



# City of Bowie

2614 Kenhill Drive  
Bowie, Maryland 20715

## MEMORANDUM

**TO:** City Council

**FROM:** David J. Deutsch, *[Signature]* City Manager

**SUBJECT:** Melford

**DATE:** March 1, 2007

The attached material was received from Attorney John McDonough today. The memorandum discusses the overall issue and responds to the testimony of Dr. Stephen Fuller and Dr. Anirban Basu who addressed Council last fall. The memorandum also references numerous Exhibits that support the St. John position.

Staff met this morning with Mr. McDonough in accordance with Council's direction. Notes from the discussion are attached.

It is recommended that Council review the attached information and provide comments as necessary. Mr. McDonough and staff will be present Monday night to respond to any questions Council may have.

Attachments

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**MEMORANDUM**

TO: Mayor and City Council of Bowie

THRU: David Deutsch, City Manager

FROM: John P. McDonough, Counsel for St. John Properties

DATE: February 28, 2007

RE: Justification for Residential at Melford

I have prepared this memorandum as a follow up to my correspondence of December 22, 2006 and February 5, 2007 as regards the City Council's ongoing review of what type of residential could be approved by the City at Melford. My memorandum, as I stated in my letters, does not address the issue of the Covenants per se or the legal arguments in *City of Bowie vs. St. John Properties and St. John Properties vs. the City of Bowie*.<sup>\*</sup> In fact, as you know, I am not the attorney of record for St. John Properties in that litigation. Rather, I am addressing the general public policy question facing the City Council, i.e., should there be residential at Melford? And, if yes, how many units, what type, what will their appearance be, how will they fit into an over all mixed use plan, what type of residents will they attract, what will be their impact on public facilities, and where on the property should they be located? These are the questions I intend to address with this memorandum.

**Land Used for Residential At Melford Is Not "Lost" For Employment**

I will deal first with the points addressed in my letter of December 22<sup>nd</sup> to Mayor Robinson, i.e., that the devotion of some land at Melford, (59+ acres in CSP-06002) would not eliminate that potential land for future employment development and thereby affect the

<sup>\*</sup> In one appeal the City of Bowie is asking the court to reverse the Court of Special Appeals, and to affirm the Prince George's County Circuit Court decision, *City of Bowie vs. MIE, Inc., et al*, which was adverse to St. John Properties. In the other appeal, St. John Properties is asking the court for one of two rulings (in the alternative), i.e., for the court to declare the Covenants void and unenforceable, based on the record before the court, or, in the alternative, if the court is not persuaded to void the Covenants outright that the court order a new trial, either for the reasons given by the Court of Special Appeals or for other reasons the court may determine.

amount of employment developed at Melford. As I described to you in my initial correspondence, this is simply not the case. The traffic capacity limitations of the entrance roads to Melford limit our potential development of employment to 3.2± million sq. ft., according to the studies by The Traffic Group which are available to your Staff (June, 2006 and September, 2006 Traffic Studies by The Traffic Group). Our land use proposal in CSP-06002 projects an ultimate development of 3.8± million sq. ft. **and** use of the 59± acres for residential. Our hope is by live/work, possible lower trip generations than projected (perhaps by shuttles, a point made by Dr. Fuller in his presentation to you of November 28, 2006) and other means (remember this is a projected 30 + year build out) we would be able to achieve this 3.8± million sq. ft. The residential traffic, on the other hand, is "counter flow" (i.e., the residents drive **out** in the A.M. and drive **in** in the P.M., the employees vice versa) and therefore the residential trips do not affect the employment trips allowed. Residential just allows St. John to use the existing and proposed infrastructure more efficiently. Simply put, the development of this 59± acres as residential has no adverse effect on the maximization of employment development at Melford. In fact, the reverse is true; residential helps create a "twenty-four hour" environment, a marketing necessity for today's office park development and better use of existing and proposed infrastructure. This type of development has lately been described as "Smart Growth."

The ultimate potential for employment on the 190 ± acres\* projected for employment at Melford is even greater, using even taller high rise office buildings, and more structured parking. It is close to 5± million sq. ft. Now, keep in mind, Dr. Fuller (in his presentation to the City Council on November 28, 2006) opined that between '05-'10, Prince George's County will attract 47,000 new jobs which he estimated will need about 647,000 sq. ft. of office/employment space per year. If that same projection held up over 30 years, that would be 19.4 ± million sq. ft. for all of Prince George's County. Even if you assume the Bowie market attracts a healthy 25% of the jobs and Melford attracts over 80% of **those** jobs, that means Melford might be able to develop 3.84 million sq. ft. over 30 years, based on Dr. Fuller's projections for the next 5 years. But, keep in mind Dr. Fuller pointed out that Prince George's County was negative 300,000 sq. ft. of absorption in the first nine months of 2006 and while it added space in '05 and in '04, it lost space in '03 and has been negative for the past four years. So, Dr. Fuller's projections are ambitious.

St. John's **own** projection of 3.8± million sq. ft. over the life of the project is ambitious. As I noted in my letter of February 5<sup>th</sup> to you, this would be the equivalent of building **two** New Carrollton Metro developments in the same 30 year length of time.\*\* The plain truth is that CSP-06002 provides the opportunity to build all the employment that realistically can be built at Melford **and** develop the 59± acres as residential. There is no loss of land for employment if you approve residential at Melford. There would probably be no loss of employment even if somehow greater traffic capacity were created! To suggest that there would be is to simply ignore the self-evident facts of the potential for office development at Melford.

\* The breakdown for Melford is 190 ± acres-employment-non-residential, 180 ± acres open space or land dedicated to the Maryland-National Capital Park & Planning Commission and/or City of Bowie, 3 ± acres setting for historic Melford House and 59 ± acres for residential. A total of 432 ± acres.

\*\*New Carrollton began development in the early 1970s as a project of the Shell Oil Company.

## Even So, Why Should Residential Be Located At Melford?

### The Economics of the Project Require It

Residential should be located at Melford because the economics of the project require it. What do I mean by this? As explained above, St. John has chosen a path of high intensity development, devoting over forty per cent of the land area (180 ± acres of 432 ± acres) to open space or public land. To use the remaining 59± acres (currently being used for residential in CSP-06002) for employment simply means a **less** intense development, i.e., lower buildings, less structured parking, more typically suburban development. This is, in fact, a less costly development approach for St. John. By **increasing** the intensity of employment, a path **avored** by the City Council (and the Maryland-National Capital Park & Planning Commission and the County), St. John simply cannot realistically use all of the developable land for employment (for all of the reasons explained above), therefore, **some** other use must be made of that land.

Now, while **additional** open space may be an attractive option, it would serve no particular purpose. Wetlands and streams already have extraordinary buffers,\* all requested parkland has been proposed to be dedicated and ponds were redesigned for more open space. To not develop the 59 ± acres would seriously undermine the economic underpinnings of the project. By creating a mixed use, with a neo-traditional village of upscale housing, St. John makes more efficient use of the infrastructure, (road network, sewer and water, utilities, etc.) and helps the per acre cost of development. The residential actually subsidizes the employment, which makes the rents for the employment more competitive, which, in effect, makes it possible to develop **more** employment. St. John is **not** a residential developer. It only develops commercial and industrial or office. It is using residential in this instance to make **its office park more successful!** That is the only reason they are pursuing the residential component at all!

### The Mixed Use Plan For Melford Creates A “24 Hour Environment” With A Compatible Mix of Employment, Commercial, and Residential

Another major reason for including residential (and some retail commercial, i.e., shops, restaurants) is to create a “24 Hour Environment” which enhances the marketing of the office park. This is a well established planning design with growing (if not universal) support among planners. *The Geography of Nowhere*, an excellent book by James Howard Kunstler, provides a look at the cost of clinging to old planning designs. In it he details the cost to the environment and communities in building monolithic centers. *The New Urbanism*, a book by Peter Katz, carefully details the development of the current design principles expressed in our proposal for Melford. These are the essential principles of “Smart Growth.” We would be happy to provide these texts to the City Council.

\* The normal Patuxent Management Area (PMA) set backs are 50 feet. Pursuant to Guideline 16 of the Master Plan, CSP-06002 uses a 100' natural buffer and 150' wide building and parking setback to streams. There is also a 150' buffer to the 100 year floodplain.

Compatibility with mixed use development is always an issue but the plan designed by Torti-Gallas, a national architectural and land planning firm with extensive experience in this type of development, does, in fact, create such a compatible mix. As you can note from the Illustrative Plan of CSP-06002 (Exhibit A) the higher intensity development is clustered at the "front" of the property, i.e., near the entrance roads, and on a ridge, adjoining Rt. 50 and through a series of traffic circles ends at about the location of the historic Melford House. This is also a high point of the property. The property then slopes dramatically towards the Patuxent River. Here Torti-Gallas designed a neo-traditional village centered around Melford House creating both a commercial core, with residential. The retail commercial and restaurants will serve the employment and the residential at Melford, **and** the Bowie community at large. Torti-Gallas employed a grid pattern for the village extending out to the buffers from the Patuxent River and the Maryland-National Capital Park & Planning Commission stream valley park, providing a pleasing view of the River for the residents (as well as access to the park) and a pleasing view from the high rise office buildings down to the River. The Plan also creates a more suitable setting for the Melford House than the old E-I-A Plan (Exhibit B) (which essentially placed office buildings around the historic home).

This proposed village has been designed around the unique amenity of the historic Melford House, and its adjacent cemetery. The plan offers a continuum of green space framed by dignified buildings for living and working. This green space network includes both formal and informal greens, terminating at the eastern edge in the Patuxent River Park. These park spaces and the adjacent streets are framed by building edges. The bulk of the parking is handled internal to each block with only incidental "on-street" parking exposed to the public realm. Streetscapes are enhanced with regularly spaced tree planting, "acorn" style lighting, as well as brick and granite pavers in certain areas crafted to make the most of the pedestrian experience.

An open space ellipse then creates a view from Melford House down to the river front, which is the "main street" of the neo-traditional village. This village consists of a mix of 866 dwelling units (366 single-family detached and attached units and 500 multi-family units) with a range of 80,000 sq. ft. to 170,000 sq. ft. of retail space, mainly restaurants, convenience and specialty shopping. The economic and land use purposes of this village are to help underwrite the total cost of the development, make use of all of the developable land, **and** by enhancing the market for retail and restaurants increase the amenities for the office park. Finally, by ensuring there is twenty-four hour presence in Melford the development became more attractive to potential employment users.

In essence Melford is the embodiment of Smart Growth – the right plan in the right place. It helps a growing County direct residents and employers to a location where they are better served by existing infrastructure. Moreover, it provides for a memorable and vital public realm, one that will grow to be one of the most attractive developments in the County.

Now, I realize Dr. Fuller raised the general idea of compatibility of employment with

residential in a mixed use environment at your November 28<sup>th</sup> meeting.\* Keep in mind, though, as I stated in my letter of December 22<sup>nd</sup>, Dr. Fuller does not believe this is **always** the case. Even before the City Council on November 28 he made clear it depends on the circumstances. And, of course, he testified, in 2002, as an expert witness, in favor of a mixed use MXT community of 123 ± acres with a neo-traditional village of 393 units with 20 acres of employment in the northwest quadrant of Md. Rt. 202 and Lottsford Road, i.e., Balk Hill Village.

And, in response to Councilman Turner's questions at the November 28 meeting, it was clear neither Dr. Fuller nor Dr. Basu gave more than a cursory review (if one at all) to either the CSP-06002 for Melford or the recently adopted Bowie Area Master Plan.\*\* The Maryland-National Capital Park & Planning Commission, and its professional staff, though, after an extensive review of both the Master Plan and Concept Plan recommended this very development. Actually, as I stated in my letter of December 22<sup>nd</sup>, I would be surprised if either Dr. Fuller or Dr. Basu continued to apply their very general opinions (i.e., loss of land to employment and/or incompatible uses) to Melford if they actually analyzed our development proposal. If the City Council desires we would be happy to brief Drs. Fuller and Basu on our project and allay their concerns about compatibility and loss of land for employment.

St. John, in fact, agrees with most of the generalizations expressed by Dr. Fuller and Dr. Basu at your November 28<sup>th</sup> meeting. This quadrant **is** an excellent location for a Class A office space development. That is precisely what St. John is building. But, as a developer, with over forty years experience in development and leasing of office space, with a portfolio of over 12 million sq. feet of office/employment space in Maryland, it has concluded this plan is the best means of creating that type of development promoted by Dr. Basu and Dr. Fuller. And, while both gentlemen are excellent academic economists, neither has anywhere near the actual experience of the St. John developers in actually building and leasing Class A office space or employment space generally. And, in fact, if the employment and residential mixes were to prove incompatible, the persons most damaged by this, the people taking the risks, if you will, are St. John Properties.

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\* Dr. Fuller: "They [residences] often find that having nonresidential neighbors begins to be a nuisance and they actually do begin to irritate each other. It does not create 24/7 kind of living environment. We have these wonderful images of mix use development, I love mix use development, it works great in Old Town Alexandria, it works great in sections of Bowie, it does not work so great in certain kinds of employment centers." Of course, Dr. Fuller never really explains **why** mixed use won't work at Melford.

\*\* **Councilman Todd Turner** "When you say city, just for clarification, there's a proposal by the owner of the property..."

**Dr. Steve Fuller** "I know about it. I've seen that but you have and I've studied all sorts of documents on other cases in this county that I can draw on for these comments as well."

**Councilman Todd Turner** "I'm just trying to get kind of a base knowledge for where each of you come from. Obviously I'm not questioning your qualifications. That's not it but I just want to know what information you relied on in order to come to your opinion this evening."

**Dr. Anirban Basu** "I reviewed the City Development Review Guidelines and Policies and also relevant portions of the 2003 County General Plan."

Consider another important factor. While Dr. Fuller showed only a vague familiarity with potential development in Prince George's County, virtually all of the other ongoing or future developments in the County with which Melford will compete are, in fact, mixed use developments with residential. Konterra, Karington, New Carrollton Town Center, Largo Town Center, Addison Road Town Center, the Prince George's Plaza Metro Development, Metro development around Branch Avenue Station, the Rt. 4/Dowerhouse Road development (Smith Farm/old Presidential Corporate Center) and National Harbor are **all** mixed use developments. Simply put, most of Melford's competition in the County (and, for that matter, **outside** the County) will consist of mixed use office developments with both residential and commercial creating a "twenty-four hour" environment. Konterra, which Dr. Fuller mentioned, has MXT zoning for 488 ± acres and is proposing 2500 dwelling units, three to four million sq. ft. of office and two million sq. ft. of retail. Karington, at Rt. 301 and Central Avenue, a few miles away, (with which Dr. Fuller was not familiar) is 381.5 ± acres with 1,294 dwelling units, 300,000 ± sq. ft. of retail, hotels and 700,000 sq. ft. of office. To expect St. John to compete for a significant percentage of the potential employment market for the County, but, to **not** allow them the wherewithal to compete for that market makes no sense. Not for St. John and not for the City of Bowie!

### **The Master Plan and Concept Plan Used Good Planning Principles In Locating The Residential**

In addition to Dr. Fuller's concerns about compatibility at your Session on November 28, St. John was criticized by Councilman Brady for "shoehorning" the residential on the rear of an already developing employment park.\* This is not a fair charge. The location of the residential is dictated by three factors. One, it is more environmentally friendly to locate the residential as the next level of development after the substantial buffers to the River. Second, it provides for a much more compatible setting for Melford House than the previous plans. Indeed compare the old E-I-A CDP (Exhibit B) and the Illustrative Plan in CSP-06002 (Exhibit A). The E-I-A plan hems Melford House in with office buildings. The Concept Plan in CSP-06002 creates a neo-traditional village around the old house. Which plan do you believe better serves the principles of historic preservation?

And, as to the environmental protection issues, the Concept Plan CSP-06002 has far more substantial set backs from the Patuxent River than the old E-I-A plan. The E-I-A plan actually places office buildings almost to the edge of the Riverfront (see Exhibit B). CSP-06002 (Exhibit A) sets back the initial residential significantly. Just comparing the two plans makes it self-evident that CSP-06002 is the better Plan. But, it is not just a better plan than the old E-I-A, it is a very good plan which conforms better to more modern planning principles, especially environmental protection.

\* That characterization is not accurate. First, only two users existed when St. John assumed control, i.e., the 87,500 sq. ft. Institute for Defense Analysis and the 120,560 sq. ft. Census Bureau facility. They have both been successfully incorporated into the new Melford Plan. All other St. John development was either promulgated after they developed the new Plan (i.e., the Office Building) or are transitional uses, anyway, (i.e., the "flex space" along Rt. 50). And, for the record, the residential component of National Harbor was added to that plan years after it was first proposed (in reaction to the demand for mixed use).

**Housing Near the Patuxent River Is Limited And Is Much Sought After In Prince George's County**

Currently, only two mixed use developments in Prince Georg's County propose planned, mixed use development near a river, with "walk to" restaurants and shops, Melford and National Harbor.\* The Melford Village views of the Patuxent River and its River park amenities make this a very unique location for housing in Prince George's County. Most of the land along the Patuxent River has been conserved in a stream valley park. Combine that with the ability to have "walk to shops and restaurants" ambiance and it makes for an attractive package, particularly for upscale and busy singles or couples and/or active adults and new retirees. No other development in the Bowie Vicinity can boast of a river view and access to the River via a public park and "walk to" restaurants and shops, as well as sharing the trails and open space and amenities throughout Melford, including the signature historic Melford House.

**This Setting Near the Patuxent River, The High Land Costs and Infrastructure Ensure This Will Be An Upscale and Attractive Development**

In addition to this unique setting, St. John has invested heavily in the land cost for this 59+ acres of residential with substantial open space and public land (almost 180 ± acres), an extensive road network and almost \$2 million of road improvements at Rt. 301,\*\* expensive environmental and park features (ponds, trails, etc.), and recreation facilities.\*\*\* All of this means that the "land costs" are much higher than normal for residential development in this area and, combined with its unique setting and amenities compels St. John to build an upscale and expensive development. Attached as Exhibit C are our "design book" made part of Concept Plan 06002. St. John is willing to commit to the City, the County, and the Community (through the MXT Zone process and other means) to construct an upscale and high quality community, as St. John believes it must do so to recover its investment in the land and infrastructure.

\* Obviously, National Harbor is on a somewhat greater scale. National Harbor is 540 ± acres (240 ± acres are waterfront). 2,500 dwelling units are approved for the waterfront. Over all the development is proposed to be 8 million sq. ft., with residential, 2,600 hotel rooms, office, retail, dining and entertainment.

\*\* Improvements at MD 3/MD450 and U.S. 301/Gov. Bridge Rd./Harbor Way Intersection (see CSP-06002, Condition #1 and #2).

\*\*\* Condition 25 of CSP-06002 commits St. John to contribute \$250,000 to the Green Branch Athletic Complex. Other conditions call for park dedication, construction of public recreation facilities and trails.

**Residential At Melford Is an Economic “Plus” For the City and Should Not Have An Adverse Effect on Public Facilities**

An Economic Study prepared in July, 2006 by RESI,\* projects a positive net flow of revenue to the City (and the County) with **all** aspects of the Melford development (see Exhibit D). In addition, as described above, St. John will be building substantial road improvements on Rt. 301, pay for construction of ball fields at the Green Branch Athletic Complex and provide private recreational and public trails and environmental features, such as ponds. In short, the Melford development should have no adverse impact on either County **or** City public facilities. This is especially true since the Maryland-National Capital Park & Planning Commission (with a netdonation of \$6 million by St. John) purchased the nearby Nash Woods, a unique, local environmental feature and thereby about 300 ± residential units contemplated by the various City and County Plans will not be constructed. As such, the units at Melford do not have an adverse impact on the area’s public facilities.

**Summary**

In summary, residential development at Melford is well planned, beneficial for the overall development the City and County and will not have an adverse impact on City and/or County public facilities. It will **not** deprive the City of needed employment and, in fact, will enhance St. John’s ability to develop employment at Melford. St. John believes the current plan for residential shown in CDP-06002 for the 59± acres is a good one. But, St. John is open to suggestions by the City Council as to how it can be made better. St. John hopes the Council will now appreciate the over all purpose of the residential (to enhance employment) and also appreciates the planning function of a neo-traditional village with sufficient size to encourage retail commercial and restaurants to create a mixed use, “twenty-four hour” environment, an essential element for a modern employment center..

We will be in attendance at the City Council meeting on March 5 and will be willing to elaborate on this presentation and answer any questions. Thank you for your attention to the enclosed. St. John Properties looks forward to working with the City of Bowie to cooperatively develop a signature mixed use office development at Melford of which we can all be proud.

\* Founded in 1989 at the University of Baltimore, RESI moved to Towson University in 1996. RESI completed the following projects for the State: (a) *State of the Workforce Report* - Study the history of Maryland’s workforce and current industry trends. It also made recommendations for a sustainable workforce-of-the-future for Maryland for the Governor’s Workforce Investment Board and *BRAC – Base Realignment and Closure Study* – To identify and analyze the education, training and workforce implications of BRAC and to develop a comprehensive plan to increase the number of workers who have security clearances for the Maryland Department of Business and Economic Development. It is a nationally recognized firm.

3/1/07 John McDonough, David Deutsch, Elissa Levan, Joe Meinert

- The 3.8 million sq.ft. maximum development is premised on the physical limitation of the development's access road (capacity of Melford Boulevard). More traffic cannot physically pass through this point, according to their studies. If it could, they would estimate up to 5 million sq. ft. of development could be built, using structured parking.
- "59 acres will be lost to employment". The loss of 59 acres to residential use will not diminish the property's potential for up to 3.8 million sq.ft. of development. St. John views residential as a means to an end.
- McDonough memorandum mentions taller high rise office buildings. This aspect was never presented to City Council. Council has reacted positively about the future possibility of replacing flex space with office buildings.
- All other projects in competition with this one have mixed use plans. Mixed use allows for the market to change and the sale of the residential component helps underwrite costs in the project.
- St. John Properties stated publicly several years ago and again in a meeting with staff in 2005 that whether the property developed with residential uses or not did not matter as long as the project's pro forma works. The need to do mixed use is driven by the need to compete with other projects.
- The property's location adjacent to the Patuxent River is unique, offering dramatic views to the river valley. There are no other developments with these assets on the Patuxent River or in the County, other than National Harbor.
- The 866 dwelling unit figure is a maximum number. The amount of residential at Melford is proportionately less than what is included in the other competing projects. A number lower than 866 might be considered if there is a good explanation supporting it. One specific idea might involve building employment uses rather than residential uses along Curie Drive and site any future residential further east. They are open to specific suggestions and thought the City would want to be more interested in architecture and aesthetics of the project.
- The main facts driving the mixed use proposal are: (1) the finite capacity of the entrance road and (2) the high levels of employment originally envisioned for the property will never be absorbed by the market.
- There is a focus on quality. However, very little is known about the large multi-family rental component. Having an estimate of rents or sale values would provide a comfort level about the quality of the residential uses.
- 3.8 million sq.ft. is "promised" in the Conceptual Site Plan (CSP), but 2.5 million of that is hypothetical and involves major redevelopment in Pods 2, 3 and 4 which is likely to be many years in the future, if at all. Why convert the 59 acres to residential and sell it off when that land could be used to accommodate the additional employment development promised in the CSP?
- Sherwood Manor has not opposed development on the MSTC property over the years; they have been opposed to the mixed-use and residential aspects of this CSP.