



July 27, 2016

Honorable Jack Young, President
Baltimore City Council
City Hall, 4th Floor
100 N. Holliday Street
Baltimore, MD 21202

Re: Opposition to CC 16-0669, 16-0670 and 16-0671
Port Covington Tax Increment Development District, Bond Issuance & Special
Taxing District

Dear Mr. Young and Members of the City Council:

Thank you for the opportunity to submit testimony on the proposed Port Covington Tax Increment Financing Project and these three bills authorizing the creation of the Development District, Issuance of Bonds, and creation of a Special Taxing District. The ACLU of Maryland is OPPOSED to the three bills in their present form.

The ACLU of Maryland has a long record of working toward racial equity in housing, education, criminal justice, and opportunities for youth in Baltimore City. That experience informs our evaluation of the Port Covington proposal. Our evaluation is also based on careful analysis of the Tax Increment Financing Application, FastLane Application, and Memoranda of Understanding executed by the City and the master developer, Sagamore Development Company, the real estate arm of Under Armour CEO Kevin Plank. While we understand that only the legislation authorizing TIF financing incentives for the Port Covington project are before the City Council at this time, in order for the Council members and other public officials to evaluate whether the risks of the TIF financing are sufficiently justified by the benefits to the City of Baltimore and its citizens, the financing issues must be evaluated in context and informed by information gleaned from other publicly available documents.¹

Our analysis of the project and the legislation leads us to conclude that in its present form, the project is both financially and socially irresponsible. The benefits and revenues to our City and residents are speculative and overstated, while the financial costs have been understated, and the risks largely unacknowledged. In addition, from a racial equity perspective, the Port Covington project will further entrench segregation in an already hypersegregated city, and impose those costs on the predominantly African American residents and taxpayers of the City, while the benefits will largely accrue to a future workforce and population that is by design, predominantly white, affluent, and not currently residing in Baltimore City.

¹ This is especially the case given that there is no single document, supported by relevant data, that thoroughly and cogently describes the project in any detail or sets out its potential risks as well as possible benefits.

We ask the City Council to slow down the rush to approval of the TIF so that a better deal can be negotiated — or at very least — so that a more thorough and independent “due diligence” analysis can be done to give officials and taxpayers alike a better understanding of the risks and potential benefits of the project as proposed by Sagamore.

We begin our comments with an overarching analysis of the failed economic development approach that is exemplified by the Port Covington project, followed by an comments on the fiscal details and soundness of the project. We then address racial equity and other issues raised by the plans, before concluding with recommendations as to what a Port Covington project worthy of our City and of our public investment might look like.

I. The Port Covington Master Plan is an example of the trickle down economic development paradigm that has failed our City and should not be endorsed by the City Council in its present form.

‘We will build it together...’ is the Port Covington claim.

In the hope of building a stronger tax base and receiving increased tax revenues in the long distant future, the Rawlings-Blake administration has uncritically endorsed a proposal by Under Armour CEO Kevin Plank and his Sagamore Development Corporation to develop a waterfront site at public risk and expense:

- A speculative real estate venture in which the developer buys cheap, unimproved industrial land, with plans to turn around and sell development parcels to vertical developers once the land is rezoned and infrastructure is installed, retaining all the value added by the rezoning and publicly financed infrastructure;
- A brand new racially and economically segregated city within the city, a virtual gated enclave, inhabited by millennials and empty nesters making an average income of \$100,000;
- Instead of middle wage jobs for which city residents can qualify and which are the priority of city and regional workforce plans, the Port Covington project is expressly designed to attract ‘high wage employment’ as a waterfront destination for “highly educated millennials and Baby Boomer residents seeking a high quality live-work-play environment,”²
- Although Baltimore City is being asked to support the project with \$660 million in TIF financing and rezoning of scarce industrial land, the jobs created will primarily be held by residents of the suburban counties, with only 32.9% of permanent jobs expected to be held by city residents,³

² Sagamore Development Company. (2016). *Tax Increment Financing Application*. (p. 43).

³ Sagamore Development Company. (2016). *Tax Increment Financing Application*. (pp. 445, 473, 501, 527). The Local Hiring MOU is actually less ambitious than the TIF financial projection, requiring that the developer ‘strive’ to meet a goal of only 20% of on-site jobs to be held by City residents.

- A new entertainment district with low wage retail jobs (the TIF projects annual wages of only \$26,745 for retail FTEs);
- In a city that can not afford to maintain the parks it already has or to keep recreation centers open, Sagamore will use a major part of the TIF financing to build new parks designed as amenities for the future residents and office workers and to add value to the parcels Sagamore will sell for vertical development.

Moreover the vague and difficult to enforce Memoranda of Understanding signed by the developer with the City are mere tokenism in the context of the customized spot re-zoning and massive public financing requested by the developer:

- A pledge from the developer to ‘strive’ to employ an even lower number of City residents (20%) and to strive to fill only 51% of new hires with city residents;
- A pledge to comply with only the City’s usual MBE/WBE goals; and
- Exemption from the minimal standards of the City’s Inclusionary Housing law, and a promise only to try to include a reduced number (10%) of affordable housing units, affordable at 80% of AMI, far above the pay grade of retail workers and most Baltimore residents.

As it stands now, the Port Covington project is a prime example of structural inequality on a massive scale — and of the same old waterfront focused economic development approach that hasn’t worked to reverse Baltimore’s decline, and may have contributed, in fact, to the disinvestment in other neighborhoods. While “big and bold”, the vision is decidedly limited and old school trickle down economic development.

We are not the only city to experience the failure of trickle down real estate development as an economic development strategy. Thus there is new paradigm in economic development focused on *equitable* growth, making sure that tomorrow’s cities are just and inclusive ones, “meaning cities that put people first, and put equity and social justice at the center of policy and design,” as described by the Ford Foundation, the Brookings Institution, the National League of Cities and mayors from around the United States and the world:

These aren’t just nice ideas. If cities are not inclusive and built for and by everyone, they will simply fail to thrive. As we have seen in cities across the US in the 20th century, top-down urban planning, metros built for cars and not people, and exclusionary zoning practices have led to severe disinvestment and racial and economic segregation, among other injustices.⁴

What we should be building — together with Under Armour — is a 21st Century model for the nation of how an old, rust belt, racially and economically segregated city can create a brand new racially and economically diverse community and an economic engine that generates inclusive growth and shared prosperity. We should show that Baltimore has learned a hard lesson: that the existence of “two Baltimores” — one empowered,

⁴ Stefan Norgaard, *Why We Need to Build Inclusive Cities*, Ford Foundation, Equals Change Blog, June 2016, <http://www.fordfoundation.org/ideas/equals-change-blog/posts/why-we-need-to-build-just-and-inclusive-cities/>

wealthy and thriving, the other still redlined and marginalized — is no longer sustainable. The existence of “two Baltimore’s” has crushed a significant number of our fellow Baltimoreans, and undermines growth and economic mobility for us all.

II. The City Council must slow down consideration of this massive TIF so that it can make a responsible decision informed by a proper ‘due diligence’ analysis of risks, costs, and benefits.

No responsible lender would make even a modest loan without performing ‘due diligence’ yet that is precisely what the City is poised to do with this unprecedented TIF. The rush to judgment on the Port Covington TIF and Master Plan seem to be premised on the assumption that TIF bonds are like free money, that the City is making a seemingly safe investment in the expansion of Under Armour, and that there is only upside benefit and little or no down side risk to the City. These assumptions are erroneous on all three counts.

Before one even begins to think about issues like opportunity costs, it is critical for the City Council to have a realistic picture of this deal. In actuality, the City is being asked to make a loan to a highly speculative mixed use real estate venture, one that is not financially backed by Under Armour or personally guaranteed by Kevin Plank, and that is being implemented by a Limited Liability Company (LLC) that has never done a project approaching this magnitude. Public investment is frontloaded and public revenues are backloaded. Public funds are the first money in and at risk, while private investment (some of it in kind rather than in cash) constitutes only a small portion (23%) of the acquisition and land development budget.

The review conducted by TischlerBise, the independent industry experts retained by BUILD, raises a host of red flags regarding this deal structure, and is reason enough to table approval of the TIF until a more independent, and much more thorough, analysis can be performed. We respectfully maintain that it would be highly irresponsible for the City Council to authorize the TIF *before having an opportunity to review the due diligence analysis that has so far been lacking*. We have been told that, contrary to sound fiscal process, due diligence reviews by BDC and the Finance Department will take place after the fact, but before issuance of the bonds. This post-hoc review does not provide the rigor or accountability that are supposed to be part of the TIF approval process. Moreover, it inexplicably undercuts the leverage the City would otherwise have to negotiate the best possible deal for Baltimore.

Among the key elements — standard in similar deals — that are currently missing from both the Sagamore TIF application and the MuniCap review, are:

- **Lack of market studies for the office, retail and residential vertical construction on which repayment of the TIF bonds depends:** Without identified vertical developers or anchor tenants, the project is essentially a highly speculative real estate venture with no market studies or data to support the hoped for demand. Under Armour’s projections of its future employment

growth may be a safe bet, but there is little basis for certainty regarding the mixed use project that is the subject of the TIF.

- There is no indication that market studies were performed supporting the TIF, and, in particular, showing such a high level of residential demand for 14,000 units, 7,500 units or even the 5,300 units initially proposed.⁵ This is of critical importance, first to assess the market risks, the potential interest of vertical developers, the potential revenues and success of the project, and the likelihood of repayment of the bonds, and second, to offer assurance that leasing at Port Covington will not be cannibalizing the market in other neighborhoods.
- **There are no vertical developers or anchor tenants** identified for the office and retail space. Nor are there market studies to assure that the project is not cannibalizing downtown and other commercial markets. At this point, the market is speculative.
- **Instead of data derived from market studies, there is less than a page labeled “market analysis” that is devoid of data** and little more than vague generalities and catch phrases about “seven broad trends in urban economics and real estate.”⁶
- **The developer simply assumes that national demographic trends such as “re-urbanization of population and jobs” will support the marketability of 7,500-14,000 new apartment units — a scale far greater than has been evident in Baltimore to date.** From the financial projections in the TIF application, we know that Sagamore envisions virtually all of the units will be in high rise apartment buildings with mostly small, studio and one-bedroom units, renting for \$2,300 to 2,600/month to a **single narrow demographic**: highly educated individuals or couples with an average income of \$100,000/year – the millennials and empty nesters referred to earlier.⁷ Some demographers and experts in the multifamily industry have started to question whether we have already reached “peak millennial” and whether the demand by baby-boomers for urban living has been

⁵ The lack of any market study is quite surprising because they are standard in the real estate industry — and required by any lender for financing. In fact, the projections for repayment of the TIF are highly dependent on the successful build out, and leasing, of the apartment units. If demand proves to be less than anticipated, it will present a serious risk of default on the TIF bonds.

⁶ Sagamore Development Company. (2016). *Tax Increment Financing Application*. (p. 43); Sagamore Development Company. (2016). *Port Covington Master Plan Draft*. (p. 43).

⁷ By order of magnitude, there are currently only 40,000 households in Baltimore City of any size or composition with incomes between \$75,000 and \$125,000 per year (16.4%), 25,438 households in the \$75,000 to \$100,000 bracket (10.4%), and just 14,570 in the \$100,000 to \$125,000 bracket (6%).
<http://www.city-data.com/income/income-Baltimore-Maryland.html#ixzz4DBsMbKYs>.

overestimated.⁸ We do not know, and neither apparently does the developer.

- In fact, the projections for debt service and repayment of the TIF bonds are highly dependent on the successful build out, and leasing, of the apartment units. If residential demand, and thus revenues, proves to be less than anticipated, it will present a serious risk of default on the TIF bonds.
- **TischlerBise notes that the lack of a market analysis in the TIF application is unusual, and describes it as “troubling.”** They conclude that “a full-scale market analysis should be included with a TIF application, especially given the immense size of the City’s proposed investment in infrastructure to support the project’s feasibility.”⁹

- **Lack of a ‘sensitivity analysis’ to stress test key assumptions and projections under varying scenarios and market conditions:** The TIF application presents a host of projections regarding costs and revenues based on only a single, optimistic set of assumptions about market conditions and key variables. But in business, it is customary and good practice to run the same projections through a variety of variables and market conditions, including best and worst case scenarios.

- TischlerBise raises an important red flag about the lack of a sensitivity analysis in MuniCap’s analysis: “In our experience it is always in a City’s best interest to have multiple scenarios evaluated that test variations in the timing of development and even the mix of uses...we think the City should attempt to understand the impact on financing arrangements if growth were slower than expected ...this is especially important given the complicated nature of the financing and the need for a Special Tax as a bridge financing source for the TIF bonds, which would also affect the amount of Surplus Property Tax Revenue being projected in the analysis.”¹⁰
- If the analysis was performed but not disclosed, the non-disclosure of such material information raises red flags about what the analysis might have revealed.

⁸ "Have U.S. Cities Reached 'Peak Millennial?'" CityLab (March 16, 2016); "Baby Boomer Mass Migration, Fact or Fiction?" Multifamily Executive (June 8, 2016).

⁹ Memorandum from TischlerBise, Inc. to Rob English, Baltimoreans United in Leadership Development, *Analysis of Sagamore Development, LLC's TIF Application for Port Covington* (July 12, 2016), Executive Summary, p. 4.

¹⁰ *Id.*, at Executive Summary, p. 3.

- **These concerns are not just theoretical. The independent experts at TischlerBise are troubled by evidence that the project does not ‘pencil out,’ because the amount of TIF subsidy for non-revenue producing amenities is too rich.**
 - Most TIFs are structured so that the revenue “increment” will always cover debt service, with a provision for a Special Tax as a backstop in the event that revenues are insufficient for a limited period of time to prevent default. As TischlerBise points out, it is cause for concern that in this case the **Special Tax payments are not a backstop but the planned source of debt service for nearly 20 years before the project breaks even and begins to generate revenue.**
 - **The fact that the public investments are frontloaded while private investment is backloaded heightens concerns about feasibility and the risk of default.** Private investment in office, retail, and residential uses that generate tax revenues are not scheduled to come until *after* massive spending on park and open space amenities has already occurred (amenities that will be deeded to the City to maintain but that are not taxable). This means that it is largely public, not private, funds at risk while the market for the project is being discovered. It also means that the City could once again be stuck with expensive infrastructure for a Port Covington plan that does not materialize. TischlerBise recommends that the deal be restructured to guard against this by pushing the larger infrastructure improvements down the line, and moving up the private development.¹¹
- **There are serious questions as whether the “But For” test has been met.** The ‘But For’ test requires not only evidence that the project is infeasible without public subsidy, but evidence that it will be feasible with that public assistance. As to the first part of the test, the narrative discussion of the quantitative “but-for” test does not show that the project is not financially feasible absent the TIF. The TischlerBise findings also raise key questions as to whether the project, as currently planned, is feasible even with the massive public incentives. This is due in part to the subsidy for parks and open space amenities.¹²
- **The TIF application appears to overstate revenues and understate costs, requiring a more thorough and independent analysis:**
 - **The revenue estimates in the TIF are overstated and extremely misleading in that they have not been discounted to present value.** Sagamore and the City administration have touted the revenues projected

¹¹ *Id.*

¹² Based on our review of the line items in the TIF application, we calculate that about \$150 million of the \$535 million in TIF financed land development is budgeted for these open space amenities, rather than traditional infrastructure like roads, sewer, water, etc. This is more than 27% of the total.

to accrue to the City net of debt service and increased operating costs — \$1.734 billion or an average of \$40.34 million per year. But these revenues will accrue over a 41 year period, with most of the revenues backloaded to the years after 2036. Because a dollar today is worth more than a dollar in the future, in determining benefits economists look at the present value of those dollars, not the nominal value in current dollars, especially given the long-term horizon of this project. In fact, hidden within the TIF, is a figure for the value of the revenues to the City **discounted to present value: \$227,388,642.**¹³ This much less impressive figure is generally not mentioned by either Sagamore or Administration officials, including in their oral testimony at the Planning Commission.

- **BUILD’s experts, TischlerBise, also identified a number of areas where they believe costs to the City are underestimated, further reducing the net benefit to the City.** These include operating costs to various city departments and capital expenditures omitted from the TIF cost projections. TischlerBise also opined that MuniCap had used an inappropriate methodology in their fiscal analysis, and that this “fails to truly reflect how new development impacts the provision of facilities and associated operating costs.”¹⁴
- **Questions about MuniCap’s role requires that the City Council table the TIF until it can obtain an objective and independent financial analysis.** The fact that MuniCap is part of a public financing industry that promotes TIFs inherently raises concerns about potential conflicts of interest and the firm’s ability to objectively critique a TIF deal. But like many, we were surprised to learn of the multiple, and potentially conflicting, roles that MuniCap plays in connection with a single project. This includes the Harbor Point TIF, already troubled by cost overruns, where MuniCap describes its involvement as follows:

“Prior to the issuance of bonds, MuniCap, Inc. served as the financial consultant to the City, preparing the TIF plan of finance and feasibility analysis in conjunction with the developer. Once bonds were issued, MuniCap, Inc. transitioned into the role of administrator to the Harbor Point Development and Special Taxing Districts.”¹⁵

Thus, it is in MuniCap’s business interests that the TIF move forward. In this regard, their interests are more closely aligned with those of Sagamore

¹³ *Tax Increment Financing Application*, supra, Schedule XVII.

¹⁴ Memorandum from TischlerBise, Inc. to Rob English, Baltimoreans United in Leadership Development, *Analysis of Sagamore Development, LLC’s TIF Application for Port Covington* (July 12, 2016), Executive Summary, p. 2.

¹⁵ MuniCap, Inc., Case Studies, Harbor Point Project, Baltimore, Maryland. <http://www.municap.com/case-study-harbor-point-md.htm>.

than the citizens of Baltimore. As with the Harbor Point project, in the Port Covington TIF application it is difficult to tell what was prepared by Sagamore, what was prepared by MuniCap working “in conjunction with the developer,” and what part was prepared by MuniCap ostensibly scrutinizing the deal on behalf of the City and the public’s interest. The City Council’s duty to the taxpayers of Baltimore and public require it obtain a ‘second opinion.’ The City Council should also prohibit any firm that plays a role in evaluating the TIF from subsequently seeking a contract (from the City or the developer) to administer any aspect of the development should a TIF be approved.

- **Given the planned use of the initial bond proceeds, there is no reason to rush approval of the TIF without first completing the City’s due diligence.**

One of the puzzling aspects of the City’s rush to approve the Port Covington TIF and Master Plan is the lack of any apparent sound reason for doing so. Initially, it was claimed that TIF approval was needed as evidence of a local match for the federal FastLane transportation grant. But the denial of that application removes that factor. Slowing down the TIF approval process to allow for the appropriate due diligence will not delay construction of the Under Armour expansion which Sagamore has said does not depend on TIF financing. Nor will it delay Sagamore’s mixed use project.

According to the TIF application, the first series of bonds scheduled to be issued in June of 2017 will *not* be used to pay for installation of roadways, sidewalks, water and sewer utilities, stormwater management or similar infrastructure needed for construction to proceed. The only land development costs slated to be covered by the first series of bonds are two new public open space areas in Port Covington and an “archeological pier” at a cost of \$49 million without any other infrastructure to facilitate the public use of these amenities.¹⁶

III. Racial and social equity issues

Increased Segregation: The residential component of Port Covington will not only perpetuate Baltimore’s racial segregation, but recreate it in an uninhabited area where it does not currently exist.

The dominant element of the Port Covington Plan is the residential component, originally projected in the TIF at 5,329 units, then ballooning to 7,500 units, and finally orally announced by Sagamore’s representative at the Master Plan hearing to have grown further to a request for zoning that will allow 14,000 units. At even the lowest number, this is the massive building of a city within the city. The bulk of the 7,500 or 14,000

¹⁶ Sagamore Development Company. (2016). *Tax Increment Financing Application*. (p. 150). BUILD’s expert, TischlerBise, has termed these “unconventional” and questioned whether they are appropriate uses of TIF bonds; Memorandum from TischlerBise, Inc. to Rob English, Baltimoreans United in Leadership Development, *Analysis of Sagamore Development, LLC’s TIF Application for Port Covington* (July 12, 2016), Executive Summary, p. 2. (The balance of the \$64 million in Series A Phase 1 bonds will cover fees, capitalized interest, and a reserve).

residential units will be in massive apartment skyscrapers abutting I-95, an extreme density that exceeds not only existing zoning categories, but also the proposed new zoning code, Transform Baltimore. As a result, the Master Plan contemplates that the City will amend Transform Baltimore — upzoning the site to eliminate all height restrictions to fit this developer’s vision.

This is hardly a blueprint for a new community that is inclusive by race/ethnicity, income, familial status, ability, or stage of life. To the contrary, by design it will be an exclusive enclave with apartment towers consisting of 900 square foot studio and one-bedroom units with rents requiring an income on the order of \$100,000 per year. Human scaled residential buildings, of the type that would be most attractive to families with children (missing from a previous draft), we are now told will all be located in the West End, across arterial Hanover Street from the core of Port Covington and the new amenities. This segregation by housing type will result in segregation by familial status as well as income and race. Due to its design and isolated geography, Port Covington will be a virtual gated community for affluent whites without children, built with massive public subsidy.

According to the TIF narrative, the target population that Port Covington is “highly educated millennials and Baby Boomer residents seeking a high quality live-work-play environment.”¹⁷ This so-called “Creative Class” skews white with African Americans comprising only 8.5% of this national pool of young highly educated workers that Under Armour and Sagamore seek.¹⁸ Certainly there are black Baltimore City residents who are highly educated and affluent, but locally, as well as nationally, this market segment is disproportionately white. To our knowledge, Under Armour has not publicly released data on the demographics of its current headquarters employees. But only 13.7% of black Baltimore City residents have a Bachelor’s degree as contrasted with 49% of whites, and only 4.1% of black Baltimoreans are in the targeted \$100,000 to \$125,000 household income bracket, less than half the share of whites in that target demographic (9.4%).¹⁹

In planning this new ‘city within a city,’ the City, State and developer should be conducting Fair Housing, Environmental Justice Review, and Title VI reviews to guide the planning and to assure the engagement of low-income and minority populations. The Administration has been fast tracking the Port Covington project without so much as an analysis of its impact on segregation and racial equity. However, as a recipient of federal

¹⁷ Sagamore Development Company. (2016). *Tax Increment Financing Application*. (p. 43).

¹⁸ Richard Florida, *The Racial Divide in the Creative Economy*, CityLab (May 9, 2016) <http://www.citylab.com/work/2016/05/creative-class-race-black-white-divide/481749/> The Baltimore region actually does better than most metros, ranking fifth nationally for the share of black workers employed in creative occupations, 34.2%. This suggests that we can and should redirect our investments to boosting the human capital of our young people, growing our own creative class rather than trying to attract them away from other cities. Florida suggests that doing so “may help to combat inequality and segregation.”

¹⁹ Alan Berube and Brad McDearman, “Good fortune, dire poverty, and inequality in Baltimore: An American story” Brookings Institution (May 2015) (analyzing 2013 American Community Survey); City-Data, “*Baltimore Income, Earnings, and Wages*” <http://www.city-data.com/income/income-Baltimore-Maryland.html#ixzz4DBsMbKYs>.

financial assistance (for transportation, housing and community development, public health, education, etc.), Title VI of the U.S. Civil Rights Act of 1964 requires the City and its relevant departments to consider whether its practices (including those not federally funded) have an unjustified adverse impact on one or more racial groups, exclude certain racial groups, or subject those groups to segregation, and if so, to consider less discriminatory alternatives. In addition, as a recipient of HUD and other federal funds related to housing and urban development, the City has an affirmative duty not only to refrain from discrimination but to further the integrative purposes of the Fair Housing Act.

The City has failed to fulfill its obligations under federal civil rights laws with regard to Port Covington, Harbor Point, Harbor East and other real estate developments that use TIFs and other public funds to subsidize high end private development – affordable primarily to white households – in areas that are either uninhabited, already predominantly white, or adjacent to white institutions.¹ Our review of the Master Plan and the other Port Covington planning documents so far made available (the TIF application, the MOU's, and the federal FastLane application) reveals a lack of compliance with the substantive or planning requirements of Title VI and Title VIII that are triggered when projects are applying for federal funds, or when federal grantees, such as the City and State, are involved.

Baltimore does not need another segregated enclave; it needs to break down the hyper-segregation that has been holding it back from reaching its potential as a global port city. And the City's fair housing and Title VI obligations require it to create inclusive, integrated communities — and do not permit the City to provide financing and zoning approvals to create another segregated white enclave. It is one thing for a City to struggle with the legacy of structural segregation in its neighborhoods — it is quite another for it to create an entirely new segregated city within the city.

Thus, apart from being problematic as a matter of policy, as described more fully in the testimony of the Public Justice Center, with which we have joined, enactment of the TIF as proposed may violate the Fair Housing Act (FHA) and Title VI of the Civil Rights Act of 1964.

Affordable Housing: To ensure that Port Covington becomes a vibrant, diverse community, as a condition of the TIF, the City Council should require the Port Covington project to not only meet, but exceed the minimum requirements of the City's Inclusionary Housing ordinance.

At first public hearing on the Port Covington Master Plan, Housing Commissioner Paul Graziano testified that he had already granted a waiver of the City's Inclusionary Housing ordinance, exempting Sagamore from compliance. The City subsequently executed an MOU that requires much less — only 10% of affordable units to be affordable at 80% of AMI. This action was contrary to law and is simply unacceptable in the face of so massive a public investment in the project, including the value added by rezoning the property for extraordinary density. The City Council should amend the TIF bills to impose affordable housing requirements. To pay for the affordable housing, it should direct 20% of each tranche of bonds to be used to finance the affordable housing,

along with a portion of the value added by the rezoning and publicly financed infrastructure improvements (20% of the net proceeds of the sale of development parcels).

In the first instance, it must be recognized that the Inclusionary Housing law establishes a city policy of inclusive development, and sets a floor, not a ceiling, for inclusion of affordable units. Regardless of the existence or terms of that law, where the City is offering financing, rezoning, or other assistance to a developer, it retains full power to set a higher bar as a term or *quid pro quo* of providing the assistance. A TIF is not an entitlement, it is supposed to be a negotiated arrangement to serve public purposes.

That said, the action of the Commissioner was contrary to both the public policy underlying the Inclusionary Housing law and its express terms:

- Where the City is providing a “major public subsidy”, re-zoning, or significant land use authorization, these public actions create value for the development, and thus trigger requirements to include either 20% (major public subsidy) or 10% (rezoning, land use authorization) affordable units;
- The law specifically deems a TIF to be a “major public subsidy”, which requires 20% affordable units; and
- A major re-zoning requires 10% affordable units.

In various public statements, Sagamore has stated that the City law required an exemption because there is no money in the Cost Offset Fund to make the developer whole. But nowhere in the City Inclusionary Housing ordinance or regulations does it say that the source of additional funds to fill this gap are limited to the Offset Fund or any other particular source. Sagamore’s statements are simply wrong. Although the Council has the prerogative to impose affordable housing requirements regardless of the specific provisions of the Inclusionary Housing law, it is worth walking through the law to correct the misleading statements that have been made and to show why the Housing Commissioner’s decision to grant an exemption was contrary to law.

As a first step, the City IH law and regulations require the Housing Commissioner to consider “all aspects of the project” and “the total amount of public subsidy and other incentives provided to the project” and to determine whether the major public subsidy is sufficient to offset fully the financial impact to the developer of providing 20% affordable units (IH §2.5). In addition, in the case of a re-zoning, the City inclusionary housing law requires the Commissioner to consider whether to provide an additional density bonus of 20% to off-set the cost of providing affordable units.²⁰ The Commissioner is required to make a finding that the project would not be economically

²⁰ Subsequent to the waiver, Sagamore announced at a Planning Commission hearing on the Master Plan that it was seeking a far greater increase in density to permit it to build 14,000 units — a revelation that appeared to take even the Housing Commissioner by surprise. This new zoning category would permit unlimited height and density, exclusively for Port Covington. The value generated by this additional density was not considered as an offset in the Commissioner’s decision to exempt Port Covington from the City’s Inclusionary Housing law.

feasible if it provided the number of affordable units required even if the project received a density bonus. (IH Reg. § 2.5(b)). The Commissioner made no such determination of feasibility before granting the waiver.

In this case, it appears that the analysis was performed by Sagamore and provided to the Housing Commissioner.²¹ Several aspects of Sagamore's analysis failed to follow the law.

- At the first stage, the analysis relied on by the Housing Commissioner failed to consider the value to the developer of both the major re-zoning and the \$660 million TIF subsidy.
- The analysis made no determination as to whether the major public subsidy itself (i.e. the TIF) is sufficient or insufficient to offset the financial impact of providing the affordable housing, and, if insufficient, the amount of the gap.
- Had this been considered there may not have been a gap, or it would have been small, in light of the extraordinary amount of the TIF subsidy, plus the substantial value bestowed on the developer by the rezoning and other public subsidies.
- Instead, the analysis merely calculated that the cost of providing 20% affordable units in compliance with the law and considered that full amount to be required to make the developer 'whole.'

The analysis provided to the Housing Commissioner by Sagamore also erred at the next step. If the TIF, other subsidies, and rezoning are found to be insufficient, the Housing Commissioner is then required to determine whether the City can provide additional funding to fill the gap and off-set the financial impact of providing the affordable units.

- The Commissioner's waiver analysis did not include any consideration of whether other funds were available to close the gap. In fact, other funds are available, as indicated by the Commissioner during his Planning Commission testimony when he referred to the use of Housing Choice Vouchers (presumably to provide deep rent subsidies to households with incomes at or below 30% of AMI). In addition, HABC has development funds that it can use flexibly to subsidize the development of units for very low-income households.

The Sagamore analysis also erred at the 3rd stage of the analysis, at which the cost offsets intended to fill the gap are capped at certain amounts ("investment thresholds") set out in the law.

- Because the analysis had already erroneously failed to consider the value of the TIF and rezoning, it assumed that none of the TIF (or major public subsidy), or upzoning, would defray the cost of producing affordable units, and the calculation

²¹ The Sagamore employee who performed the analysis, Michael Pokorney, was until recently employed by the Housing Department where he was the sole person responsible for implementation of the City's IH law. His position does not appear to have been filled. The contact person noted on the letter from Housing Commissioner Graziano to Mr. Pokorney granting the exemption is actually an employee of the HABC Housing Choice Voucher program.

of the gap was greatly inflated.²² Thus, the needed cost-offsets were determined to exceed the cap or ‘investment thresholds.’

- It also artificially inflated the gap by basing it on the calculation of a lifetime (30 year) rent subsidy for all of the affordable units, at a cost of \$184 million overall, instead of capitalizing a write down. Moreover, the analysis ignored the availability of housing vouchers to provide rent subsidies for the lowest income tiers.
- As a result, the Commissioner erroneously concluded that the “Inclusionary Housing requirements for this project exceed the allowed threshold amounts...and the project is therefore exempt.”

The MOU falls far short of compliance with the City inclusionary housing law despite the project receiving both the major public subsidy in the unprecedented amount of \$660 million, and in addition, the substantial benefit of upzoning that will greatly enhance the value of the property. The MOU entered into by the City and the developer in lieu of compliance with the City inclusionary housing law is vague and contingent on receiving state LIHTC funding and only requires 10% of the units to be affordable to households at or below 80% AMI, with no provision for households at lower income tiers required by the City inclusionary housing law. It does not require the developer to provide affordable units in the event it is not able to obtain competitive 9% LIHTC subsidies. To the extent it receives those subsidies, LIHTC units will not be built in other localities – thus, there is no increase in the supply of affordable housing.

The City Council should replace the token affordable housing requirements of the MOU with a real commitment to diverse housing options and an inclusive community. In return for the massive public benefits requested by Sagamore, it is reasonable to require that at least 25% of the units in the Port Covington Development District be affordable to households at 80% of AMI, and that a portion of those units be affordable at lower income levels: 30% should be affordable to poor households at or below 30% of AMI and an additional 25% should be affordable to households with incomes up to 50% of AMI. It is also important to require that the affordable units be integrated with and equivalent to market rate units, requirements for a range of bedroom sizes in both affordable and market rate units to accommodate families with children and not just studios/1-BR units, and affirmative fair housing marketing requirements.

The TIF bond proceeds are an appropriate source of funding for the affordable housing requirements,²³ augmented by a recapture of a portion of the value, at the time that Sagamore sells land parcels for vertical development, created by publicly financed infrastructure and rezoning²⁴ When the public is asked to extend \$660 million in TIF

²² It also artificially inflated the gap by basing it on calculation a lifetime (30 year) rent subsidy for all of the affordable units, at a cost of \$184 m. overall, instead of the capital cost to build the units.

²³ Affordable housing is an eligible use of TIF bonds under the City’s TIF enabling legislation, Art. II, § 62 (c)(6)(iv)

²⁴ At this point most of the value in the land will have been created by the public action — through upzoning of land purchased as cheap industrial land, and by public financing of most of the costs of infrastructure improvements. On the land use side alone, the upzoning and repeal of the Urban Renewal plan and existing PUD will allow extraordinarily high levels of density and value added. For example, the

financing, additional subsidies and tax credits of over \$700 million, and a lucrative rezoning of industrial land for more profitable uses, nothing more is required to make the developer whole. It is reasonable to expect that 20% of the TIF bonds and 20% of the net revenues from land sales will be used to meet the affordable housing requirements before TIF bonds are used for discretionary and expensive amenities like an archeological pier that in most cities would be paid for by the developer.

Parks and Open Space: Why is a large share of the TIF being used to build park amenities for the benefit of the developer?

The Master Plan proposes 41 acres of parks and open space (Master Plan, p. 51). We calculated that more than \$140 million of the TIF was budgeted to be used for parks, green space, and related amenities like the ‘archeological pier’ rather than typical infrastructure like streets and sewers. The BDC’s revised comments on CC 16-0670 peg the figure even higher, at \$160,915,000 for parks, piers and plazas — a startling 24% of the total \$660 million TIF and 30% of the \$535 TIF infrastructure financing. Most of this \$161 million is spending on luxury amenities benefiting the marketability of the project itself that will neither generate taxes nor benefit to the general public.²⁵ TischlerBise notes that some of these amenities go above and beyond what many other developments in the region and nationally would include in a request for TIF financing.²⁶

According to the TIF application, the first series of bonds scheduled to release in June of 2017 will cover \$49 million of public improvement costs for two new open space areas in Port Covington and an archeological pier.²⁷ The costs financed by the TIF bonds for these three projects is more than three times greater than the city’s current capital allocations for all of its parks and recreation facilities.²⁸ While these facilities will no doubt be pleasant amenities for those who will “live, work, and play” at Port Covington, the cost/benefit calculation for residents of the City as a whole is much less certain.

The parks will be turned over to the City to maintain these expensive amenities, but because they will be city-owned, Sagamore and the vertical developers will pay no property tax on the acreage.²⁹ Both the Master Plan and TIF application are silent as to

amendment to Transform Baltimore will eliminate any height restriction on residential properties in the north central portion of the site where the scale and massing section of the Master Plan shows towering skyscrapers where residential uses are not even currently permitted.

²⁵ Based on our review of the line items in the TIF application, we calculate that more than \$140 million of the \$535 million in TIF financed land development is budgeted for these open space amenities, rather than traditional infrastructure like roads, sewer, water, etc. This is more than 27% of the total.

²⁶ Memorandum from TischlerBise, Inc. to Rob English, Baltimoreans United in Leadership Development, *Analysis of Sagamore Development, LLC’s TIF Application for Port Covington* (July 12, 2016), Executive Summary, p. 3.

²⁷ Sagamore Development Company. (2016). *Tax Increment Financing Application*. (p. 150).

²⁸ City of Baltimore. *FY 2016 Summary of the Adopted Budget*. (pp. 224, 228). The amount of public improvement costs financed by the TIF bonds also exceeds the City’s current operating budget for park maintenance, recreational facilities, and events.

²⁹ Sagamore Development Company. (2016). *Tax Increment Financing Application*. (pp. 464-65).

who will be responsible for maintaining the parks and open space on an on-going basis, but seem to assume the City will be responsible.

In the face of a declining budget, the City's Department of Parks and Recreation has struggled over the past decade or more to maintain the park and recreation facilities it already has in its inventory across the city. It has had to close recreation centers badly needed by Baltimore's youth, and turned parklands like Lake Roland and Ft. Smallwood over to neighboring counties to operate.

The construction and maintenance of these new parks was not contemplated as a priority for the City. As noted in the Master Plan, these new parks are not included in the Parks Master Plan and would require amendments to that plan. (Master Plan, p. 51). It is likely these spaces will require a high degree of maintenance in light of their surrounding high end uses. We are concerned this is not affordable for the City and will divert resources from neighborhoods with greater needs. Instead, these parks and green spaces will primarily serve as amenities that enhance the value of the Under Armour properties and those of the owners of the office space, apartments, and retail uses and their tenants. The City Council should, therefore, retain ownership of the green space, paying taxes on it and maintaining it. In consideration for the fact that public financing will cover 77% of the land development costs, including the parks and other green spaces, these spaces should remain open to the general public.

A more fundamental question exists as to why such a substantial portion of the TIF (\$161 million) should be used to build park amenities when uses of equal (or arguably greater) public purpose are currently left out of the budget and receive no TIF proceeds? This includes affordable housing — a legal requirement — as well as civic uses such as a school and fire station. The City Council should require the developer to contribute most of the cost to build the open space amenities, and/or, seek funding from alternate sources such as Program Open Space.

Jobs and Job Access: The City will be subsidizing Port Covington, but at best only 32.9% of jobs are projected to be held by City residents.

The primary selling point for the Port Covington TIF is jobs. Sagamore projects approximately 25,000 permanent jobs will be housed at Port Covington, a considerable number to be sure. But as TischlerBise points out, without a market study we do not know how many of these jobs are likely to represent a net gain as opposed to jobs relocating to Port Covington from other areas of the City.³⁰ More fundamentally, in all of its public relations and testimony at the Planning Commission Sagamore neglects to mention a key fact: the TIF projects that only 32.9% of these jobs will be held by Baltimore City residents, and the local hiring MOU commits Sagamore only to “strive” to reach a benchmark of 20% of jobs held by City residents. Moreover, an undisclosed share of the jobs held by City residents will be in lower paying retail service jobs (projected average FTE annual wage of \$26, 725) as opposed to family supporting middle

³⁰ Memorandum from TischlerBise, Inc. to Rob English, Baltimoreans United in Leadership Development, *Analysis of Sagamore Development, LLC's TIF Application for Port Covington* (July 12, 2016), Executive Summary, pp. 3-4.

wage jobs. Without stronger local hiring requirements, the City and its residents will be incurring the risks and costs of the Port Covington TIF and project, yet suburban residents stand to be the prime beneficiary of the job gains.

The isolated location of the Port Covington site also makes access to jobs at Port Covington difficult for City residents. The (unsuccessful) FastLane application submitted by the State and City to the federal Department of Transportation cites the employment needs of West Baltimore residents in making its case for \$76 million to improve access from I-95 to/from Port Covington.³¹ However, the Master Plan indicates that the I-95 interchange improvements that are the gist of the “FastLane Phase I” application are designed to facilitate access to Port Covington from the south, i.e. Anne Arundel and Howard counties, and the DC metro area, (Master Plan, p. 50), not from other parts of the City.

We see nothing in the Master Plan that addresses connectivity to West Baltimore, the part of the City and its people most in need of better job access. Moreover, it appears that whatever transit improvements are made will have to be paid for out of unidentified public sources, uses that could place Port Covington in competition with disinvested parts of the City, or connectivity to other job centers of the region. (Master Plan, p. 50):

“Separate coordination will be required between BCDOT and MTA regarding proposed infrastructure improvements to MTA transit facilities within the development. Separate funding mechanisms will be utilized in order to implement these proposed improvements.”

Schools and Education Funding: Loss of State Education Aid and the Cost of School Facilities

The vision of a healthy and prosperous community must include a plan for education. The development must transcend the ideals and policies of the past, which are reflected in Baltimore’s current racially – and economically – isolated schools. We know based on research and case studies, the best outcomes for students — wealthy and poor, white and black — are achieved in communities and schools that are racially and economically diverse.

Surprisingly, schools seem to be an after thought in the Port Covington Master Plan and proposal. While the Master Plan is silent on the number of children expected to reside at Port Covington if fully built out, the TIF application estimates that the City and the Baltimore City Public School System will need to provide some 884 new children with education services.³²

The developers seemed to assume that any children living on the site would be absorbed by schools in neighboring communities, without looking at enrollment projections for those schools or consulting with BCPSS (Master Plan p. 40-41), adding a school site only

³¹ Maryland Transportation Authority. (2016). *FastLane Application*.

³² Sagamore Development Company. (2016). *Tax Increment Financing Application*. (p. 56).

at the prodding of Planning staff.³³ (We question whether the air quality at that site, in the West End near the intersection of I-95 and Hanover Street, makes it appropriate for schoolchildren).

Planning is essential to have a positive impact on current area schools – are additions at existing neighborhood schools the best solution? Will a new school be required? How can any overcrowding in nearby schools be addressed through a new school building or rezoning should any of those alternatives be required.

The developers should be required to work with City Schools to put forward a plan that furthers racial and socioeconomic integration that will benefit the students in the new development as well as students in nearby school zones. Should the school system determine that a new school is needed to serve the influx of students, developers should be required also to provide a portion of their TIF bond proceeds to fund construction of a new traditional school in the area. The same requirement for a plan for racial and socioeconomic integration in the new school should be required.

In addition, we have serious concerns about the effect of the massive Port Covington TIF on State education aid to City Schools. If the development comes to fruition, it will increase the City's wealth, leading to decreases in State education aid. But where the State sees the City's increasing wealth as a reflection of its ability to increase local education aid, almost all of the taxes generated from the Port Covington development will go to cover the cost of TIF bonds. Over the last two years, the ACLU and allies have fought hard to restore over \$20 million in state education cuts, a significant portion of which was due to an increase in the City's wealth, in both income and property. In the first 10 years alone, Port Covington could cost the school system over \$14 million in State education aid.

It is true that House Appropriations Committee Chair Del. Maggie McIntosh helped to put in place a temporary measure to hold the city harmless to decreases in State education aid due to TIF-associated property value increases. It is also true that consultants are currently reviewing the State's education funding formula, and have been directed by the legislature to look at the impact of economic development financing on low-wealth jurisdictions like the city, and propose potential solutions. But, the developers must agree to a binding "hold harmless" agreement to make up any potential loss in State education aid as a result of Port Covington's increased property wealth should a permanent solution not pass at the State level in future years.

IV. What would a Master Plan worthy of our investment look like? Equitable Growth and Shared Prosperity

As the events of April 2015 demonstrated, Baltimore will continue to suffer decline and further instability unless we shift our priority from public investment in private real estate deals to investments in:

³³ Alternatively, the developers may have assumed children would attend private, parochial or charter schools, as suggested by one news report.

- the human capital of our people; and
- improvements in their quality of life and upward mobility.

The Port Covington project could be designed as this kind of investment of our \$660 million. But it is crystal clear that it was not.

The ACLU of Maryland calls on the Planning Commission to recommend that the Port Covington TIF legislation be tabled and sent back to Sagamore and BDC with direction to conduct analyses of the financial and racial impacts of the project as planned, to authentically engage with disadvantaged groups and a broad array of stakeholders and communities, and to pursue more inclusive and less discriminatory alternatives — ones with bigger benefits for the people of Baltimore City. Such a plan would include, at minimum, strong and binding local hiring and training requirements, robust opportunities for small disadvantaged businesses and those owned by minorities and women, strong connectivity to provide job access to economically distressed neighborhoods, and the following specific elements:

- **Build a truly inclusive and diverse community where families and children can thrive**, not just high rise studio and one-bedroom apartments for millennials with no children and an average income of \$100,000, as depicted in the Master Plan and TIF application;
- **Residential units on the Port Covington site must be affordable at the full spectrum of income levels in the workforce and City**, including food prep workers, janitors and retail clerks, home health aides, daycare workers, construction workers, carpenters, nurses aides, carpenters, teachers, firefighters, plumbers, and disabled persons. The housing must be affirmatively marketed to attract a racially and ethnically integrated community, not one that simply replicates existing patterns of segregation in Baltimore and the virtually all-white Locust Point peninsula;
- **20% of the \$660 million TIF proceeds, as well as 20% of the profit derived from the rezoning, should be used to provide the affordable housing.** To the extent that ‘value recapture’ from public actions and investments such as the rezoning and TIF is in excess of on-site affordable housing needs, the excess should be placed into an Affordable Housing Trust Fund;
- **Protection for public school funding** in the form of a binding “hold harmless” agreement from Sagamore to make up any loss of state education aid due to the increasing property values of Port Covington;
- **Work with City Schools to put forward a plan that furthers racial and socioeconomic integration in schools** that will benefit students in the new development as well as students in nearby school zones;
- **A Good Jobs guarantee** with family supporting wage standards and full time work, enforceable, verifiable commitments to filling at least 51% of jobs generated at Port Covington with city residents (including low income populations and year round youth hiring), not the 33% projected by the TIF application, and apprenticeship programs;
- **Requirements to exceed the City’s usual MBE/WBE requirements;** and

- **Middle wage job creating investments** like an Under Armour manufacturing facility, whether on-site or in a disinvested area of the City like West Baltimore.

The success of these principles must also be inextricably linked to a democratic process that is transparent at every juncture and provides for real community engagement.

While the proposed tax-increment financing (TIF) plan does not currently accomplish these goals, we believe there is still potential for Port Covington to chart a new path for Baltimore. With a complete change in permitted land uses and massive public subsidies constituting the 77% of the capital investment needed for land development in Port Covington, we should all have an historic opportunity to build it together --- and to get it right.

The choice before the City Council is not one of growth or no growth. It is a choice between equitable growth and trickle down, between inclusive growth and continued segregation, between shared prosperity and growing inequality. In short, it is a choice between the unsustainable path of Two Baltimores and starting down the road toward One Baltimore.

Yours truly,

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