

Subject: GLX background

FROM: Lee Auspitz

I write, as promised when we spoke after the special meeting of the Aldermen last Thursday night, with some background details that may be useful to have on the record for the City's future negotiations on the Green Line. These do not affect the current package, which would appear to be complete in the form presented: The City has done its due diligence. The documents are in good order. The sewage tie-ins are significant. The loan proposals are well structured. The Aldermen's lines of questioning would make any city proud. But there are several background conditions that are not treated in the documents. They point to the disproportionate share of the cost burden borne by Somerville relative to resources retained by MassDOT/MBTA and contributions pledged by other stakeholders:

1. MassDOT/MBTA retain two resources made possible by and in excess of the \$50M Somerville contribution

a) MassDOT's \$38M wild card. Under TIP Amendment #4 Mass DOT is reallocating to GLX Phase 1 only the \$152M *federal* portion of the \$190M in TIP funds originally designated for GLX Phase 2 (the further extension to Route 16). Under the 20-80 sharing formula for highway flex funds the state contributes 20% (\$38M) to leverage the federal 80% (\$152M). The Commonwealth now plans to use the \$75M Cambridge/Somerville contribution as a substitute for its own previously committed 20% contribution to GLX Phase2/Route 16. Half the municipal contributions are now to be used to trigger the \$152M federal match. Though this is not formally specified in TIP Amendment #4, the \$38M state share has been withdrawn from circulation. In effect MassDOT has palmed a \$38M wild card which remains available for undesignated use. The rationale for retaining a \$38M slush fund is that the MBTA Fiscal Management and Control Board requires that no "new" state funds go into GLX Phase 1. This unusual move was flagged as such by Tom Bent, the MAPC, the Conservation Law Foundation, yours truly and others at the Boston MPO meetings, as recorded in the minutes of

[May 5th, 2016](#)

[June 2nd, 2016](#)

Mass DOT has carefully avoided promising to use the previously committed \$38M for GLX 1- or GLX 2-related purposes, though the federal agencies involved could still require that it be used as a reserve for GLX 1.

b) MBTA's excess property holdings. The \$2.288 billion plan voted jointly by the MassDOT Board and its Fiscal Management and Control Board on May 9, 2016, includes a 50% cutback from the square footage for parking, vehicle storage and building footprint of the original Vehicle Storage and Maintenance Facility (VSMF) plan, along with a 60% reduction in construction cost. Station footprints were also reduced. This means that a significant portion of \$93M eminent domain takings for GLX are now excess real property as defined under Section 21 of the FTA Master Agreement: "Use of Real Property, Equipment and Supplies:"

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/21-Master.pdf>

Federal regulations are thorough and detailed with regard to what they call "real property prematurely withdrawn from project use." The regulations are specifically applied to States which are recipients of federal funds [see 21: b(1)(a)2a and h(4)]. In the GLX case, the most straightforward course will be, after due notification and prior approval, to return all real property released from active use to the municipal tax rolls and to use the proceeds to reduce gross project cost either directly by offsetting municipal contributions.

In the case of VSMF land takings there is a persistent and well-documented history suggesting that de-accession proposals will emerge from MassDOT planning staff with great reluctance, if at all. One has even heard the novel argument that the federal excess property regulations do not apply to GLX/VSMF, because \$93M has already been used to purchase the private properties before drawing on federal matching funds. Whether some variant of this argument can survive court challenges or post-contract audit by the DOT Inspector General is highly questionable. Federal regulations provide for assessing retroactive

penalties upon completion of the project in cases of non-compliance. Even in the case where property is retained for future use, federal regulations require prior approval by the funding federal agency.

In other words, the MassDOT Boards and MBTA have an affirmative obligation to notify FTA of their intention to retain or return to the municipal tax rolls all properties no longer needed for the revised GLX. Under the FTA Master Agreement [21: a(4)(b)], Region I would appear to have a reciprocal duty to remind MBTA that GLX will remain contractually incomplete without such notification. Explicit Federal approval is also required in the (not out of character) event that the MBTA should seek to retain all previous eminent domain takings for future use.

Somerville has a strong interest in this matter, since it provided GLX with its most valuable property takings-- of which the most significant was the removal of the 300-employee M.S. Walker Co. from Somerville—thus reducing the City’s modest commercial property base as well as removing from the market scarce land available for new growth. It should also be noted that the GLX plan approved on May 9 retains a \$15M escrow fund for further eminent domain takings, above and beyond the unallocated contingency provision applied to the GLX budget as a whole. Yet \$93 million of the planned \$98 million of identified property takings are already included in sunk costs. In a fixed rail transit system real estate surprises are improbable. The \$15 million escrow would appear to be well in excess of what is needed in future takings for the scaled back project. As much as \$10M of the escrow could be used to offset Somerville’s land contributions, even without the de-accessioning of excess takings.

2. “Value-capture” comparisons with other stakeholders

The term “value capture” has become fashionable to justify local and private contributions in anticipation of enhanced tax revenues and commercial profits from “new growth” directly linked to infrastructure. Without endorsing this as an adequate rationale for infrastructure spending, it is worth noting that by this standard Somerville bears a disproportionate burden relative to other stakeholders. The disparity between Somerville and Cambridge is especially marked. The outcomes are the result of a series bilateral negotiations between the MBTA, on the one hand, and Tufts, Medford, Somerville and Cambridge on the other, so any unwarranted disparities are attributable to the MBTA/GLX project negotiators.

a) Tufts University is making only facilitating gestures—use of its land for construction staging, costs of managing its virtually private stop (surrounded in a 300-degree arc by tax-exempt Tufts-owned land).

No monetary figure has been released by the University or the MBTA, but it would not appear to be commensurate University’s enhanced (non-taxable) land values. On the other hand, Tufts has disclosed plans to use station air rights for an ambitious new academic building with shops and food service facilities in conjunction with what its President has aptly called the “Tufts Stop.”

b) The City of Medford has announced no contribution. Most of the Medford-based new growth will in any case accrue to Tufts until the Route 16 extension becomes a reality.

c) The City of Cambridge has linked its \$25M contribution to its ambitious North Point Development Project and more specifically to the Lechmere Station relocation (the full cost of which was originally supposed to have been borne by the private developers of North Point). Cambridge has already permitted 4.5M square feet of residential/commercial development at North Point with a project value of \$2.5B. The developers are slated to bear half the Cambridge \$25M contribution. A back-of-the-envelope calculation at current tax rates suggests the City of Cambridge will retire its entire outlay with less than six months of new growth North Point tax revenue at fully permitted development, or (since the developers will bear 50% of the contribution) only three months of actual North Point tax revenue. The effect on non-North Point Cambridge taxpayers will be negligible.

d) Somerville’s retirement of principal and interest of its \$50M contribution will take not less than three years of full ‘new growth’ tax revenue. City Assessor Marc Levy has testified that he estimates \$2.5B in 30-year taxable value city-wide split evenly between new growth and higher valuation of existing property (meaning higher taxes on existing property owners). Director of Finance Ed Bean has estimated the new growth tax yield at full development at \$20M a year. These numbers are not grounded in issued permits, or as noted below in longitudinal TOD (transit-oriented development) data. If accurate, Somerville will be paying double the contribution of Cambridge, for half as much “value capture.” Of course, there are many other indirect benefits to Somerville (such as better city-wide access to its new high school) but if GLX is using a value capture metric, the disparity between Cambridge and Somerville is hard to justify.

3. New Growth Data

Fiscally, Somerville's revenue and development estimates are not grounded in localized, longitudinal data on transit-oriented new growth. There is a 30-year history relative to the Red Line and Community Path to provide perspective. You may recall that several years ago I testified on this topic before the Board of Aldermen. And for many years running—indeed since Somervision—the issue has been put before the City at various venues. The City has followed up only to the extent of discontinuing the practice of over-writing (i.e. erasing) localized new growth numbers in its computerized assessing records. Relevant longitudinal data can easily be reconstructed and analyzed of course. But in the meantime there is no historical base from the 30 year experience with the Red Line and Community Path to project Green Line TOD during the coming decades. This is not a small failing if one is bonding for 30 years.

4. Conclusion

For those who support the \$50M contribution, there remains work to be done on 1) publicizing and allocating \$50+M in excess monetary and physical GLX resources retained by MassDOT and the MBTA, 2) ongoing negotiations with MassDOT to rebalance Somerville's disproportionate burden, 3) localized, longitudinal analysis of transit-oriented new growth patterns.

I am sharing this email with two persons who have specifically asked for it. I am at your service, if you think it worth discussing further or circulating more widely.

Sincerely,

Lee
Josiah Lee Auspitz