chapter 59 (SSTDC and Towns all subject to this statute)
- Governing Date January 1 of each year
- Based upon the January 1 date,
  - » FY2015 revenue is set as of 1-1-2014
    - No development, no growth
  - » FY2016 revenue set as of 1-1-2014
    - No development plans to date
    - If one were presented tonight
      - 60 for permitting
      - LNR has taken up to 1 year to sell property under which a permit applies
      - One might predict foundations only for FY2016
    - Hence limited new growth for FY2016
  - » FY2017 revenue set as of 1-1-2015
    - Certificate of occupancy for all permitted development must be granted by 1-1-2015 for 100% capture in FY2017
- Weymouth CFO should verify this information through his staff

# Town Duties and Costs

<u>Fiscal Year</u>	<u>Values</u>	<u>Revenues</u>	<u>Expenses</u>	<u>Surplus/Deficiency</u>
2014	\$ 124,633,600	\$ 2,349,446	\$ 2,483,378	(\$133,932)
2015	\$ 136,304,209	\$ 2,707,062	\$ 2,844,716	(\$137,654)
2017	\$ 251,145,775	\$ 4,256,547	\$ 4,691,431	(\$434,884)
2019	\$ 427,454,091	\$ 6,380,220	\$ 8,973,195	(\$2,592,975)

# Specific Responses

- **Other Responsibility for the Towns**
  - 500 acres of Parks and open space
  - Turtle monitoring
  - Electricity for street lights
  - Maintain Roads
  - Maintain Infrastructure of Water and Sewer

# Specific Responses

- **Host Community Fees**

- Currently exists
  - » Paid upon development
- Not an additional source of revenue