

Members of the County Council:

I will spare you my opinion on the wisdom and propriety of the proposal to award grants totaling \$43,016,785 to the developers of Towson Row. I will, however, make some suggestions, comments and questions based on my reading of the Community Funding Agreement and the Development Agreement.

What is the legal authority for the grants?

The County Council should insist that the County Attorney, preferably in a formal legal opinion, confirm that the County Council has the legal authority to approve the expenditure of County funds for the grants contemplated by the "County Funding Agreement." Although the agreement describes them as "tax credit advances" and "hotel tax advances," that language is nothing more than window dressing, in my opinion. The only relationship to tax credits and hotel taxes is that the amount of the grants is, for no reason that I can ascertain, determined by the projected amounts of certain tax credits and hotel tax payments, and the developers would forego claiming certain tax credits to which they would be entitled.

The disbursements of County funds scheduled under the agreement are grants, pure and simple. The recipient of the grants under the agreement is identified as TR Development Corporation.

The Baltimore County Council has no inherent power to make grants to private for-profit businesses on an ad hoc basis; grants of public money for private purposes must be explicitly authorized by state statutes or county ordinances. The Baltimore County Code does have provisions for economic development grants set forth in Title 10 of Article 10, which establishes the Economic Development Revolving Financing Fund.

County law specifies a process for applying for an economic development grant or loan, and requires an application conforming to the requirements of § 10-10-105 of the County Code. Was that process followed? If not, under what legal authority are these grants being made to TR Development Corporation?

There were two red flags in the agreement that caught my attention. The first is that the authority for the funding is not included in the Recitals, as customarily is done, at least in my experience. The second is that the agreement includes

representations by TR Development Corporation that it has the full power and authority to enter into the agreement, and that the agreement is valid and does not violate any of the corporation's organizational documents. The agreement contains no parallel representations on the part of the County.

In my opinion, the omissions are odd, but may not signify anything other than casual draftsmanship. In context, however, they support my opinion that the legality of the County Council's action in approving the grants must be confirmed.

Why is confirmation important? There is widespread and vehement opposition to the proposed grants. Unless the County Attorney can render a persuasive opinion that there is sound legal authority for the grants – and that the required process for approving such grants was followed - a taxpayer's suit challenging the grants is almost inevitable. A successful suit would all but guarantee that Towson Row remains nothing more than a hole in the ground for the foreseeable future.

Conversion of the sale of County-owned property into a gift.

There is another provision of the County Funding Agreement that is, well, innovative. In effect, it converts the sale of three County-owned parcels to the developers of Towson Row into what is tantamount to a gift.

The County previously has contracted to sell three County-owned parcels within the development site to the developers for a total purchase price of \$2,335,825. Under the agreement, that amount will be "reinvested" by the County in the Towson Row project upon receipt.

The "reinvestment" clause provides that the money realized from the sale of the properties will be applied to the first scheduled "tax credit advance" under the agreement. Once so applied, the "income" from the sale will reduce the total amount of the tax advances to which the County is obligated to disburse to the developers in the form of grants by the amount of the sales price of \$2,335,825. In other words, it will reduce the total amount of the grants from \$43,016,785 to \$40,680,960.

The effect is that the County realizes no money from the sale of the properties; it simply gets a reduction in the total amount of the grant funds that the County has voluntarily obligated itself to award to the developers!

As I said, I give credit to the drafter of the agreement for being creative, although I am uncertain of the benefit to the County.

In my experience, it is one of those provisions that you see in a proposed contract to which your first reaction is “you have to be kidding.” The County Council should at least be aware that the agreement foregoes the \$2,335,825 in revenue anticipated from the sale of the three properties, and converts it into a “grant” (or gift) to the developers.

Why isn't Towson Row Statutory Trust a party to the County Funding Agreement, and what protections are afforded to the County under the County Funding Agreement if TR Development Corporation goes bankrupt?

The agreements before the County Council for approval include the County Funding Agreement referenced above, and a Development Agreement. Kudos to Pamela Wood of the Baltimore Sun for obtaining copies of the documents and posting them online.

<http://www.baltimoresun.com/news/maryland/baltimore-county/bal-document-towson-row-agreement-with-baltimore-county-20171208-htmlstory.html>

The parties to the County Funding Agreement are the County and TR Development Corporation, which is named in the agreement as the “Recipient.” The agreement is signed on behalf of the Recipient by Arthur Adler, identified as the president of TR Development Corporation.

The County Funding Agreement also imposes obligations on the “Developer,” identified as Towson Row Statutory Trust. Towson Row Statutory Trust is not a party to the agreement. Mr. Adler, however, also signed the agreement on behalf of Towson Row Statutory Trust as an “authorized person,” under the following statement: “Towson Row Statutory Trust executes this Agreement to acknowledge its consent to the obligations of the Developer contained herein.”

The parties to the Development Agreement are the County and the Towson Row Statutory Trust. Towson Row Statutory Trust is identified as the owner or contract purchaser of the parcels of land to be developed as Towson Row. The agreement is signed on behalf of the Towson Row Statutory Trust by Mr. Adler as an “authorized person.” Mr. Adler is a partner with Caves Valley Partners. Neither agreement is signed by a representative of Greenberg Gibbons Commercial Corporation, which became a “co-developer” of Towson Row in May.

The almost universal rule-of-thumb is that persons or entities intended to be bound by the terms and conditions of a contract are made parties to the contract, with their respective rights and obligations set forth in the contract. Why isn't Towson Row Statutory Trust a party to the County Funding Agreement?

The County Council also should ascertain what if any protections are afforded to the County under the County Funding Agreement if TR Development Corporation goes bankrupt. In other words, what status would the future property and hotel tax revenues anticipated to "repay" the County for the tax credit and hotel tax advances have under such a bankruptcy filing?

Exactly whose interests are being protected by these grants?

According to news accounts, Greenberg Gibbons Commercial Corporation announced in May that it formed a joint venture with Caves Valley Partners to be a "co-developer" of Towson Row, and that it would bring additional investors to the project. Caves Valley Partners reportedly faltered when the costs of removing rock from the proposed site of a parking garage were greater than expected, and the project stalled.

Whose investment in Towson Row is at risk if this project doesn't get the grants, or doesn't go forward for some other reason? Or if the project fails for some reason, such as changing market or economic conditions? One would suspect that Greenberg Gibbons protected itself and its investors as much as possible in return for coming aboard. I believe that the public has the right to know whose financial interests are being protected by these grants, especially in light of the controversy around the size of the campaign contributions made by Caves Valley Partners. <http://thebaltimorepost.com/caves-valleys-campaign-contributions-pave-way-towson-gateway-project>

Where is the Fiscal Note from the County Auditor?

As of this afternoon, it still had not been posted. A proposal to award \$43M in grants with no Fiscal Note? In an ideal world – and nothing about Baltimore County government resembles an ideal world – that Fiscal Note should have been posted at least 7-10 days ago so that people attending the work session tomorrow could read it for purposes of preparing their testimony. (Not to mention that members of the Council might want to ask knowledgeable questions about it at the work session.)

Does the analysis from Sage Policy Group state that the infusion of \$43 million in County funds is necessary to make the project work?

If the entire report has been made available, I can't find it. I have read statements attributed to the Kamenetz administration that the report concludes that the \$43 million in grants are "justified" by the ultimate benefits in revenue, jobs, etc. Even assuming that is correct, it answers the wrong question. Does the report also state that the \$43 million in grants are **necessary** to make the project work? Was Sage even asked to address that question?

If not, on whose word is the County Council relying that there is a need for these grants? ***I point out that, under Section 10-10-105(c) of the County Code, an application for assistance from the Economic Development Revolving Financing Fund is evaluated on the basis of "need" and the "financial ability of the applicant," among other factors. \$43 million is a whole lot of money to be ponied up without some independent professional determination that, considering the financial resources of the applicants, that the applicants need this money to make the project work.***

I understand that this proposal was presented by the County Executive to the County Council on Dec 4th. Mr. Kamenetz must have remarkable faith in the acumen of the members of the County Council to believe that they will be ready to approve such an extraordinary undertaking by December 18th.

Good luck, and thank you for considering my suggestion, comments and questions.

David A. Plymyer
Catonsville

[Plymyer retired in 2014 as Anne Arundel County attorney, and he served for five years as an assistant state's attorney for Anne Arundel County]