

# COUNTY OF YORK

## MEMORANDUM

**DATE:** April 23, 2021  
**TO:** York County Board of Supervisors  
**FROM:** Neil A. Morgan, County Administrator  
**SUBJECT:** Status of the Marquis Project



The Marquis Project was approved by the York County Board of Supervisors in 2007. It was envisioned, and approved, as a shopping center and commercial development to be developed in two phases, on each of two “pods”, North and South. The commercial development began, and is now restricted to, the North Pod. The Marquis was one of a number of projects approved around the Commonwealth during that time frame using the strategy of Tax Increment Financing (TIF) with an associated creation of a Community Development Authority (CDA). The creation of the CDA allows for certain public infrastructure improvements to be financed by bonds issued by the Authority that are partly exempt from taxation. The bonds are not debts of the County, and the County has no obligation for them apart from the agreement to contribute incremental tax revenue to the CDA to finance the bonds. That is, while the County continues to receive tax revenues upon the pre-development value of the land, any tax revenue increases resulting from development are paid over to the CDA for the period of time stated in the agreements between the County and the CDA. The County also receives a fixed annual payment from the tax proceeds to offset the cost of municipal services attributed to the Marquis. It should be noted that the Target store, although part of the original plan of development, sits on its own parcel and is not part of the CDA. However, the tax revenue generated by the Target store also flows to the bondholders. A rather detailed Operating Agreement between Target and the developer provides for, among other things, mutual obligations for maintenance of the roadways and other facilities that serve the entire North Pod. As compared to some of the other projects such as Short Pump in Henrico County and Hampton Towne Centre, most reasonable people would acknowledge that the Marquis has been a disappointment. The purpose of this memorandum is to give the Board of Supervisors and interested citizens a high level summary and update on the Marquis.

### Project History

As I understand the project history, the attractiveness of the original vision was the creation of a vibrant mixed use community. It was envisioned as a place that combined a new library, office space, hotels, retail, restaurants and entertainment. (See attached design concept). The goal was to build a community that enhanced the County’s quality of life, leveraged Williamsburg tourism activity and expanded the County’s tax base. The reality is that the goal has not been achieved

There were several factors that contributed to the Marquis’ vision not being realized. The original developer ran into financial difficulties, some of which may have had their origins in the developer’s other projects elsewhere in the country. Those difficulties were

greatly exacerbated by the Great Recession. The developer persuaded the County to modify the project design to lower its expenses. The result, unfortunately, was the construction of a 1980's style big box shopping center without the dynamic mixed use features that were part of the original plan. Although several of the big box retailers opened, other elements of the project were left unbuilt. Despite compromises that were intended to give the developer relief, the severity of the recession ended with the original developer declaring bankruptcy and abandoning the project in 2008. Regardless, the five big box stores (Target, Best Buy, Kohl's, Dick's Sporting Goods, and JC Penney), continued to operate, although the JC Penney closed in 2015, and the building is now vacant and is owned by an investor.

After a period of uncertainty and project "limbo" a new developer known as Todd Interests bought the development rights through the bankruptcy process, using his company Marquis RE Williamsburg LLC. Mr. Todd subsequently entered into multiple modified agreements with the County in 2013, 2015 and 2017. Among other things, the County agreed in 2013 to rezone the "South Pod" of the property for residential use, in large part because further commercial development of the project seemed unfeasible. These agreements also separated the North and South Pod project areas such that most of the residential area was removed from the Tax Increment Financing (CDA) district. The period of time the County pledged tax revenue within the remaining TIF was further extended until 2041, and a different and slightly larger elementary school site was proffered as part of the residential component.

With Mr. Todd's ownership of the project, progress was made on planned infrastructure including satisfactory completion of water, sanitary sewer, and stormwater facilities. Although the main road was initially envisioned to become a VDOT maintained public road, the original developer was not required to have the road accepted by VDOT. It remains a private road owned by Todd Interests with various easements and maintenance rights reserved for Target, the County's Community Development Authority, and for the residential South Pod. The road's status has meant that the Marquis Hills subdivision now under construction has to be constructed with private roads. The County is requiring those roads to be built to VDOT standards so that the possibility of the system ultimately becoming a public road system is reserved.

With the agreements approved in 2015 and 2017, the residential component of the Marquis has proceeded. For a number of years many observers hoped that a Sam's Club would be constructed on the North Pod, thereby strengthening the project's retail base. Even though Sam's Club's parent company subdivided a 13.5 acre parcel which it now owns and had an approved site plan, in 2019 the County was verbally advised that this project would not be constructed. That news, combined with the closure of JC Penney's further reduced the Marquis' potential retail vibrancy, raising more concern about the project's ultimate "built environment" and further dimming the prospects that the tax cash flow would ever reach a level that would pay off the CDA bonds. There remains one sizeable developable area on the North Pod, between the Dick's and the Sam's Club parcel, and several smaller subdivided but vacant parcels on which Mr. Todd has indicated plans for possible restaurants or small retail establishments.

### **Financial History**

The financial model that the original project was based on has long since been abandoned as unrealistic. Subsequent updates have continually been overtaken by events. Although the history of the evolving financial model is exceedingly complex, a few key summary points are most important to understand.

First, the original financial forecast projected that the CDA bonds (based on the TIF's tax revenue) would be paid off in less than a decade, assuming full development. Thereafter, the County was expected to receive millions of dollars of new tax revenue on an ongoing basis. However, the current reality is that it is not clear the bonds will ever be paid off based on current trends. Unless they are paid off, almost all County tax revenue from the project passes through the CDA to the bond holders until 2041. The only exception is \$173,457 (3% annual escalator) annually which the County receives for the cost of services and the small amount of real estate tax that was paid based on assessed values prior to development of the raw land.

It is my understanding that for the first time since the project began, the private bond holders will not receive their full payments later this year. Simply put, the cash generated by Marquis' taxes is insufficient to fully pay the investors, and all of the reserves created for the purpose of bond payments have now been consumed. It is anticipated that this bond default will be an ongoing dynamic for years to come. It is not clear to me what might happen with the bonds. The bondholders' options are limited, as legal counsel to the CDA (the law firm of McGuireWoods) advises that the bondholders have no rights under their bond agreements to foreclose on the property within the CDA. The bondholders' options might include accepting partial payments, skipping payments to allow the accrual of reserves, or some type of restructuring. I will not speculate on what other legal options may be available to them. They may simply end up losing money on what has turned out to be an unfortunate investment.

Because the CDA/TIF structure involved bonds that are not backed by the full faith and credit of the County, the above referenced default has no direct impact on the County's finances. There is no expectation or requirement that the County pay any money to solve this problem. However, stories about the Marquis's bonds being in default will potentially cast the County and its economic climate in an unfavorable light.

### **The Future of the Marquis**

It is very hard to understand what might happen within the project area over an extended period of time. The County will have very limited ability to shape that future not only due to the existing CDA/TIF but also because Todd Interests (a limited asset LLC) controls some of the remaining undeveloped land, the private entrance road, and approval rights for potential development changes, such as the recently Board of Supervisor's approved rezoning of the JC Penney's building. The Marquis Parkway, which serves as the entrance not only for the North Pod commercial development, but also for the residential development on the South Pod, remains privately owned, although subject to the mutually enforceable maintenance agreement as to the North Pod. The residential development

owns an access easement over the entirety of the Parkway for the benefit of the entire South Pod, and as with any access easement it carries with it maintenance rights in the event the commercial properties should ever fail to maintain their portion of the road. There remains some optimism that VDOT will eventually agree to take the Parkway into the state system, although the developer appears not to be pursuing discussions with VDOT at present.

One way to think about the future of the Marquis is to divide the conceptual analysis into various challenges and opportunities. As a physical place the Marquis does have some real positives. Most obviously, it is a large, conveniently located property with high capacity utilities and ample parking, and there is significant residential growth either currently underway, or approved and in the pipeline, in the general vicinity to provide support for the merchants there. As brick and mortar retail continues to decline, one could imagine partially redeveloping the site and achieving something closer to the original mixed use vision. It is my hope that the reuse of the JC Penney's property might be a small step in this direction.

The single family residential element of the Marquis is now rapidly proceeding. This will strengthen the existing retail marginally and could create some new opportunities within the larger development. There is also an apartment site and an elementary school site that remain undeveloped at this time. If the County ultimately chooses not to build an elementary school within the Marquis, an alternative concept for outdoor recreational space will be important to ensure this new neighborhood maintains its appeal, or the developer may one day approach the County for a rezoning to allow additional development. Because the residential component has been removed from the TIF, the taxes generated by the residential element will be part of the County's general tax base.

Reimagining the physical trajectory of the Marquis is actually easier than understanding how the complex financing structure and ownership arrangements could be reconfigured in a way that incentivizes all of the interdependent entities to work together going forward. York County may have a role in reimagining the Marquis over time, but it would require many other land owners, businesses, and bond holders to signal a willingness to work together in new ways.

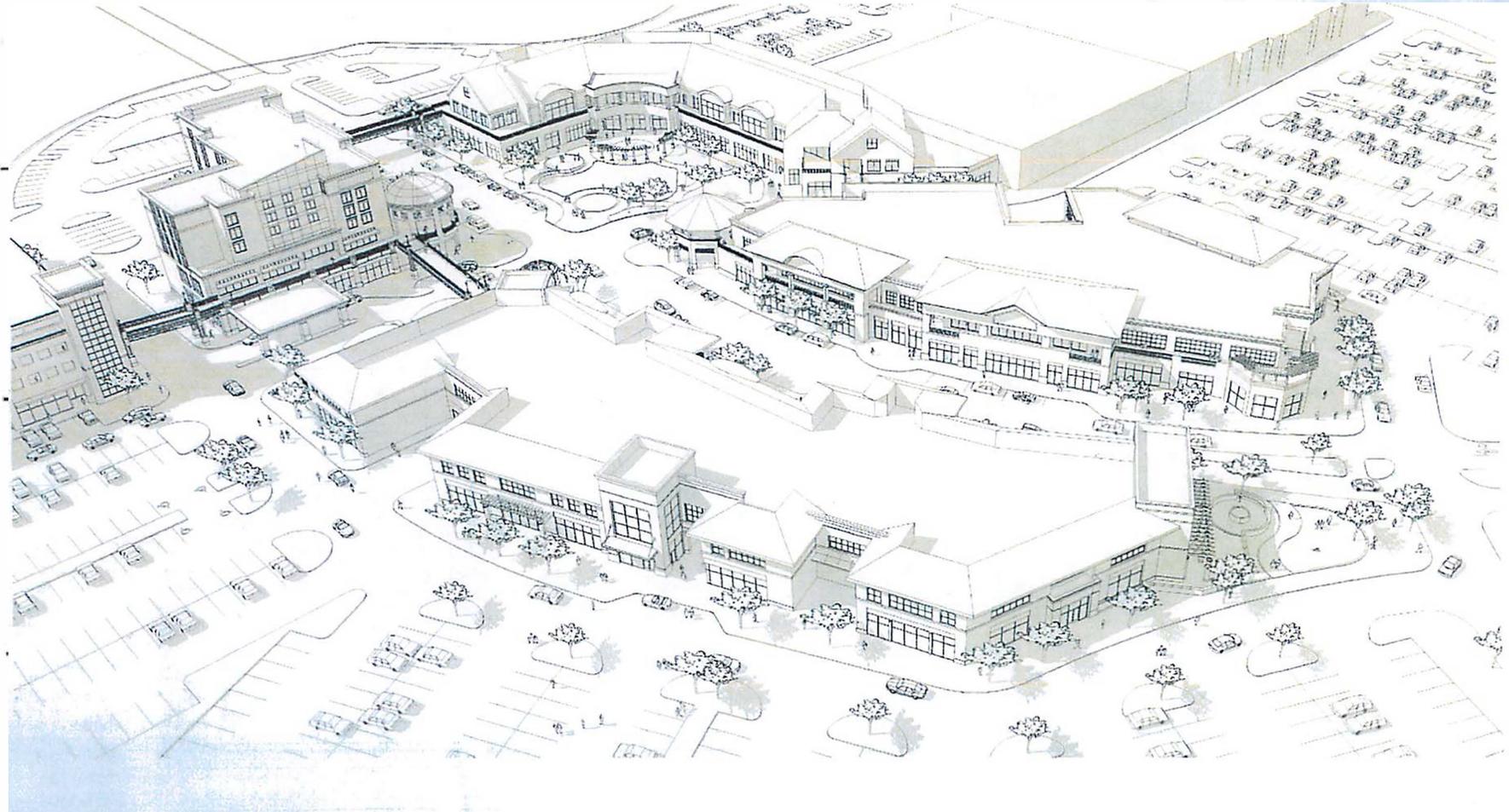
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Attachment:

- Site Plan

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These views are virtual representations to show general team, massing of building forms and relationship between design elements. They are not intended to depict material, specific landscaping or developed architectural details.



SITE  
PERSPECTIVES

THE MARQUIS  
WELLSBORO, VA

JFRA ARCHITECTS  
1000 COMMONWEALTH AVENUE, SUITE 200  
WELLSBORO, VA 22191  
PHONE: 540.757.0300 FAX: 540.757.0301

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