MILITARY BASE REDEVELOPMENT: ISSUES FACING PRIVATE DEVELOPERS

by

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Bachelor of Arts Trinity College, 1985

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ABSTRACT

Military base redevelopment is a complex process that necessitates cooperation between government (on the federal, state, and local levels) and the private sector. From a policy point of view, government has, and will continue to play a significant role in base transfers and conversions. Yet with regard to the ongoing development of these sites, success is contingent upon private sector investment.

This thesis hypothesizes that there are issues facing private developers that are inherent to the military base redevelopment experience. Some of these issues are the result of working under the authority of a Local Redevelopment Authority (LRA). Others stem from the complexities attendant to property formally owned by the military. This paper uncovers such issues as control, timing and uncertainty, signaling and externalities, infrastructure, and environmental remediation. These issues are interdependent, and may determine the types of investors (developers) who are best suited to work at former military sites.

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CHAPTER 1 INTRODUCTION

1.0 Introduction

The end to the Cold War, coupled with the reduction in United States military forces, has resulted in unprecedented base closings nationwide. The signing in July 1992, of the National Base Closure and Realignment Plan is the latest (and largest) chapter in a series of military base closures dating back to 1961. Despite its reputation, the government has been remarkably efficient with regard to this task, closing more than 240 bases since 1988.

Once a base is slated for closure, it becomes subject to the Federal Disposal Process. This complex process generally involves giving control to a Local Redevelopment Authority (LRA) which must make sites hierarchically available to federal agencies, state, county and local governments, and to the homeless¹. Any remaining property is then available to the private sector. Whereas the federal government once conveyed sites to local authorities for as little as a dollar, current mandates² call for property to be disposed of at "full market value", although changes³ in 1994 provide exceptions to this rule.

Consequences

Because the communities affected by base closures face potential loss of jobs, service users and tax revenue, these closures are met with both fear and resistance. Bases once provided an avenue for politicians to "bring home the bacon," now they find themselves inextricably caught in the tangle of what to do in the closure's aftermath. Political battles begin to overshadow pragmatism. One thing is clear however, opportunity lies in action. Redevelopment or conversion, therefore, has become the official mantra. Successful base conversion generally implies utilizing the real estate such that the area's loss of jobs is mitigated and a net benefit to the community(s) can be created. This implies attracting and/or generating jobs as well as providing housing, educational and recreational facilities. Furthermore, as the federal government tries to maximize revenues generated from the "sale" of these bases, LRA's are under increasing pressure to secure uses which maximize residual land values. Traditionally, government has played a major role in ongoing redevelopment efforts. This role has taken the form not only of

¹ Under the terms of the McKinney Act

² 1988 Defense Base Closure and Realignment Act

subsidies, but also of direct involvement in placing federal and state offices, prisons, etc. on the sites. Yet given the enormous amount of federal lands becoming available under the base closure program and the finite number of these types of governmental uses, the arithmetic becomes obvious. Furthermore, given ever tightening budgetary constraints on both the federal and state level, coupled with the unpopularity of "pork" style federal subsidies, future prospects for significant direct governmental investment appear dim.

Role of the Private Sector

The inherent issues and complexity of base closings necessitate cooperation between government (on the federal, state, and local levels) and the private sector. From a policy point of view, government has, and will continue to play a significant role in base transfers and conversions. Yet with regard to the ongoing development of these sites, success is contingent upon private investment. In fact, despite significant past direct government participation, the lion's share of credit for successful base conversion⁴ goes to private sector investment. Furthermore, given current (and anticipated) government budgetary constraints, attracting private sector investment will be even more critical in the future. This idea is not novel, having become apparent through the urban renewal experience of the 1960's and 1970's. President Carter articulated this idea in his 1978 report on policies to help cities:

"National Urban policy must reflect a strong and effective partnership between the public and private sector...Federal, state and local funds, no matter how plentiful, will not be enough to solve our urban problems. *The private sector must help.* Only *it* can provide the capital needed for rebuilding and growing; only *it* can carry out the large-scale development programs necessary to provide healthy local economies."⁵[italics added]

Although President Carter was not speaking about military base redevelopment per se, the applicability of these ideas to base redevelopment in the 1990's and beyond is clear.

³ Pryor Amendments to 1994 Defense Authorization Bill (see Section 2.2).

⁴ Charlestown Navy Yard for example (discussed in this paper)

⁵ U.S. President, <u>National Urban Policy Report</u>, (Washington D.C. U.S. Department of Housing and Urban Development, 1978).

1.2 Research Question(s)

The focus for this paper's research begins under the assumption that the factors and determinants influencing developers decisions to pursue projects at "conventional private sector sites"⁶ are also issues at military sites.

This paper will focus on the issues facing private developers (investment) in regard to pursuing projects at military bases undergoing conversion. Specifically, it will explore the hypothesis that there are issues surrounding private sector investment at military sites and that these issues are unique by virtue of the conversion process.

Control

Both the American urban renewal experience and experiences with large planned and mixed use developments may offer lessons applicable to military base conversion. Central to this issue is the imposition of specific uses and guidelines as mandated by an entity acting as "master developer".

As Bernard Frieden discusses in his book Downtown, Inc., early joint interest in investment and redevelopment in downtown areas were characterized by compromise between the public entities orchestrating the redevelopment efforts and the developers exploiting these opportunities. This success was a result of the fact that "neither side imposed a narrow agenda on the other"⁷ and on the cooperative add-hoc nature of the transactions. As the urban renewal movement matured, however, municipal renewal entities unilaterally imposed strict redevelopment plans many times only to find that

⁶ Conventional private sector sites is an arbitrarily chosen phrase that is meant to refer to sites that are exchanged in the private sector and are not subject to "extraordinary" regulation. In other words, sites that are not subject to unusual regulation outside of the typical municipal planning , zoning and regulatory process.

⁷ Frieden, Bernard J., <u>Downtown, Inc. How America Rebuilds Cities</u>, MIT Press, 1989, pg.19.

developers were not interested in pursuing those plans.⁸ Likewise, some military sites have fallen into this same trap sprung from unilateral and myopic planning.⁹

Similarly, large, masterplanned communities and mixed-use developments face many of these same issues. Success is contingent upon balancing market and social needs in an attempt to maximize value on an *aggregate* level. As Wheaton and DiPasquale discuss in their book *Urban Economics and the Real Estate markets*¹⁰, a *single* developer on a site may be able to *internalize* externalities thereby generating the maximum residual land value, whereas multiple developers will act in their best interest without regard for the greater whole. Yet this issue is not easily addressed, especially when a single "master developer" is not investing directly in individual parcel development. In this case, as Mouchly et al point out, "the developer's basic task with these projects is to create value to all the participants in the process".¹¹ These are issues that are not only relevant to military base development, but are also especially complex. Given that LRA's not only must balance the needs of the market, communities, lenders/investors and developers, but also must attempt to maximize value, the question arises; from the private developer's perspective, have these issues been successfully addressed and how have they [the developers] responded?

Timing and Certainty

Related to the issue of control is the developer's need to be able to plan with reasonable certainty and to execute those plans expeditiously. With regard to development, this issue is non-trivial as nowhere is the adage "time is money" more appropriate. The base disposal and reuse process is extremely complex and lengthy. Furthermore, once a deal has been struck with an LRA, a developer does not necessarily have either the opportunity and/or the right to now commence the project on his own schedule and pace. This can be due to any number of reasons ranging from bureaucratic delays to

⁸ Detroit's experience with the Gratiot residential project is typical of this problem. Planning for the project began in 1947. Ignoring the business community, the tortured planning process finally ended in a request for proposals in 1952 only to find that no developers were interested in the project. The renewal plans were then revised to allow more construction in an attempt to make the project more attractive. This effort was met with only two very poor and unacceptable proposals. By the end of 1954, the city decided to go to business people and private developers for help in formulating a plan. Finally, Detroit was able to sell the site to a developer and the housing opened in 1958. Newark, New Jersey had a similar experience with its North Ward project.

⁹ Watertown Arsenal for example. Discussed in Section 5.0.

¹⁰ Wheaton, William and DePasquale, Denise, <u>Urban Economics and the Real Estate Markets</u>, Prentice-Hall, 1996.

¹¹ Mouchly, Ehud, and Peiser, Richard, "Value for Everyone," Urban land, (August 1993), pg. 16.

environmental and infrastructure concerns (both discussed below). This stands in stark contrast to most conventional private sector sites where the developer is more or less master of his destiny. This paper will explore the suspicion that this is an important issue in both developer's willingness to pursue projects on military bases and the satisfaction of that experience. William Gilligan, Vice President of Toll Brothers, Inc. - one of the nation's largest home builders, remarking on interest in acquiring a site at Weymouth Naval Air Station,¹² expressed this sentiment that although the site's location is very desirable and that Toll Brothers is having difficulty finding appropriate sites, concerns over the uncertainty of the reuse planning process and disposal timetables have precluded them from spending time and resources pursuing what would otherwise be under serious consideration.¹³

Signaling and Externalities

Little has been written on the "herd mentality" of developers. This theory postulates that developers may wait until there are examples of success at a site before pursuing projects themselves. This complements the above discussion with similarities to the urban renewal experience. As Chaplin et al point out,

"If owners [developers] can learn about the best use for their property from the experience of neighboring properties, then they will have an incentive to delay renting [pursuing]. They will play a waiting game, hoping that...[another developer]...will be the first to commit their property to a particular use and thereby generate the socially valuable information concerning whether or not the property is well matched to that use. Once a successful use is found, the uncommitted owners [developers] will be able to use that information to improve the quality of their decisions."¹⁴

This has obvious relevance to the military base experience. These sites are very large and as they become available to the private sector, they are usually wholly untested in a market sense. This paper begins with the suspicion that developers contemplating investing at bases consider these information externalities and that the lack of information early in the reuse process may also affect the types of developers that are willing to make investments.

¹² Weymouth Naval Air Station is a military base located in Weymouth MA, A Boston suburb, which was recently closed under BRAC 95.

¹³ William Gilligan, Interview with author, May 28, 1997.

¹⁴ Chaplin, Andrew and Leahy, John, <u>Miracle on Sixth Avenue: Information Externalities and Search</u>, Working Paper, Columbia University & Harvard University, pg 3.

Infrastructure

As the federal government operated military bases, they were not required to abide by local codes concerning roads, utilities, water , sewer, etc. In conventional private sector sites, the infrastructure surrounding the sites is, by default, usually adequate. If they are not, these are areas where developers generally negotiate with municipal authorities. By virtue of their ability to grant and deny permits, municipalities wield considerable weight in requiring developers to provide infrastructure upgrades and competitive considerations incline developers to accept these demands. On bases, however, the LRA (which in some sense is acting as a "municipality") is trying to *attract* developers and therefore must provide attractive (i.e. "improved") sites. The question then arises as to how important these infrastructure issues are, when are they important, and what types are important?

Environmental Remediation

Historically, the United States Military has had a disgraceful record concerning contamination of their sites with toxic substances. Furthermore, some sites also contain (both above ground and buried) discarded live ordinance. As a result, virtually all military bases contain some level of environmental contamination and there is also the implicit fear that contamination will be found in the future on sites originally thought clean.

Because owners of property have been held liable under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for environmental hazards caused by *previous* owners, developers have been wary to acquire sites at military installations where there is a perceived risk of liability. Recent changes to the liability statutes, as well as liability assumed by the Department of Defense, are mitigating this problem. However, questions remain. For instance, "who will be responsible for the business interruption and potential liabilities that result from additional cleanup activities resulting from previously unknown conditions and the change in use of the property."¹⁵ This paper will review the issues developers face under CERCLA with regard to military facilities and will attempt to uncover, from the developer's perspective, the impact of these issues on the decision to acquire sites.

¹⁵ Amos, Bruce, "The Application of Environmental Insurance in Redevelopment Associated With Military Base Closures," <u>The Real Estate Finance Journal</u>, (Fall 1996), pg.80.

1.3 Summary of Chapters

Chapter 1

Introduction. The questions the paper will explore will be introduced to set the tone for the following chapters.

Chapter 2

Overview of the closure process. In order to provide the reader with a basic understanding of the complexities of the base closure process and a familiarity with terms (such as LRA, BRAC, etc.) so that the discussion that follows is in context, a broad stroke summary of procedure will be provided. This is important as it relates to timing. Furthermore, this summary will serve as a starting point for discussion under the assumption that the base transfer has proceeded to a point where governmental and statutory claims have been addressed and private developers are the acquisition agents.

Chapter 3

Charlestown Navy Yard. This case study will consist of an overview of the Charlestown Navy Yard conversion followed by a discussion of issues (see above) faced by developers both in the initial stages of the project and in current efforts. Charlestown should provide valuable insight as it has been a benchmark success story. In hindsight, this is not extraordinary given its location, but during the initial stages of development uncertainty abounded. In this context, it should be helpful to compare Developers experience today with that of twenty years ago.

Chapter 4

Lowry Air Force Base. Lowry has been held up as a recent shining example of base planning, and given Denver's recent economic boom, Lowry's success at attracting development is not surprising. This case study will explore the perspectives of developers both pursuing and contemplating projects at Lowry. The current economic vitality, coupled with ample alternative sites, makes an interesting backdrop.

Chapter 5

Watertown Arsenal. Although this site was a military facility and not a base per se, it has all of the attendant procedural and policy characteristics that typify bases. This

site was chosen because a single developer¹⁶ was able to control the entire site and succeeded in producing a highly successful project. Watertown's early reuse efforts, however, were very unsuccessful. This case will hopefully provide insight as to what issues surrounded this failure and ultimate success. Furthermore, it may provide a different perspective as compared to the other sites as here a developer *was able* to act as master developer and presumably internalize positive externalities.

Chapter 6

Analysis. The above questions will be revisited in the context of the central issues through the research.

Chapter 7

Conclusions. Findings will be summarized and conclusions drawn with respect to questions raised as well as a general discussion of "lessons learned".

1.4 Methodology

Research consisted of identifying military bases for case studies and conducting interviews with base redevelopment staff and actual/potential private sector developers. Predetermined questions designed to provide a consistent benchmark were used as a framework to explore the issues noted above. Developers were queried as to their experience on "conventional" sites to provide a standard against which their experiences at the bases could be compared.

¹⁶ New England Development

Chapter 2 Overview of Base Disposal/Reuse Process

2.0 Introduction

The current round of base closures is not without precedent, with President Kennedy announcing the first large scale base reductions in 1961. Under that initiative, by 1990, over 100 bases had been closed resulting in almost 100,000 civilian jobs lost and 137,000 military personnel relocated. Despite the often ominous rhetoric which typified this politically volatile issue, however, reuses at these sites were fairly successful, creating approximately 158,000 new civilian jobs.¹⁷

2.1 Process

Base closings originally fell under the auspices of The 1949 Federal Property and Administrative Services Act, which gave responsibility for base disposal to the General Services Administration (GSA), the traditional agent for federal property management and transfer. The current round of base closings (those since 1988) was initiated by the enacting of Public Law 100-526 in October 1988. Under this law, the Base Realignment and Closure Commission (BRAC) was created and mandated to recommend domestic bases for closure and realignment. Public Law 100-526 established BRAC as a one-time only commission, which expired on December 31, 1988. As a result, upon expiration on December 31, 1988 future base closings once again became governed by the procedures mandated by section 2687 of Title 10, United States Code.¹⁸

On November 5, 1990, President Bush signed Public Law 101-510, which created an independent, five-year Defense Base Closure and Realignment Commission (DBCRC) and specified base closure rounds in 1991, 1993 and 1995. Under Pub. L. 101-510, for each round, the various services and Department of Defense (DoD) agencies submit their candidates for closure and realignment to the Secretary of Defense for review. He, in turn, then submits recommendations to DBCRC. On July 1, the Commission then submits its report(s) and recommendations to the President, who, upon approval, forwards the list to Congress. By doing nothing, Congress passively accepts the list.

¹⁷ <u>Civilian Reuse of Former Military Bases, 1961-1990: Summary of Completed Military Base Economic Adjustment Projects</u>, Office Of Economic Adjustment, Office of the Assistant Secretary of Defense, (Washington, DC 1990).

¹⁸ Department of Defense Base Reuse Implementation Manual, (Washington, DC 1995)

Rejection requires a joint resolution of disapproval. In 1991, the commission recommended the closure of 34 bases and the realignment of 48 others. The 1993 and 1995 Commissions subsequently recommended an additional 61 closures and 39 realignments.¹⁹

2.2 Implementation

Disposition of federal property has traditionally been executed by the GSA under the Surplus Property Act of 1944 and the 1949 Federal Property and Administrative Services Act. In 1988, the Base Closure and Realignment Act shifted this responsibility to the DoD. Under this law, all property must be sold at market value with funds obtained from the sale or lease to be deposited into a "base closure account" that is used to defray expenses related to closing bases nationwide. This strategy to try to realize "market value" is significant and is a "departure from base closure procedures used in the 1960s and 1970s when many closed military bases often were turned over to local and state governments for as little as \$1."²⁰

Once a base has been selected and approved for closure, and no other military departments have laid claim to it, disposition of the base must pass through a hierarchy of potential users. Federal agencies share first claim along with homeless assistance use under the McKinney Act.²¹ Once these claims have been satisfied, the site (or remaining portion) is deemed to be "surplus" and offered to state and local governments.

Typically, state and local governments acquire sites through either public conveyances or negotiated sales. Changes implemented by the Clinton administration and the Pryor Amendments to the 1994 Defense Authorization Bill have both reduced the screening process time and provided a mechanism to transfer bases to state or local government for economic development "at or below the estimated fair market value of the property transferred or without consideration".²² By utilizing these "economic development conveyances", communities, even if unable to pay market value, are able to acquire sites

¹⁹ <u>Defense Base Closure and Realignment Commission 1995 Report to the President</u>, (Washington, DC 1995).

²⁰ Gsottschneider, Richard et at, "Acquiring Property at a Former Military Base: The Process and the Law," <u>Real Estate Issues</u>, (April 1994).

²¹ See Section 2.5 for a discussion of the McKinney Act and exemption under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

²² Title XXIX, Section 2903.

and save millions of dollars in acquisition costs. For example, "at Fort Devons, the Massachusetts Land Bank is negotiating a conveyance under a master lease where there is no acquisition cost but the Land Bank and the U.S. Army will share proceeds from future asset sales."²³

2.3 Phases of Implementation²⁴

Before federal property can actually be transferred, it must go through a complex process of disposal implementation that consists of three basic phases;

Base-Wide Reuse Planning

In this phase, most activities are mandated by law. Generally, this phase begins at the approval date for the closure and ends when the Local Reuse Authority's(LRA's)²⁵ reuse plan has been submitted to the Military Department. Concurrently, the Military Department must complete the following tasks;²⁶

- Identify installation property, which is excess to DoD's needs and surplus to the Federal Government's needs, that will be made available for reuse.
- Inventory personal property and consult with the LRA to identify the personal property that will be made available to the LRA for reuse.
- Determine and analyze environmental impacts that may occur as a result of its disposal.
- Identify potentially impacted natural or cultural resources on the property and any mitigation measures that may have to be taken.
- Conduct an Environmental Baseline Survey (EBS) to identify the environmental condition of the installation property, including property that is uncontaminated and can be made available for reuse without further environmental actions.
- Refocus current environmental cleanup, compliance, and natural and cultural resources strategies and schedules in light of the LRA's land-use plan and redevelopment priorities.
- Relocate active mission elements (mission drawdown).

²³ Seidman, Karl, "Redeveloping Military Bases," <u>Commentary</u>, Summer 1995, pg.11.

²⁴ See Department of Defense Base Reuse Manual. Some passages reprinted.

²⁵ See Section 2.4 for a discussion of LRAs.

²⁶ Department of Defense Base Reuse Manual, (Washington, DC, 1995).

• Plan for and carry out protection and maintenance (caretaking) of installation property and facilities not immediately reused at the time of active mission departure/base closure.

Reuse planning activities, whenever possible, are conducted concurrently and are grouped into four principal categories;²⁷

- 1. *Comprehensive land-use and redevelopment planning*, including LRA formation, recognition, and reuse planning activities, Military Department/LRA community interface activities, and Military Department disposal planning activities (including interim leasing of facilities no longer needed by the active mission), conducted to assist the LRA reuse planning efforts.
- 2. Environmental Impact and other impact analysis.²⁸
- 3. *The BRAC Environmental Process*, including environmental baseline surveys and environmental cleanup activities.²⁹
- 4. *Installation Management*, including active mission drawdown, protection and maintenance of facilities, and caretakers operations.

Disposal Decision Making

This phase consists of the Military department's disposal decision and the LRA's reuse decision. The LRA will submit its plan to the DoD and if the LRA's plan contains provisions for the homeless, an application to the Secretary of Housing and Urban Development (HUD) will be made. The Military Department will then, after completing its NEPA analysis, issue final disposal decisions.

Parcel-by Parcel decision Implementation

After environmental remedial actions have been taken to comply with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, the Military Department will dispose of the property in accordance with its disposal decisions and as described in Section 2.6.2.

²⁷ Ibid.

²⁸ See Section 2.6 for discussion of environmental issues at bases.

²⁹ Ibid.

2.4 Local Reuse (Redevelopment) Authority (LRA)

Base reuse activities are generally orchestrated by a Local Reuse (Redevelopment) Authority (LRA). The LRA is a local governmental or quasi - governmental organization that usually has the sole responsibility for the planning and reuse of the site as well as acting as the communities' point of contact regarding the closure. Furthermore, the LRA is "expected to provide leadership and build consensus for base reuse"³⁰.

LRAs are encouraged to bring together diverse interests representing political, economic and community interests. Because base reuse is typically a politically and socially sensitive topic, the LRA should have "the complete support of local jurisdictions and interest groups, who speak with one voice though the designated LRA. This key factor is more important in recognizing an LRA than any procedural step"³¹.

Once commissioned, the LRA becomes, in essence, a master developer. LRAs do, however, have tremendous flexibility with regard to how they execute and manage this mandate. This point is non-trivial, as evidence (discussed later) suggests that the private sector plays close attention to how the LRA's authority is exercised.

2.5 Homeless Assistance

During all of the base closure rounds since 1988, LRAs have had to wrestle with provisions designed to address the needs of the homeless. This issue was first addressed by Title V of the Stewart B. McKinney Homeless Assistance Act of 1987³² by making service of the needs of the homeless the first priority of all surplus federal property, including military installations. While Title V successfully executed its mandate with respect to small parcels, it quickly became apparent that it was not sufficiently flexible to address the huge sites comprising base closures and did not adequately represent all of the multiple interests involved.³³

³⁰ Community Guide to Base Reuse, (Washington, DC, 1995).

³¹ Ibid.

³² 42 U.S.C. 11411

³³ Department of Housing and Urban Development, 24 CFR part 586

Congress, recognizing these problems, in 1994 enacted The Base Closure Community Redevelopment and Homeless Assistance Act³⁴ which exempts 1995 BRAC Commission installations from the provisions of Title V of the McKinney Act and substitutes a community based process where the LRA, community groups, and representatives of the homeless participate in local reuse planning. Additionally, it establishes a process whereby 1988, 91, and 93 BRAC Commission installations are able to elect to be treated under this new process. Under this Act, the LRA is responsible for developing a reuse plan that "appropriately balances the needs" of the various communities, businesses and developers, and homeless assistance. Once this balance has been achieved, the LRA then submits its reuse plan to HUD to determine its compliance with the statute.³⁵

2.6 Environmental Issues & Remediation

Environmental liabilities associated with military bases have been cited in the past as hampering redevelopment efforts "because they [developers] fear they will be held liable for the cleanups under CERCLA."³⁶ Likewise, developers interviewed expressed concerns over the potential for incurring either direct liabilities for environmental contamination or indirect costs associated with their removal (e.g. delays, cost overruns, lost business, etc.). Therefore, an overview of environmental procedures and liabilities surrounding base reuse is important to understanding these issues facing developers.

In the past, the federal government has been cavalier in its use and disposal of hazardous substances. Causes of contamination range from the passive, such as leaking underground oil and gas tanks or runoff from cleaning facilities, to the almost criminal³⁷ dumping of toxic and radioactive wastes. In fact, "the first 86 bases that were slated for closure contained over 500 individual hazardous waste sites that had to be cleaned up , and 15 of these bases have been placed on the National Priorities List (NPL) or superfund list."³⁸As it turns out, "federal facilities are among our worst polluters".³⁹ Furthermore, some bases also contain live ordinance buried in undocumented locations.

³⁴ Pub. L. 101-510

³⁵ Department of Housing and Urban Development, 24 CFR part 586

³⁶ Schnapf, Larry, "Sales of Military Bases and Surplus Supplies Pose Environmental Traps," The Real Estate Finance Journal, (Winter 1994), pg. 24.

³⁷ In many instances a private citizen or corporation behaving similarly would, in fact, face criminal penalties.

³⁸ Schnapf, Larry, "Sales of Military Bases and Surplus Supplies Pose Environmental Traps," <u>The Real</u> <u>Estate Finance Journal</u>, (Winter 1994), pg.24.

2.6.1 Legislation

Responsibility for environmental cleanup falls primarily under the auspices of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),⁴⁰ the Superfund Amendments and Reauthorization Act (SARA), and the National Contingency Plan (NCP).⁴¹ Consistent with CERCLA's "polluter pays" philosophy, the DoD, under section 120 of CERCLA, is responsible for remediating all environmental damage it has created through its activities.⁴² The DoD is also responsible for cleaning up past contamination, regardless of when it is identified, and for meeting the requirements of any new federal or state cleanup standards and laws.⁴³ However, the large number of individual toxic sites many bases contain, coupled with insufficient funding of the Defense Environmental Restoration Account (DERA)44, make complete remediation of a base tremendously time consuming and in some cases all but impossible. Furthermore, CERCLA requires that the military complete remediation of the entire site prior to disposal, thereby delaying redevelopment efforts on those portions of the base that are uncontaminated or already remediated. The passage of the 1992 Community Environmental Response Facilitation Act (CERFA)⁴⁵ addressed this problem by allowing the base to be, in essence, subdivided, and the uncontaminated parcels conveyed for development. This allows reuse efforts to proceed and parcels to be transferred even though remediation efforts may be incomplete.

2.6.2 Process

Prior to making a final disposal decision, the Military Department, under the National Environmental Policy Act (NEPA),⁴⁶ "must consider all reasonable disposal alternatives and their respective environmental consequences...[and]...analyze impacts to natural and cultural resources (e.g., historic structures, wetlands, threatened and endangered

³⁹ Rubenson, David and Anderson, John, <u>California Base Closure: Lessons for DoD's Cleanup Program</u>, National Defense research Institute, 1995.

⁴⁰ 42 U.S.C. 9601 et seq.

⁴¹ Rubenson, David and Anderson, John, <u>California Base Closure: Lessons for DoD's Cleanup Program</u>, National Defense research Institute, 1995.

⁴² This does not, however, necessarily provide a panacea for developers acquiring these sites (see Section 5.2.5).

⁴³ Environmental Impact at Closing Installations, General Accounting Office/NSAID-95-70, 1995

⁴⁴ DERA is an account funded by the defense appropriation process as CERCLA's Superfund is not available to the DoD.

⁴⁵ PUB .L. No. 102-426, 106 Stat. 2175.

⁴⁶ 42 U.S.C. 4321 et seq.

species, Native American sites and others)..."⁴⁷ This analysis typically takes the form of an Environmental Impact Statement (EIS).

While NEPA addresses the environmental impact of the proposed use(s) on the site, of far greater relevance to base reuse is the *site's* environmental impact upon the *uses*. In other words, does the site contain contaminated areas and how/when will they be remediated? Environmental programs are executed through the BRAC Environmental Process, which includes addressing environmental issues as well as executing cleanup activities. Ideally, communication between the Military Department and the LRA will ensure that reuse planning is compatible with the environmental conditions and that cleanup priorities can be established to reflect current and anticipated land uses.⁴⁸

The Defense Environmental Restoration Program (DERP) requires that "all DoD installations (active, closed, or realigned) proceed expeditiously to remediate environmental contamination from hazardous substances, pollutants and contaminants due to past practices. This includes accommodating environmental response processes under other federal and state statutes, as appropriate."⁴⁹ DERP establishes guidelines designed to meet three objectives:⁵⁰

- 1. The identification, investigation, research and development , and cleanup of contamination from hazardous substances, pollutants, and contaminants.
- 2. Correction of other environmental damage (such as detection and disposal of unexploded ordinance) that creates an imminent and substantial endangerment to the public health or welfare or to the environment.
- 3. Demolition and removal of buildings and structures that pose an immediate threat to health and safety.

The BRAC environmental planning process consists of five principal steps.⁵¹

- A BRAC Cleanup Team (BCT) is established which works closely with the LRA and coordinates the cleanup activities.
- The BCT reviews the LRA's redevelopment plan and the status of all environmental programs.

⁴⁷ Department of Defense Base Reuse Manual, (Washington DC, 1995)

⁴⁸ Ibid.

⁴⁹ Fact Sheet, Air Force Base Conversion Agency, Department of the Air Force, (Washington, DC, 1997).

⁵⁰ Ibid.

⁵¹ Department of Defense Base Reuse Manual, (Washington DC, 1995).

- A BRAC Cleanup Plan (BCP) is prepared, describing the status of base environmental programs, and identifying strategies and schedules for integrating the environmental cleanup with the community reuse plan.
- As contamination is remediated, the BCP is updated to reflect cleanup and site close-out actions that have been taken, as well as any changes in community redevelopment needs.

Of primary concern to end users of former base properties are the environmental issues concerning the sites they acquire. Providing this information, The Environmental Baseline Survey (EBS) is a mandated report that is "generally intended to be a thorough review and compilation of environmental records and other activities related to the environmental condition of the property *as of the date of the EBS report*. The EBS report satisfies a number of requirements including; notification of transferees of storage, release, or disposal of hazardous substances as required by CERCLA, identification of uncontaminated property under the provisions of CERFA (at CERCLA 120(h)(4)), and supporting the preparation of Findings of Suitability to Lease (FOSLs) and Findings of Suitability to Transfer(FOSTs) in support of real estate transactions.⁵² Furthermore, DoD relies on the EBS report as a key element in satisfying its due diligence requirements for real estate transactions.⁵³

Once it has been determined that the property is environmentally suitable (i.e. uncontaminated or remediated) the DoD (or military department executing the transfer) will issue a FOST or FOSL.⁵⁴ Because a transfer of real property by deed cannot be made until environmental cleanup is completed, or a cleanup remedy is in place and operating successfully, it has become common practice to lease property in anticipation of transfer.⁵⁵ This has been an important means of facilitating redevelopment efforts while environmental restoration continues and before a FOST has been issued.⁵⁶

⁵² <u>Air Force Base Conversion Handbook, BRAC 95 Update</u>, Department of the Air Force, (Washington, DC, 1995).

⁵³ This point is quite significant as while the DoD views the EBS report as satisfying *its* due diligence requirements, a purchaser may not necessarily rely on it [EBS report] as due diligence with regard to an "innocent purchaser defense" to CERCLA 107 liability. See Section 5.2.5.

⁵⁴ If a FOST cannot be made but the parcel may be leased as permitted by law, a FOSL may be issued.

⁵⁵ <u>Defense Base Closure and Realignment Commission 1995 Report to the President</u>, (Washington, DC 1995).

⁵⁶ This is not without implication to private sector investment, however. See Section 5.2.5.

CHAPTER 3 CHARLESTOWN NAVY YARD

3.0 Introduction

On July 1, 1974, the U.S. Navy formally closed the Charlestown Navy Yard (the Yard), ending a 174 year relationship with Charlestown and the City of Boston. What was once the employment home of over 50,000 people at its peak, now lay fallow. As described by Robert Kenney, the former director of the Boston Redevelopment Authority (BRA), the once bustling home of the U.S.S. Constitution⁵⁷ had been reduced to an "inaccessible run down industrial site consisting of derelict piers, crumbling buildings and environmental hazards."⁵⁸

Although the Yard represented potentially prime real estate, and history has borne this out, in 1974 the Yard's future appeared quite uncertain. The nation was in the midst of a recession and the pundits were speaking of the demise of the historic northeast power centers of industry and commerce. Furthermore, although the Yard was just a stone's throw from downtown Boston *across* the harbor, it was, in fact, quite inaccessible as it lacked service by public transportation and adequate roads.

Yet, the Yard's redevelopment has been tremendously successful and has received national accolades. Approximately 3,000 permanent jobs have been created while ongoing construction provides close to 2,000 more. 1,086 housing units have been completed, including 323 affordable units, which, when combined with office and retail uses, add up to over 2.5 million square feet. The project is not yet complete, with an additional 2.3 million square feet of mixed-use development planned or under construction.⁵⁹

3.1 History

The Charlestown Navy Yard had faced threats of closure since the 1930's. In the aftermath of renewed closure threats in the 1960's stemming from the Kennedy Administration's base closure initiative, the Charlestown Historical Society moved to

⁵⁷ The U.S.S. Constitution ("Old Ironsides") is the oldest commissioned warship (1797) in the world and resided (and still resides) at the Charlestown Navy Yard.

⁵⁸ Robert Kenney, Interview with author, (June 26, 1997).

⁵⁹ Karen, Victor, "The Charlestown Navy Yard," Commentary, (Fall, 1994).

have the Yard recognized as a National Historic Monument and placed on the National Register of Historic Places. In 1966, they succeeded. A few years later, sparked by a September, 1969 article in the Boston Globe, a movement was begun to create a park at the Navy Yard that was centered around the U.S.S. Constitution.⁶⁰

In April, 1973, the Secretary of Defense announced that the Charlestown Navy Yard, among others, would be closed. Initially, The Boston Economic Development and Industrial Commission was designated as the agency responsible for the planning and conversion of the site with the Boston Redevelopment Authority (BRA) acting in an advisory capacity. Ultimately, however, it became apparent that the BRA, given its experience with redevelopment projects, was far better equipped to manage the Yard's conversion/redevelopment and the BRA acquired 105 acres of the 135 acre site from the GSA⁶¹ in 1976.

As portions of the site had been declared a National Historic Monument and some of the buildings historically and architecturally significant,⁶² the BRA acquired 31 acres (the Historic Monument Area) for 1\$ pursuant to Section 2039(K)(3) of the Federal Property and Administrative Services Act of 1949 with the stipulation that the site be reused with an eye to preserving historic resources. Under the provisions of this transfer, the BRA is prohibited from subsequent transfers to third parties and therefore uses ground leases to facilitate transfer of control to private developers. Another 16 acres was also acquired for \$1 to establish Shipyard Park and 30 acres was conveyed⁶³ to the National Park Service to Establish the U.S.S. Constitution National Park. The remaining 58 acres of the site (known as the New Development Area) was purchased from the GSA for 1.74 million dollars.⁶⁴

Initial reuse plans were aimed at directly mitigating jobs lost due to the base's shutdown by calling for significant industrial and light industrial uses. Specifically, it was proposed that shipbuilding activities be sought which would re-hire workers laid off by the Navy and would require little public investment as the required infrastructure was already in place. Towards this end, a deal was eventually struck with the Boston

⁶⁰ McCleary, Oren, <u>A National Park for Charlestown</u>, (Boston, 1975).

⁶¹ Robert Kenney, Interview with author, (June 26, 1997)

⁶² Several building had been designed by noted architect Alexander Parris, who also had designed Quincy Market.

⁶³ By public Conveyance, see Section 2.2.

⁶⁴ Karen, Victor, "The Charlestown Navy Yard," Commentary, (Fall, 1994).

Shipbuilding Corporation to locate at the Yard under the condition that it could secure enough shipbuilding contracts.

Unfortunately, American shipbuilding in general, and New England shipbuilding in particular, was in its twilight, and Boston Shipbuilding's failure in 1975 to secure the prerequisite contracts was an indication of the demise befalling the U.S. shipping industry.

Hopes then settled upon attracting the Kennedy Museum to the Yard. Although the library would not create any jobs to speak of and would not contribute tax revenues, it was felt that the museum would attract tourists as well as lend credibility to the Yard as a desirable site. At this time at the end of 1975, the BRA officially took over as the agency in charge of the Yard's redevelopment. The BRA quickly refocused reuse planning on creating a mixed-use masterplan that exploited both the waterfront location and the site's historical character. They [BRA] hoped that the Kennedy Museum would be the first step in attracting development to the Yard. This hope was to be frustrated, however, as the Kennedy Museum chose to locate at the University of Massachusetts.

3.2 Boston Redevelopment Authority (BRA)⁶⁵

The Boston Redevelopment Authority was established in 1957 by the Boston City Council and the Massachusetts Legislature to assume the development powers previously held by the Boston Housing Authority. These powers were also expanded to areas other than publicly-assisted housing and in 1960, the City Planning Board was abolished and its powers transferred to the BRA.

During the next ten years, the BRA concerned itself first with large downtown renewal projects and then with more than 20 neighborhood urban renewal areas. Its role was restricted as a matter of policy to residential and commercial development.

In 1971, the Economic Development and Industrial Corporation (EDIC) was created to promote industrial development and in 1990 also assumed responsibility of job-training, job placement, and other human services programs. Beginning in 1993, the BRA and EDIC were functionally merged.

⁶⁵ Taken from the BRA on-line (web) information, (July 1997).

3.3 Immobliare New England (INE)

Immobliare New England (INE) was the American subsidiary of Societa Generale Immobliare of Rome created expressly to operate the Charlestown Navy Yard project. Societa Generale Immobliare of Rome, a joint venture between an Italian based real estate developer and Italian construction company, was no stranger to ambitious U.S. development, having completed such notable projects as the Watergate Hotel in Washington and Marina Del Rey in California.

INE was attracted to the Navy Yard primarily because of its location, and specifically because of the "tremendous development potential we recognized that the site's complete access to the water afforded," says Paul Davis, former president of INE. This potential was by no means universally believed, however, as no local, or other, developers had expressed serious interest in pursuing the 58 acre parcel known as the New Development Area. In fact, conventional wisdom at the time considered Charlestown a "tough neighborhood," says Davis, which was compounded by the Yard's inaccessibility and lack of public transportation. Davis suggests that the lack of interest by other developers was the result of their concentration on Boston CBD and waterfront projects, having not taken the time and/or lacking the analytical sophistication to consider a deal with perhaps more subtle potential.

Whereas others saw few redeeming features at the Yard, INE saw apartments and a marina. Very Important to INE was that they control a large enough site so that they could build enough apartments and able to "create a neighborhood." Since they were to be the first developers at the Yard, Davis says that they had to be assured that they had enough "critical mass to determine their own destiny." Davis also says that they even put a positive spin on the site's inaccessibility, feeling that the two obscure entrances and fences with barbed wire would provide a "buffer" between the site and the "tough neighborhoods." They felt that if they invested in security and received support from the BRA, they could "secure the site."

Negotiation

Despite the fact that INE felt bullish about the potential for development at the Yard, they were also aware of it detractions. Davis recalls that they were prepared to proceed with the project, but only under the right circumstances. Negotiations centered on INE

feeling comfortable that the BRA's incentives were aligned with theirs, and that the BRA was fully committed to the project. This took its form as two issues, financing and infrastructure.

With regard to the latter, INE insisted that the BRA provide certain infrastructure investments. These took the form of streets, sidewalks, landscaping and utilities. Also, it was important to INE that the BRA move ahead swiftly with its plans in the Historic Monument Area. INE felt that much of the appeal to living at the yard was going to be the Yard's waterfront and historic components, and they wanted to make sure that these amenities were going to be in place when they marketed their product. Because the BRA was "committed to sparking development" at the yard, "a lot came out of those negotiations," says Davis. In addition to providing the infrastructure improvements, the BRA also agreed to a schedule for those improvements which, if not met, would trigger a refund of INE's money with interest.

INE and the BRA also agreed on a unique financing agreement. Under this agreement, INE lent to the BRA the \$1.74 million dollars for the BRA's purchase of the New Development Area from the GSA. Each parcel to be developed was then assigned a value, and as that parcel was developed, the valued amount was deducted from the remaining balance owed to INE. Also, as mentioned above, if the BRA failed to meet its infrastructure commitments, INE was entitled to have their remaining investment returned with interest (two points over prime). On the other hand, if the development proceeded smoothly, the accrued interest was forgiven. Furthermore, there was a development goal set that provided for the BRA to receive a percentage of project profits if these goals were met. These provisions created a unique set of incentives that enabled INE to reach a "comfort level" sufficient to justify pursuing the project. As Davis said,

"the financing agreement gave us a lot of leverage because you had a situation where the city is on the books owing a developer all of this money plus accruing interest...this gave us relative assurance that the city and administration would cooperate as much as possible and get things done on a timely basis."⁶⁶

Another dimension that Davis says was critical in arriving at an agreement, was that the Land Disposition Agreement be flexible enough to *modify* once the project was

⁶⁶ Davis, Paul, Interview with author, (July 21, 1997).

underway. Davis feels that this flexibility is a critical issue. An example of this flexibility is evidenced by the provision in the agreement regarding elderly housing. Davis notes, "as with most planned, large scale development under a municipal authority, the municipality or agency generally requires the developer to provide or subsidize some type of public good." At the Yard, the BRA wanted INE to provide elderly housing. Yet, rather than mandating it with a rigid requirement or obligation, the agreement called for a "best effort" on the part of INE. This, Davis says. "made us comfortable because we knew that if the subsidies or market did not materialize, we would not be held to the cross."

Also a significant determinant of INE's faith in the viability of the project was the BRA's plan, responsibility, and commitment to developing the historical areas as well as their commitment to Boston's waterfront. This combination of amenities, INE believed, would attract people to the Yard and provide focus. Davis points out that it is "important to note that a private developer would not necessarily have the incentive, and probably not the ability, to provide large public goods."⁶⁷

3.4 Kenney Development Company, Inc.

Kenney Development was founded in 1977 by Robert Kenney and specializes in "planning, developing and managing complex urban development and redevelopment projects, in its own right or consulting to others."⁶⁸ Mr. Kenney has had a long history with development and redevelopment in Boston, serving as Director of Boston's Public Facilities Commission from 1968-1970, and as the Director of the Boston Redevelopment Authority from 1971-1976.

Bob Kenney was also one of the first developers to pursue commercial development at the Charlestown Yard where he was involved with the speculative redevelopment of Buildings 33, 34, 38 and 39 in the Historic Transfer Monument Area. Kenney became involved with the project after being approached by a business group that held the development rights to the site. As he recalled,

⁶⁷ Davis, Paul, Interview with author, (July 28, 1997).

⁶⁸ Taken from Robert Kenney's resume, provided by Mr. Kenney.

"I was approached by this community group that had been previously designated as developer. The BRA had advertised these buildings for development and a group of local business men put a proposal together and they were designated as the developer. They came to me to see if I could do the project as they had had another development consultant but he couldn't or didn't get it started. I was able to get it started."⁶⁹

Kenney was a logical choice to contact as he, as director of the BRA, had negotiated the transfer and early planning of the Yard.

While Kenney had been searching for projects to get involved with and looking at other sites, the Navy Yard was attractive for several reasons. Kenney had specialized in old or historic buildings and he saw an opportunity to apply his experience and competitive advantage with these types of projects at these buildings. The site's "unique campus like setting close to downtown" also appealed to him.

Because the site had been part of a Historical Conveyance (see Section 3.1), the buildings could only be developed and operated under a ground lease. Furthermore, the BRA provided the lease for 37.5 cents per square foot during construction and 75 cents per square foot after completion which was extremely inexpensive, even by 1983 standards. The BRA was then able to share in the upside of the deal if it was successful by participating in a percentage of the profits once a predetermined benchmark had been reached. As Kenney says, "they [BRA] made it financially very attractive with the combination of the ground lease and the fact we did not have to provide any tenant buildout until the spaces were leased. This limited our exposure."

It was also important to Kenney that the BRA had already made a significant investment in infrastructure at the Yard. This included roads, sidewalks, landscaping, and investment in the park areas. Perhaps more importantly, housing had already been built and people had begun to live at the Yard. This, Kenney says, "was an indication that people wanted to be there--well, live there at least. This was important."

While the site was attractive, Kenney says that he remained apprehensive. With regard to his project's proposed uses, namely office and retail, the Yard remained untested. Also, of major concern, was that the site was not easily serviced by public/rapid transit. He says that without public transit, he felt that it would be difficult to "convince tenants to locate there--especially back office operations."

⁶⁹ Kenney, Robert, Interview with author, (June, 26, 1997).

Kenney had no reservations with regard to working under the authority of the BRA. Not only was he intimately familiar with its people and procedures, but he felt, "confident that I had enough flexibility once I got underway to keep me from getting nervous." In fact, the BRA, under his stewardship, had negotiated with the DoD to acquire the historic buildings pre-approved for use, rather than having to go individually before the Department of the Interior, to allow flexibility in the planning process as events developed. Moreover, because of the type of projects he had experience working on, he felt comfortable with "complex deals."

Flexibility was to prove very important to Kenney. Initially, the BRA had designated that all of the historic buildings contain retail spaces on their first floors with office space above. Yet market realities prevailed as it became apparent that the Yard was not going to be a retail destination and retail tenants did not lease the space. Kenney *was* having success attracting office tenants, however. The BRA "recognized this reality" and subsequently allowed Kenney to put office on the first floor.

The BRA also proved helpful in establishing the viability of the project by leasing office space themselves as well as by facilitating the Massachusetts Water Resource Authority's lease of a large block of space. By helping to occupy space, Kenney says that "other tenants felt more comfortable about leasing space themselves."

Going Forward

Kenney Development is currently looking at the option to develop Building 105, which Bob Kenney refers to as a "real turkey." He would like to "do some housing," given the extremely tight Boston housing market but has been frustrated by toxic contamination. Building 105 is historically significant as it once housed the famous Charlestown Navy Yard Chain Forge. It is also significant in that it is heavily contaminated with Asbestos and PCB's. Kenney says that although the DoD is responsible for the clean up, "you never know how long it will take for them to get around to it and it might take them forever to do it." Frustrated by waiting, and anxious to pursue what he believes is *currently* a good project, he explored the possibility of doing the clean up himself. This, however, proved impractical as the cleanup is particularly expensive due to the requirement that the Forge be kept as a museum and therefore retained *intact* and cleaned. Also, he is insecure as to his liability if he does the clean up himself. He feels that both he and the DoD would be well served to provide a mechanism to allow private developers to remediate the site and be reimbursed by the DoD.

3.5 Raymond Property Company, LLC

The Raymond Company was founded by Neil St. John (Ted) Raymond in 1969, and has been a significant presence in Boston real estate. They are especially noted for their adaptive reuse of historic buildings. Among their more celebrated projects are the Lincolnshire Hotel Building, 277 Dartmouth Street, the Exeter Street Theater, and the Frederick Ames Webster House.

James English, Raymond Company's Director of Planning and Operations and one of the firm's partners, has a unique perspective on the Yard's redevelopment. Not only has he has been involved with the Raymond Company's efforts there, but he also worked for the BRA in the early 1980's as Project Coordinator for the Navy Yard and ultimately as the Deputy Director of Harbor Planning and Development.

Raymond Company first became involved at the Yard with the redevelopment of Building 149, which had originally been undertaken by the Congress Group but had barely gotten underway by them when they decided to sell out. Building 149 was a proposed speculative office building of approximately 600,000 square feet. Jim English remembers,

"Ted Raymond felt that there was potential at the Navy Yard for office development although at this time it was still fairly untested. Bob Kenney had completed some space and had leases with the BRA and the Massachusetts Water Resource Authority and it was important that there were *some* tenants."⁷⁰

Agreement

The agreement reached with the BRA was based primarily on financial incentives. English says that the BRA had already "demonstrated its commitment to the Yard," and that much of the infrastructure improvements had been completed. Therefore, negotiations centered around financing. "Unlike most private sector acquisitions," English says, "financial terms were negotiated...[and]...projects at the yard were

⁷⁰ English, James, Interview with author, (June 23, 1997).

typically not a bid situation but rather based upon the merits of the proposal and whether that guy or team had the where-with-all to execute and complete the project."

Building 149 was also part of the Historical Conveyance (as was the Kenney site discussed above) and therefore also subject to a ground lease. Again, the BRA offered a very attractive lease as incentive to Raymond's developing the site. They also structured the agreement so that the BRA would share in the upside of any profits Raymond realized. This, English says, "was important in ensuring that the BRA was interested in the project's success."

English says that flexibility once the project got underway was also crucial. Building 149 had been designed by Alexander Parris, the architect of Boston's Faneuil Hall, and under the terms of the Historic Conveyance and subsequent agreement with Raymond Company, it had to be restored. Yet because of the building's condition, combined with restrictions imposed by current building codes, a true restoration was financially unfeasible. As English explained,

"The only way we were going to be able to do the job was to take the whole building apart and rebuild it *our* way and then make it look the same. That was quite all right with the BRA and everyone else because they were in a development mode to get things done, not bust peoples chops."

The project became a resounding success when Raymond Company leased space to the Massachusetts General Hospital's (MGH) Research Department. MGH, recognizing that they had begun to fall behind in research and were confined with regard to space in Boston, decided to invest heavily in a state of the art research facility at the Yard. They then convinced the head of Cancer Research to locate there, promising him virtually anything he wanted. As English points out, "MGH sort of repeated the BRA's experience of spending some money and giving the first guy in everything he wanted, then everyone else wanted to be there." Importantly, MGH also established their own transit system to service the Yard which proved to be a tremendous attraction for future tenants. "MGH just created a huge engine for economic development," says English.

Also responsible for their project's and, ultimately, the Yard's success, English believes, was the very successful exploitation of the waterfront and historical amenities. The park, U.S.S. Constitution, and waterfront not only make the Yard a destination, he says,

but they also create a "valuable space. People will always pay a premium to live or work on the water."

Ongoing development

By the mid 1980's, not only had the Yard begun to prove itself as a viable location, but Boston was also experiencing an unprecedented economic and real estate boom. Now the tide began to shift as developers began to *compete* for sites at the Yard. Whereas developers once asked the BRA what they were going to do for them, the leverage had turned where the BRA now asked the developers what *they* would provide. By this time, Raymond Company had also bought out INE's interest at the Yard. English remembered, "they [BRA] began asking, what streets are you going to build? What linkage are you going to provide? What programs in Charlestown are you going to support?" Because the market was strong and the Yard had now proven itself, developers responded.

With the real estate crash of the late 1980's and early 1990's, the situation reversed itself. Once again, the BRA was looking for developers. English recalls that the BRA came to them and said, "come take Building 75." Raymond Company, however, was also considering buildings in Charlestown that the banks had foreclosed on and were anxious to dispose of. Recognizing this, the BRA again offered to "participate" with a very attractive financial package (low ground lease) and a share in the potential upside of future profits. Furthermore, when Raymond suggested that they did not want to provide any roads or participate in linkage programs, "the BRA said, 'no, none of that, just come here and we will move you through the process smoothly and quickly.' And that is exactly what happened," English says.

English feels that it is just this type of flexibility which has made the BRA so successful in redeveloping the Yard. Furthermore, it was, and is, the reason that Raymond Company is able to successfully participate. English says, "the BRA is somewhat unique in this country in that it is both the planning authority and the development authority in one board. You have the same group encouraging development as making the planning and zoning decisions...that foresight was just so brilliant."

CHAPTER 4 LOWRY AIR FORCE BASE

4.0 Introduction

When, in the fall of 1991, Denver learned that Lowry Air Force Base was targeted in the BRAC 91 round of closures, it did not come as a surprise. Not only was the base obsolete⁷¹ and had been slated for closure once before (in 1976), but a feeble attempt at saving the base had been attempted in 1990.

With mitigating the negative impacts of the base's closure in mind, reuse efforts have been impressive. Lowry has received national attention for the speed and efficiency in which it has developed and implemented its reuse plan. As James Meadows, Executive Director of the Lowry Redevelopment Authority proudly claims, Lowry "has moved faster from closure to reuse than any other military facility, with innovative plans for land acquisition, housing for the homeless, and financing--is a role model for base redevelopment."⁷² Lowry's impressive reuse plan calls for 800 acres of open space including 45 holes of public golf, an ice arena, a business/town center that includes an urban office park, independent and assisted care housing for seniors, a college campus for 10,000 students, and two residential neighborhoods with over 3,000 single family houses.

Unlike the Charlestown Navy Yard, Lowry has had the good fortune to have its reuse plan met by a healthy economy. Moreover, The Denver metro area has been experiencing explosive growth on a local level and these have combined to help Lowry generate promising early results.

4.1 History

The 1,866 acre Lowry Air Force Base was commissioned in 1937 in what was then the rural outskirts of Denver. Lowry is perhaps best known as President Eisenhower's summer White House from 1953 to 1955. Lowry was also the original home of the U.S. Air Force Academy which was dedicated there in 1955.

⁷¹ Although an Air Force Base, the base's runways had been decommissioned in 1965 in the aftermath of protests sparked by the crash of a military plane in a Denver Backyard. The base was subsequently used as a training facility.

⁷² Meadows, James, Lowry, "A Role Model for Base Redevelopment," <u>Urban Land</u>, (March 1997), pg.26.

Once the base's closure became certain in late 1991, the communities of Denver and Aurora responded by signing an intergovernmental agreement creating the Lowry Economic Recovery Project (LERP). While only 11 percent of the site lay in neighboring Aurora, Denver's recognition of Aurora's economic stake in redevelopment efforts was critical in establishing an early broad base of support that would facilitate agreement in the arduous reuse planning process. This swift response was instrumental in the delivering to the Air Force of a clear plan that, in turn, enabled the Air Force to complete the requisite Environmental Impact Statement (EIS) and deliver a decision on property disposition sixty days in advance of the actual closure of the base.⁷³

In 1994, the Air Force issued a Record of Decision (ROD) approving the proposed Lowry reuse plan, while Denver and Aurora signed a second intergovernmental agreement establishing the Lowry Redevelopment Authority. The Lowry Redevelopment Authority is an independent public entity or LRA (see Section 2.4) that serves as the master planner and developer of Lowry. As Meadows says, "the LRA [Lowry Redevelopment Authority⁷⁴] is accountable to the public but retains discretion to redevelop the site more like a private enterprise, albeit for a public purpose."⁷⁵

At this same time, as per the federal, state and local screening process (see Section 2.2), the LERP recommended, and the air force accepted, public benefit conveyances to the American Red Cross, Community College and Occupational Education System, University of Colorado Health Sciences Center, Denver General Hospital, Colorado Department of Health (lab facility), Belle Bonfils Blood Bank, City of Aurora Parks, Emily Grifith Opportunity School, Lowry Heritage Museum, and the Colorado Historical Society. In regard to a request by the Denver Sheriff's Office for a correctional facility, the LERP strongly recommended against it and the offer was ultimately withdrawn.⁷⁶

Denver, Aurora and the LERP struggled with requests for homeless assistance under the terms of the McKinney Act (see Section 2.5). While the LERP recommended that no more than 86 family units and 87 rooms for individuals be dispersed, phased in, and

⁷³ Ibid.

⁷⁴ In the discussion of base reuse, LRA generally refers to Local Redevelopment or Reuse Authority. The Lowry redevelopment Authority also uses this acronym. To avoid confusion, references to LRA in this paper refer to the former.

⁷⁵ Meadows, James, Lowry, "A Role Model for Base Redevelopment," <u>Urban Land</u>, (March 1997).

⁷⁶ Frieden, Bernard, Case Study: Lowry Air Force Base, MIT working paper, (January 1997).

managed with market-rate rental housing by a common management company, the Department of Health and Human Services approved the award of 196 family and 109 individual units. Ultimately, the Lowry proposal won the day, but only after a compromise to provide housing elsewhere funded by a \$5 million grant by HUD, \$1.5 million from Denver and the State, and a \$2 million contribution from the Lowry Redevelopment Authority.⁷⁷

Because the Air Force has not finished all of the procedural disposition requirements relating to the entire property, Lowry does not yet have title to all parcels. Therefore, they have used leases to transfer control to purchasers with the lease payment equal to the agreed purchase price. In general terms, the lease carries an irrevocable option to purchase. The purchase price is paid upon lease execution and a lease agreement for \$1 per year executed. When the DoD releases title, Lowry then is able to transfer title to the purchaser and the lease is voided. This is significant as it requires a level of sophistication on the part of the purchaser.

4.2 Randy Stein & Skeena Holdings, LLC

Randy Stein has been involved in real estate since the early 1980's when he worked for a developer in project acquisitions. Later in the 80's, he sourced deals and acted as a project manager for eight builders in four southwestern states. In the aftermath of the real estate collapse in 1989-90, he went into business for himself as a land broker in the Denver metropolitan area. In this capacity, he not only developed an impressive network of clients and associates in the Denver real estate market, but he also gained an intimate knowledge of the Denver market as well as experience in negotiating and wading through complex and time consuming real estate transactions.

Mr. Stein is also an avid athlete, having played professional tennis as well as being involved in a recreational ice hockey league. His passion for hockey is also shared by his five year old son, and Randy is looking forward to being active in his son's youth hockey league. It is with respect to ice hockey that Stein's passion for sports and experience as a real estate professional converged at Lowry.

⁷⁷ Meadows, James, Lowry, "A Role Model for Base Redevelopment," <u>Urban Land</u>, (March 1997).

Precipitated by the impending closure of the ice rink he played at, coupled with the growing popularity of hockey and a shortage of available rink space. Stein spotted an untapped investment opportunity and formulated a development proposal by build a skating facility. He subsequently optioned the aforementioned closing rink and lined up prospective tenants. When that deal fell through, he began looking for an appropriate space.

Attracted by the large airplane hanger space available, Stein first considered the Stapleton Airport site which, like Lowry, was slated for redevelopment. At Stapleton, however, they did not seem to be far enough along or have a clear enough vision of their reuse plan to give Stein confidence in pursuing his project there. Conversely, Lowry had a very specific reuse plan and as Stein remarked, "everyone was talking about what a great plan they [Lowry] had and what a wonderful job Jim Meadows was doing."⁷⁷⁸ Furthermore, they had aircraft hangers.

On February 8, 1995, Stein contacted the Lowry Redevelopment Authority to express his interest in the site and on March 1, presented his proposal for an ice arena. While Steins proposal conflicted with Lowry's masterplan showing the hanger to be demolished for open space, this would be the first deal that Lowry would secure and the proposal complemented well the surrounding area's proposed recreational use. Upon getting no response to his letter of intent, Stein wrote several more times before receiving a June 27 letter where Meadows outlined the terms of the deal.

Problems

Stein had courted the Canlan Group as an investor to finance the project and Canlan was presented to Lowry in the fall of 1995. Finally, on February 26, 1996, a contract was executed. The contract was conditioned upon Stein getting financing from a suitable institution and Canlan was agreed to as that investor. Meanwhile, Stein had begun to lose faith in Canlan's ability to meet its commitment. The Colorado Avalanche, a hockey team, also lost faith in Canlan during this time and withdrew its commitment to practice at the arena. Of obvious concern to Stein, especially with the contact's May 31st drop dead date approaching, Stein contacted Meadows expressing this concern and his desire to replace Canlan with a more dependable investor. As Stein recalls,

⁷⁸ Stein, Randall, Interview with author, (June 30, 1994).

"I told them [Lowry] that Canlan's financial were bullshit. Jim [Meadows] had his mind set on them, though, even though I told him they weren't going to perform and that I could get someone else. I couldn't believe it.""

On May 14th, Stein delivered information regarding other prospective investors to the Lowry Redevelopment Authority but that information was returned *unread* on May 20th. At this same time, the American Hockey Company, a firm that successfully owns and operates hockey arenas nationwide, had agreed to provide Stein financing. On May 21st, after officials at Lowry refused to meet with him, Stein and a representative of the American Hockey Company went to Lowry, but again was refused a meeting. Getting ever more panicked, the next day Stein again tried to present the American Hockey Company's credentials, but was again refused.

On May 31st, Stein, through a second mortgage on his house, put up the "earnest money deposit" and was granted an extension. As Stein remembers,

"they [Lowry] finally agreed to an extension and began to smoke Canlan out. Canlan was refusing to take Lowry's calls and they [Lowry] woke up. After all that, Canlan was finally out and Lowry agreed to review American Hockey's financials. They [Lowry] saw how good the financials were and agreed to begin negotiations on a new contract with American Hockey providing the financing."⁸⁰

Contract Negotiations

The contract negotiation process was an arduous one for Stein. While he concedes that "Lowry has a legitimate interest in making sure that proposals stay within their [Lowry's] strict planning guidelines" and that "they can and should enforce strict adherence to elevations, details, site construction, access, etc. and warranties of use," Lowry was unreasonable with regard to "constant subsequent amendments" and "ad nauseaum attention to arguments over details such as the definition of floor area." These conflicts over what Stein considers as "trivialities" resulted in Stein's threat to withdraw. Ultimately, however, their differences were resolved.

Other Problems

Stein encountered other problems which he attributes to dealing with an authoritative bureaucracy. One example stemmed from a verbal agreement he says he made with

⁷⁹ Ibid.

⁸⁰ Ibid.

Lowry officials concerning rubbish disposal. Upon learning that he was not entitled to the disposal site as he believed was agreed upon, he complained to Meadows. Meadows wrote to him,

"To avoid future miscommunications, please be advised that your organization may not rely on any representations by any party associated with the LRA unless it is in writing and mutually executed by the parties."⁸¹

Environmental Scare

While Stein had had little or experience with public authorities, he did have experience with real estate deals in which there were environmental questions. With regard to the property at Lowry he was purchasing, Stein had, through the due diligence process and consultation with his attorney, become versed in the federal environmental statutes relating to his property and recognized the DoD's responsibility for all contamination found previously as well as in the future. Furthermore, the hanger site "had been given a clean bill of health" from the Air Force.

Under the requirements of CERCLA and the transfer, Stein was responsible for asbestos removal associated with the hanger's renovation, which, by the middle of March 1997 was under way. At this time however, Stein's attorneys received a letter from the Colorado Department of Public Health and Environment suggesting that;

"Although unlikely, the possibility exists that nuclear weapons had been used as part of the specialist training conducted in Building 1499 [hanger], and that laboratories and a materials vault, were located in the building. It is this possibility that has prompted the BCT (BRAC cleanup team) to recommend that Building 1499 and several others undergo screening for radiological materials prior to release for transfer deed to the community."⁸²

Stein recalls that he reacted with "dismay," saying that "I drove to the site and told everyone to leave. All I could see was lawsuit." Stein then learned that although the DoD had responsibility for a potential cleanup, this did not insulate him from lawsuits. Also, if contamination was found, he faced the financial liabilities that would occur if his job was shut down while he waited for the Air Force to get around to cleaning up the site. To his surprise, Stein found out that the Air Force had been notified by Colorado

⁸¹ Meadows, James, Letter to Randall Stein, (February 25, 1997).

⁸² O'Grady, Barbara, State Project Manager, Colorado Department of Health and Environment, Letter to Phillip Larson, (March 14, 1997).

of its concerns in early December, yet neither the Air Force or officials at Lowry had notified him.

Ultimately, all would turn out well when no contamination was found except one *drop* of mercury in a slop sink. For Stein, however, it had "given him the fear of God."

Other Problems

Stein has also felt frustrated by what he believes was Lowry officials unreasonable level of control. As he puts it, "its our [Lowry's] way or the highway." Stein uses an incident associated with the groundbreaking ceremony at his site as an example. Stein, feeling justifiably proud on the dawn of his project, had successfully invited, among other civic officials, both the mayors of Denver and Aurora to the ceremony. Stein was pleased at this recognition of local support as well as a chance to generate publicity for his company. Officials at Lowry, however, exercising their contractual right to control these types of events, refused to allow the mayors attendences. They justified this decision saying that they were not prepared to stage a "suitable" event. Furthermore, when Stein gave the papers a press picture of himself wearing a hockey helmet (a play on the fact he was both the builder and a future user of the facility), Lowry's public relations person repeatedly tried to prevent the picture's use, saying, "she did not like it." Other issues abound. For instance, Stein has been asking Lowry to provide signage so customers can find the arena during the initial disorder caused by road construction, but to no avail. He has been repeatedly asked to speak to one person after another, and upon finally getting someone to concede signage is within their domain, has been told that they can not provide the signs within fifteen days to be ready for the arena's grand opening.

The American Hockey Company also at times felt frustrated with Lowry's domineering attitude. In one instance they were concerned by Lowry's failure to notify them of a pending lawsuit related to the homeless issue.⁸³ American Hockey's attorneys obviously felt that this was not trivial as they referred to Lowry's failure to notify them as "at a minimum, misrepresentation and quite frankly is [as] akin to fraud."⁸⁴ Notification of any actions, suits, or proceedings affecting the seller or purchaser are required by the Purchase and Sale Agreement.⁸⁵

⁸³ O'Reilly V. Perry, USDC District of Colorado, Case No. 95-CV-3188.

⁸⁴ Haligman and Lottner, P.C., Letter to Randy Funk, Esq., (February 6, 1997).

⁸⁵ Section 4.1(b), Purchase and Sale Agreement between Skeena Holdings, LLC and Lowry Redevelopment Authority.

The Good News

Stein believes that Lowry's masterplan is well designed and thought out. He believes that the impact of the surrounding mixed use developments should provide a positive backdrop for his project. He also feels that the large amount of recreational facilities may generate an image that will help him market the ice arena. Stein is very concerned, however, with the slow pace of these developments. Specifically, he feels that Lowry could have easily facilitated the building of more housing at a faster pace. The "presence of all of those rooftops," he says, would be valuable for making his project more attractive.

4.3 Allied Jewish Apartments

Allied Jewish Apartments is a non-profit organization sponsored by the Jewish religious community and both owns and operates three HUD elderly housing complexes with 400 units in Denver. Their mission is to "provide quality affordable housing and services to seniors." In acquiring and constructing their facilities, they are both organized for, and have the requisite experience to act as their own developer.

Two factors attracted Allied to Lowry. The first was location, the second, cost. Barbara Caley, Executive Director, explained,

"There ware two reasons we looked at Lowry when RFP's came out. The number one reason was location. Given the Denver market with not much available land and the site's location almost in downtown, and the proximity to such strong communities, especially on the Denver side. The second reason was cost considerations. We are a non-profit and we were buying an existing building at a low price."⁸⁶

Although the necessary renovations were significant and carried a commensurably high price tag, Allied believes that it is getting a \$16 million dollar building for \$9.5 million. This is important for it will, "allow us [them] to do assisted living at affordable prices, and that is our mission", Caley says. The extensive modifications are a consequence of bringing the building up to code and to comply with ADA⁸⁷ requirements. Caley noted that these were concerns as Allied contemplated the project but they were subordinated

⁸⁶ Caley, Barbara, Interview with author, (June 30, 1997).

⁸⁷ Americans With Disabilities Act.

by their belief that the discounted price would "allow them to provide more housing than they would have been able to do at another site," despite the cost of renovations.

Allied first became interested in the site in early 1995 in response to Lowry's first RFP. They [Allied] had committed themselves to creating more housing and were looking for an appropriate site. Therefore, when they received Lowry's RFP, they began discussing the Lowry site seriously. Due to Allied's committee and board oriented organization, these preliminary evaluations took significant time and they did not respond to this first RFP. By the time that Lowry issued its second RFP, however, Allied was ready to respond affirmatively. While they were originally interested in doing more housing and were looking at another site, there was a person on Lowry's board who was also at the State Housing Authority (CHAFA) who helped sell and facilitate the Lowry deal. As Caley recalled,

"then began a long exchange of letters between the director of Lowry (Meadows) and myself with the proposal finally going before the disposition committee." $^{\ast 88}$

The negotiation and disposition process took a little over a year. When asked if this process had seemed particularly long, Caley suggested just the opposite, saying that when put into the context of *their* experience, one year was fairly short. She elaborated,

"Our process is very time consuming. Everything must go though committees and boards. We are very process oriented and understand and appreciate bureaucratic procedure."⁸⁹

Issues

During the initial negotiations, two issues were of primary concern. They were questions surrounding environmental safety as well as concern over both the amount and pace of infrastructure being provided by Lowry.

Being a sophisticated owner and *operator* of real estate, Allied was well informed about statutory environmental considerations. Furthermore, they were also dependent on CHAFA, FHA, and HUD environmental sign-offs for their financing. Therefore, Allied was particularly aware and sensitive regarding environmental hazards. Recognizing that a proactive approach to environmental issues is necessary, even given the DoD's

⁸⁸ Caley, Barbara, Interview with author, (June 30, 1997).

⁸⁹ Ibid.

responsibilities, an environmental consultant and phase I study were commissioned. As Caley remarked, "the Department of Defense is responsible--*on paper*."

At issue was an underground "plume" (water) lying under part of the site that had a small level of chemical contamination as well as some potential soil contamination due to previous cleaning activities. These were not determined to be hazards by the Air Force, and Allied's consultant, upon study, also felt that they posed no risk to people's health. In light of these determinations, CHAFA, FHA, and HUD ultimately signed off.

Allied remains concerned about infrastructure issues. As the military had no requirement to meet local codes, many infrastructure improvements are required. Many other proposed improvements, such as new roads, sidewalks, parks, and public facilities, are of particular concern to the elderly. Because the Allied project is an existing site sitting within the context of the surrounding area and without its own roads, walks, spaces, etc., it is a "big" concern that these improvements are completed by the time the housing becomes occupied. As Caley said,

"promises are cheap. Say we are in operation in eight to ten months, which is our plan, and then they [Lowry] decides to put them [infrastructure] in. It will inconvenience our residents who are elderly."⁹⁰

Caley does not doubt that Lowry will complete the improvements, but is concerned as to when. She recognizes that it "may not be clear sailing." She also goes on to point out that since Allied is a non-profit organization and on such a tight budget, they are unable to help facilitate these improvements.

Control

Whereas Randy Stein found the highly controlled environment at Lowry difficult at times, Caley has a different perspective. She feels that because Lowry's masterplan had designated their site for elderly housing, they were able to acquire it even in the face of competition from other potential users. She notes that Lowry's commitment to their plan had enabled Allied, whose product is non-salable, to acquire a quality site while preserving their mission.

Furthermore, Allied is used to heavy regulation. Caley pointed out that "the other regulatory requirements" that they have to meet "are higher and more constraining than

⁹⁰ Ibid.

Lowry's." Whereas Lowry's tight controls and restrictive masterplan did not pose a hardship, it does provide for amenities very important to Allied such as the town center, paths, and access to medical facilities. As Caley described it, "the plan is visionary."

Caley believes that because Lowry does not need to generate profits in the traditional sense, they are able to provide a mix of uses as well as the above referenced amenities where a private master developer might not. She feels that it is important to recognize that these amenities are particularly valuable to their clients. Moreover, as suggested above, Allied may not have even been able competitively to acquire a site at Lowry had the masterplan not allowed for uses which were not "profit maximizing."

4.4 Village Homes

Village Homes was founded in 1984 as a residential builder and developer. Since that time Village Homes has become one of Colorado's largest home builders, is consistently ranked among Denver's top five builders, and has been recognized by Builder Magazine as one of the top builders in the country. Village Homes generally develops its own lots and is currently working on projects ranging in size from 19 to 834 lots. In the past, they have bought finished lots, been sub-developers within master-planned communities, and acted as master developer.

Gary Ryan, Vice President in charge of community development, says that Village Homes initially became aware and interested in opportunities at Lowry trough the extensive press coverage related to the closing and reuse plan. As the plan progressed, Ryan says that "they kept their eyes on what was going on and let them know of our potential interest."⁹¹ Later, Village Homes was contacted by Lowry about acquiring a site because, as Ryan explained, "we [Village Homes] had experience with a development on an infill site in West Denver and it was a traditional neighborhood design with alley houses,⁹² and that was a component they were looking for."

For Village Homes, given that there are virtually no large infill locations available in Denver, coupled with the booming Denver housing market, the site was very attractive. Furthermore, the site affords employment access to Colorado Boulevard and centers

⁹¹ Ryan, Gary, Interview with author, (July 1, 1997).

⁹² Traditional neighborhood design refers to a currently popular neighborhood design scheme which uses an alley behind the streets to provide vehicular and service access, leaving the streetscapes uninterrupted.

along Route 225. In fact, the Denver CBD is not their primary employment market. Still, despite mutual interest on both Village Homes' and Lowry's part, arriving at a deal was very difficult. As Ryan remembered,

"You had to be determined to work with them [Lowry] and they had a complicated process to go through to get a plan through. They had master plans, zoning issues to go through and they had a tremendous amount of citizen input through their citizen advisory group and so on. So, they had a very substantial pre-development cycle to go through before they could think of dealing with anyone and so, that was a long part of the process...So, this was a long time horizon project towards acquisition."⁹³

Ryan feels that in the end, Lowry was responsive to them because Lowry had a clear vision of what they wanted and because Village Homes had proven that they could successfully provide and deliver that product.

Village Homes could also have considered a site at the Platte Valley Redevelopment Area which has large parcels available and is, in fact, even closer to downtown Denver. Ryan explained that they found Lowry more desirable for a couple of reasons. While pursuing a project at Lowry is "more complex than a typical deal," Ryan says that the Platte Valley project "is even more complex and has political complexities that are going to make ending up with a plan, infrastructure, and financing a much longer timetable."⁹⁴ Ryan feels that this long timeline until a public decision, combined with unresolved complexities, creates an unacceptable level of uncertainty.

Lowry's vision for the rest of the site was also important to Village Homes. They believe that the mixed use concept, combined with all of the open space and recreational amenities, will be attractive to prospective homebuyers. Ryan said that the very large amount open space and amenities would have been difficult for a single *private* master developer to financially justify and provide. Despite the concern that some homebuilders and local homeowners had expressed, while the reuse plan was being developed, concerning the homeless issue and the possible negative impact upon house values, Ryan says that this was not an issue for Village Homes. He feels very strongly about this point. Village Homes is "less paranoid" than many other developers, Ryan says, and not only recognizes the needs of providing a housing for all economic groups and the resulting public benefit, but also is "ready to accept the mixed-use that Lowry

⁹³ Ryan, Gary, Interview with author, (July 1, 1997).

has planned...[and]...trusts and appreciates the entity [Redevelopment authority] managing the property" to consider and address these issues.

Negotiation

Unlike Allied's experience, Ryan believes that Village Homes paid "top market prices" for their site. He feels that Lowry was able to get these prices because of the desirable location and the construction boom. Village Homes' role can be probably best be characterized as sub-developer working under the Lowry Redevelopment Authority as master developer. When negotiating their agreement, a central issue was how this relationship would be defined with regard to infrastructure provision. Ryan says that a major part of the negotiation process was,

"how much improvements is the seller going to do for the price they wanted? They were pretty clear on the amount of money they wanted. We were able to compare that to our previous lot costs and negotiate based on service price and knowing what development dollar should be for that density and that form of developments."⁹⁵

Given his experience, Ryan feels that the negotiations were "interesting" in that Lowry solicited advice from Village Homes as to how to execute their vision. He says that Lowry "had a clear picture of what their development plan was what role they needed to perform as master developer and so created a framework for us to work from because we had built this type of product."

In regard to the level of improvements that Lowry was willing to provide, "that's where all the negotiation really took place...more negotiation about what was included than about actual dollars paid," Ryan says. Ultimately, what they agreed on was, in Ryan's words, "peculiar." In general, Lowry is developing all of the perimeter streets and the spine utilities while Village Homes is responsible for some interior streets and auxiliary utilities to be connected to Lowry installed mains. "Its a hybrid field. a little over half of the lots we're buying are fully improved except for the alley, and 40% of the lots we'll have to finish ourselves," Ryan says.

Another area that required negotiation was with respect to Lowry's strict design and engineering guidelines. At issue was exactly what waivers, variances, or amendments to Lowry's original planning guidelines would be required by Village Homes to give them an

⁹⁴ Ryan, Gary, Interview with author, (July 28, 1997).

⁹⁵ Ibid.

appropriate "comfort level." Lowry and Village Homes were able to reach agreement because, as Ryan explained, "Lowry recognized that as a merchant builder we had significant issues as to affordability and absorption while we recognized the constraints that they [Lowry] had as a quasi public entity."

The entire agreement was contingent upon Lowry's acquiring title from the DoD. While the lease in wait of title procedure works well for commercial tenants, the relative unsophistication of the residential market requires that the properties be fee simple. Ryan says that Village homes "started talking with Lowry about two years before [they] executed an agreement--much longer than usual."

Another "significant challenge in the agreement process" was establishing incentives to ensure an adequate time table. Ryan says that this was accomplished by 'triggering" Village Homes' "performance by the delivery of certain accomplishments by Lowry...then there was a drop dead date in the future where we could walk away and have all funds refunded. This flexibility was critical in reaching an agreement."

Environmental Concerns

Village Homes was aware of the potential for environmental issues related to their site. Ryan says that the first step was to "get familiar with what environmental responsibilities lie where." Furthermore, in the sale agreement, Lowry was not willing to make any unique warranties or representations about the property. Village Homes felt comfortable with the environmental assessment that the Air Force had completed commenting that they [Air Force] "had provided an organized and systematic report of all the historic conditions, and then saw a review of all that information by a third party consultant." In addition, Village Homes also did their own due diligence investigation. Still, Ryan expressed some reservations as to the ever increasing discussion of developer liability even where liability is explicitly assumed by another (i.e. DoD) party.

Another aspect of the environmental issue for Village Homes is whether potential buyers will be concerned with this issue. Ryan says that they have addressed this with the Redevelopment Authority and that Village Homes will have to "have a relatively high level of disclosure... and going to have to be able to do some education." This is to mitigate any possible fears that the public may have developed due to press stories about contamination and confusion with the "Lowry Bombing Range."

Control

Ryan feels that the very high level of control the Redevelopment Authority exerts is a double edged sword. On the one hand, he believes that Lowry is attractive because of their "clear strategy." On the other hand, the specificity of the type of product Village Homes must provide could be a liability if there are market changes. Ryan says that this is mitigated by their "relatively small commitment to build only 83 homes." He also thinks that the "other initial builders feel the same way--that they're looking at maybe a two, or two and a half year programs at most." With a relatively short time horizon, Village Homes believes that they can rely on their market research. Ryan indicated that to contemplate larger projects with longer time horizons, they would need much greater flexibility with respect to timing, product type, and design. He believes that the key to being able to pursue projects with the complexities attendant to base development is "sophistication and the access to information and the ability to judge the market."

4.5 Pulte Homes

Pulte Homes is the Nation's largest homebuilder with numerous recognitions for quality of design and customer service including being named America's Best Builder for 1997. Pulte operates in forty-one markets worldwide and sold over fourteen thousand homes last year generating \$2.3 billion dollars of revenue.

Like Village Homes, Pulte initially became interested in pursuing a site at Lowry because of its location and the huge current and projected Denver housing market demand. Alan Hyden, Director of Land Development for Pulte Homes' Colorado Division and who holds a Masters in Planning from the University of California at Berkeley, said,

"We [Pulte] are looking for niches, and our research shows that there is a market for "active adult" communities at infill locations in the Denver market. Lowry's attraction is that it has large parcels, especially considering it is an infill site, and it is locationally more desirable than other available sites such as Stapleton. Also, their land plan is great."⁹⁶

Unlike Village Homes, however, Pulte's attempts at acquiring a site at Lowry have been met with frustration.

⁹⁶ Hyden, Alan, Interview with author, (June 30,1997).

Pulte first approached Lowry officials in the Spring of 1996 to express interest in pursuing a project at Lowry. As Hyden recalled, "given that they had 3,200 lots to get developed, not an insignificant number, I assumed that our interest would be welcomed." Yet, to Hyden's surprise, Pulte was simply told to come back in six months. When Pulte reproached Lowry in the fall of 1996, they were once again put off and told to return in the spring. Pulte's experience in the spring of 1997 proved no different as they were yet another time told to come back in the fall. Through the influence of a friend and real estate associate involved in a project at Lowry, Hyden has recently been granted an audience by Lowry officials. With regard to this issue, it has been rumored⁹⁷ that insider politics have played a role in the selection process, specifically with regard to the influence of a Local marketing person who has "Lowry's ear." It was implied that this person, who provides market research to developers, may have a large amount of influence of who is chosen to pursue projects at Lowry. However, it is impossible to confirm the veracity of these remarks.

Hyden is a thoughtful person, and he reflected on some of the issues surrounding prospective involvement at Lowry. He feels that Lowry has an excellent development plan and believes that there are significant benefits to be realized by working under the Redevelopment Authority acting as master developer. For example, the location of the education and medical research facilities through the public conveyance process as well as Lowry's development of the recreational facilities, have already created externalities that positively affect the rest of the site. Furthermore, the masterplan assembles a combination of uses that otherwise may not have converged. From the developer's view, working under a master developer relieves him of much of the infrastructure concerns, and can also keep lots off of the books until they are developed. Hyden feels that another important aspect for a company like Pulte who have "great research," is the opportunity to be "pioneers."

Conversely, Hyden also sees some pitfalls. One area of particular concern is market timing and the flexibility to successfully go through market cycles. "There are examples of fantastically planned master planned communities that went belly-up when they hit the cycle wrong," he says. He feels that bases may be particularly susceptible to this due to the quasi public nature of the Redevelopment Authority. This stems from the possibility that they do not have "the normal economic pressures as a private sector

⁹⁷ Persons who wish to remain anonymous and do not appear in this paper.

developer has," and that they may create a plan that is either not based on market realities or not flexible enough to change when the market realities change.

Hyden thinks that this may be a danger at Lowry. As an example, he points to the plan's strict adherence to the "new urbanism"⁹⁸ design guidelines. He is concerned that focus group studies indicate that people generally don't like this design and that they will be particularly vulnerable to a market downturn. Also, developing a site as large as Lowry is a long process, and too strict an adherence to design guidelines may preclude the flexibility to change to follow technology.

⁹⁸ New Urbanism is another reference to "traditional designs" as discussed in note # 93.

CHAPTER 5 WATERTOWN ARSENAL

5.0 Introduction

The Watertown Arsenal, 59 acres overlooking the Charles River in Watertown Massachusetts, has been a military site since 1816 which, at its peak during World War II, employed over 10,000 people. Although the 2,300 jobs remaining when it closed in 1967 seem small in comparison, the shock to the community at losing those jobs was not insignificant.

Watertown faced similar issues as Boston would several years later at the Navy Yard. Both cities would begin aggressively planning for their site's redevelopment, and both sites were potentially valuable real estate⁹⁹. In Watertown's favor, the late 1960's economy was strong and prospects for redevelopment of the Arsenal site looked promising.

However, *unlike* Boston's experience, Watertown would prove to be remarkably *unsuccessful* at attracting *any* development to their site for 14 years.

5.1 History

In April 1964, the DoD announced the closing of approximately half of the Watertown Arsenal, consisting of 59 acres. By 1965, reuse planning had begun under the assumption that purchase of the site could only be financed by a private developer if the proposed redevelopment took place under a Federally approved urban renewal plan. To coordinate these efforts, the Watertown Redevelopment Authority (WRA) was created.

Watertown had expressed concerns regarding the "danger in allowing the GSA to conduct a private sealed bid sale...[and]...the exploitation of the land and buildings for commercial and speculative purposes by private developers."¹⁰⁰ As a result, the WRA looked toward acquiring the site. By doing so, they felt that they would be able to

⁹⁹ This is not to imply that the Arsenal site did or does have the same *intrinsic* value as the Navy yard but rather that it possessed excellent locational value and development potential.

¹⁰⁰ Watertown Arsenal Alternative Use Committee, <u>The Evolution of a Plan</u>, (Economic development Administration, Washington D.C., 1975).

exercise the "maximum amount of control" over the "type and character of new business that would be created."¹⁰¹

In 1968, Watertown Town Meeting approved a plan for an office/industrial park and appropriated \$6,385,000 for the purchase of the site¹⁰² from the GSA, having been assured by the WRA that the town would be reimbursed shortly when the site was developed. This optimism was based upon the fact that Polaroid Corporation had expressed an early interest in the site. With this in mind, the WRA had focused all of its planning and attention on accommodating this possibility. Much to the WRA's dismay, however, Polaroid ultimately did not purchase the site.

The next ten years were characterized by the WRA's failure to come up with a coherent policy towards the site's reuse. As Mark Boyle, current director of the Watertown Arsenal Development Corporation (the WRA's successor) and Chairman of the Watertown Planning Board commented:

"They [WRA] hadn't even done a re-use plan. They had a very hard time getting a re-use plan adopted, there were citizens in the community that kind of set up an alternative re-use committee that didn't like what the Redevelopment Authority was setting up. So they set up their own kind of independent, rogue group. They would critique and tell the citizens that there was a better way or a different way to do it. And they actually went to town meetings -- we had a town meeting-form of government at the time -- and stymied it and stopped the Redevelopment Authority's plans at the town meeting on more than one occasion. So they were a thorn in their [WRA] side for many, many years. And there was an elected board at the time. So there was a lot of politics involved. It [WRA] was an elected board at the time. So there was a lot of politics involved, and politics can always delay things and cause problems."¹⁰³

Finally, in the early 1980's, the WRA was able to develop a feasible plan. Boyle explained:

"It was an urban renewal plan, and the urban renewal plan was the reuse plan, and it basically set out what was allowed, and these

¹⁰¹ Ibid.

¹⁰² Given that nearly ten years later Boston would pay only \$1,740.000 for the New Development area of the Navy Yard which is a more desirable site, the question naturally arises as to why Watertown paid such a seemingly extraordinary amount. Although the author posed this question to several people involved with the redevelopment effort, no one could answer this question. In fact, Mark Boyle, the director of the WRA and the Watertown Planning Board, indicated that the purchase price for Arsenal II (the second half of the site about to be purchased by the WRA) will be less than \$6,000,000.

¹⁰³ Boyle, Mark, Interview with author, (June 24, 1997).

alternatives were allowed. They kind of wrote it and adopted it to be somewhat flexible, to be able to respond to what the marketplace would throw on the table for proposals. And so they adopted an urban renewal plan that talked about development, financing, zoning and all that type of stuff but was flexible enough to attract and accommodate the negotiated bid process."¹⁰⁴

5.2 Steve Karp & New England Development

New England Development was founded in 1972 and since that time has become one of the most successful real estate development companies in the country, having developed more than 13 million square feet of retail space. Beginning with a project no one else would consider, building a mall next to a competitor, Steve Karp saw an opportunity, broke the rules, and successfully developed the Liberty Tree Mall. Since then, he has continued to be an innovator in retail development.

Steve Karp had become interested in the Arsenal site around 1980. The site's location made it ideal for a retail center and Karp recognized this. The potential trade area encompassed seventeen zip codes in urban and suburban Boston, 600,000 people within a five mile radius and 275,000 people within a three mile radius. In fact, research had shown the potential for attracting shoppers from eighty-two zip codes.¹⁰⁵ As Karp explained,

"I will show you one picture. [shows aerial picture of Arsenal site & surrounding communities and headline saying 'this picture is worth a thousand words and over 1/2 million people'] I put this together myself. The headline tells the story. From the point of view of location, it is so well located in the population base. Its so strong from a retail point of view that it is a no brainer."¹⁰⁶

Yet despite its location, the Arsenal site had failed to attract developers for years. Mark Boyle suggests that this failure to attract developers was in a large part due to uncertainty related to what the town was willing to accept. Developers were wary of spending time and resources planning a project when the community could come to no consensus as to what they would allow. Furthermore, the WRA was very inflexible and "exacting" in its posture towards negotiating with potential developers. Steve Karp agrees.

¹⁰⁴ Ibid.

¹⁰⁵ Courtesy of New England Development.

¹⁰⁶ Karp, Stephen, Interview with author, (July 11, 1997).

Change

The early 1980's marked a shift in the WRA's approach to management of the site. Boyle proposed,

" I think there were a couple of changes. One of the changes was that all the battles that could be fought were fought, and people thought it was time to get the job done. Secondly, bodies changed on the redevelopment Authority [WRA], and you had a more responsible group of individuals...and they said, 'enough with the politics, this is an embarrassment'... and they were willing to reach out to the development community and be flexible."¹⁰⁷

This change was successful, as the WRA received several serious proposals for the first time. Around this same time, Steve Karp, recognizing the site's retail potential, had submitted a proposal to acquire and redevelop the site. The proposal called for demolishing the existing buildings and building a complex three level mall with underground parking similar to the, as yet unbuilt, Cambridgeside Galleria.¹⁰⁸ Karp had secured commitments from Jordan Marsh and Sears and these commitments could virtually guarantee that the project would be built.

Karp's proposal was rejected, however, in favor of a proposal by a joint venture between Ann & Hope and Gilbain Construction company. Karp had his doubts. As he explained,

"The reason why they selected that group was they had Ben Thompson for an architect. At the time, Ben Thompson was the hottest thing in the country because he had just done Faneuil Hall . He told them he could make this another Faneuil Hall. Not really understanding what makes Faneuil Hall click, they [WRA] bought into it and were stuck. It was not appropriate for this site."¹⁰⁹

Within a year, Karp's observation became apparent as the Gilbain project was unable to secure financing. They [Gilbain] then approached Karp and suggested a joint venture. Karp agreed, but on his own terms. He remembered answering, "yeah OK, but I don't like your plan. I don't think it works". Karp did reluctantly agree to save some of the

¹⁰⁷ Boyle, Mark, Interview with author, (June 24, 1997).

¹⁰⁸ The Cambridgeside Galleria was subsequently built by New England Development and is nationally recognized as one of America's finest urban malls.

¹⁰⁹ Karp, Stephen, Interview with author, (July 11, 1997).

existing buildings as originally planned because saving them "seemed to be a hot button with the Redevelopment Authority."

Success

Karp now faced the job of getting the town to approve his plan. Watertown still envisioned that their site could be "the next Faneuil Hall" and needed to be sold on Karp's proposal. Karp remembered,

"It took a long time for them to understand that it wouldn't work and that Faneuil Hall has some unique things. Most important what they didn't really understand is that it [Faneuil Hall] has millions of square feet of office buildings surrounding it and that people could walk out of those office buildings and walk over there and they were doing it and they were eating there and that created business. We didn't have anything like that in Watertown. In fact, the area was more of an industrial area and that it wouldn't even create that kind of interest."¹¹⁰

Where the WRA had been inflexible in the past, they now appeared open to new ideas. As Karp noted,

"It was a long process of educating them to understanding that if it didn't make economic sense, it wasn't going to happen. They had to give us enough flexibility that we could create a plan that worked and had some flow to it. That meant a lot of meetings, a lot of nights, a lot of education. They actually hired a couple of consultants that turned out to be very helpful...they were very instrumental and helpful in giving the thing a little clarity and direction."¹¹¹

Another key element in the equation was the new plan's ability to secure financing. This was the first time since 1968 that anyone actually had the confidence and financial capability to redevelop the site and this fact was not lost on the WRA. Still, the process was very time consuming before the property was finally sold for \$4.3 million dollars. Even then, some suggested that this figure was too low and that the WRA had "sold out."¹¹²

As Karp remembered, the process went on "for months, maybe years." He feels that this was due to the WRA's lack of experience. As a developer of large regional malls, however, Karp was accustomed to resistance and had the staying power to endure long

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Watertown Sun, (September 24, 1981).

delays. He noted, "you learn to be very patient in this business. You can't force anything on a community until they are ready to accept it." Karp feels that this experience and willingness to commit to a project even in the face of obstacles and delays makes him far better positioned to take on this type of deal involving bureaucratic pitfalls.

Other Considerations

With regard to environmental issues, the landscape in the early 1980's was significantly different than it is today. While the Karp team did have an environmental study performed, in retrospect, not nearly as much attention was paid to these issues as would be today. When queried as to how he [Karp] would have dealt with the environmental issue today, he indicated that it is a *major* concern on *any* site. He feels that particular attention would need to be paid at a military site however, as they are "notorious for having all sorts of contamination." When asked to comment on the DoD's responsibility for cleaning up their sites, Karp responded,

"It's always nice to think that the federal government is standing behind you because they certainly have deeper pockets than any developer. But I think what we need to do is make sure that the responsibilities are in the right place and that you deal with the exposure that you may have. You need to be aware of what financial hardships that [you face] by something happening during the construction and third party suits. Doing your own investigation is one of the things that we spend a lot of money up front on. Mostly with environmental experts to go in and analyze sites to give us an idea of what the magnitude of the problem is-not just rely on the information that is given to us by the federal government or any third party so that hopefully you can make an intelligent decision."¹¹³

When asked to comment on his experience at the Arsenal with regard to developing an "untested" site, Karp indicated that this was not much of an issue. He explained that many of his sites are "untested" and that he performs exhaustive market research on a potential site's feasibility. He has confidence in the research's conclusions and therefore has no hesitation being "the first one in."

He does, however, believe that it is important for him to be able to control a large enough site so that the project is able to create its own space. Karp points out that he insisted on purchasing the *entire* site even though he did not need the space. That way, he said, he was able to make sure the uses on the remaining areas did not conflict with his vision

¹¹³ Karp, Stephen, Interview with author, (July 11, 1997).

of the site. Therefore, he is able to be much less concerned with the surrounding environment besides access.

CHAPTER 6 ANALYSIS

6.0 Introduction

Despite significant differences in the types of sites, circumstances surrounding their transfer, economic climate, timing, and geography, common threads run through all of the developer experiences relayed at Charlestown Navy Yard, Lowry Air Force Base, and the Watertown Arsenal. This point is non-trivial, as it points to *fundamental* issues facing private investment that seem to be attendant to the military base experience.

6.1 Questions Revisited

As suggested earlier in this paper, research was designed to explore issues *unique* to the military base experience. To provide a framework for exploration, five central arguments were identified that were suspected of playing a major role in private sector investment decisions. These arguments were chosen in an attempt to focus the inquiry to issues specific to the base experience, but general in applicability.

The evidence collected suggests a commonality of experience that relates to these arguments. In practical application, however, these issues identified cannot be considered in isolation, but rather are part of the complex mosaic that constitutes investment decisions. Interestingly, there is also a commonality of issues *between* each of the arguments. This section will once again look at the arguments identified in the first chapter, but now in the context of the cases related in Chapters three through five.

6.1.1 Control & Flexibility

Military base redevelopment typically involves an LRA acting in the role of "master developer". The term master developer, however, is not absolute. The ways in which LRA's exercise their mandates vary greatly. This variation may occur between LRA, across time, or both. Central to this issue is the amount of *control* the authority exerts and the *flexibility* with which it applies that control. It was hypothesized that the American urban renewal experience has lessons to offer base redevelopment efforts, and evidence collected suggests that this is the case.

As discussed earlier, some early urban renewal experiences, such as those in Pittsburgh, were successful because of cooperation and partnership between the public and private

sectors. This cooperation was born out of a pragmatism stemming from the real estate community's (developer's) interest in securing federal funding for development projects in blighted areas, and housing advocate's desire to address the housing needs of the slums.¹¹⁴

As the renewal movement matured however, municipal planners became more ambitious with their plans to revitalize downtowns. Bernard Frieden, in his book *Downtown*, suggests that there arose a bias against the average person, and that "downtown plans [were] aimed at improving public taste rather than satisfying it."¹¹⁵ Authorities charged with urban redevelopment tended to *overplan*, as well as tried to *create* a market, rather than use or exploit an existing one. This was a result of unilateral planning on the part of the public authorities. As Frieden goes on to say, "the new downtown was profoundly out of touch with popular taste and with developers who normally built for the mass market. The key decisions on downtown projects were not made by developers..."¹¹⁶

In many ways, LRA's can resemble the renewal authorities discussed above. In essence, they have the same mandate, namely to redevelop and bring economic vitality to under utilized areas and are usually vested with the same planning powers. Moreover, they are also subject to the community and political contention that the renewal authorities typically faced.

Likewise, LRA's are also subject to some of the same pitfalls as described above. For example, Watertown fell into such traps with its plans for the Arsenal site and Boston almost did the same at the Navy Yard.

The Watertown Arsenal Experience

Watertown and the WRA's experience with the Arsenal is a good example of an authority's planning without the input of the engines of development, namely private developers. Indicative of this is Watertown's futile attempt to lure Polaroid to the site and their subsequent fourteen years of unsuccessful marketing.

¹¹⁴ Frieden, Bernard J., Downtown, Inc. How America Rebuilds Cities, MIT Press, 1989.

¹¹⁵,Ibid, pg. 58.

¹¹⁶ Ibid, pg. 59.

Once Polaroid had expressed possible interest in the site, Watertown used this tepid interest as the rationale for making plans for a high technology industrial park. As Frieden points out with regard to downtowns, Watertown was trying to create a market, not exploit one. Also, typical of this type of thinking was the hope for a more "elite" use. This was confounded by the WRA's subsequent inability to present a coherent and unified strategy for the site. Developers were therefore wary of becoming embroiled in the community division that was so obviously plaguing the subject.

Ultimately, Watertown and the WRA were able to take a realistic and constructive position towards the site's use. As Mark Boyle suggested, the WRA's "new found flexibility ...and coherent strategy resulted in them getting five or six proposals--major, big-time proposals." Boyle says that the BRA helped to "provide a model." Still, Watertown was again ready to fall into the trap Frieden discusses. Resting with the proposal they chose, were hopes of another Faneuil Hall. Yet, as Steve Karp says, the WRA went ahead with this plan "not really understanding what makes Faneuil Hall click." Finally, it took market realities and a sophisticated developer [Karp] to lead them down the right path. The solution was not obvious however. It took Karp's vision to defy convention and build a "downscale" mall. It is important to note, though, that the WRA was now *willing* to be led, and therefore, successful at last.

The Charlestown Navy Yard Experience

Early reuse efforts at the Charlestown Navy Yard also fell prey to unrealistic planning. Here, the EDIC did not try to impose an "elite" use on the site, but rather tried to impose an *unrealistic* one. Despite the fact that shipbuilding or industrial uses were a nice idea in response to job losses due to the Yard's closure, they were also impractical. Northeast shipbuilding and industry were in serious decline and the economy (both local and national) was in the doldrums. The early plans to exploit the yard for these uses was therefore no more than wishful thinking.

Fortunately, when responsibility for the Yard's redevelopment fell to the BRA, it fell into the hands of an agency that was singularly experienced and successful at reuse projects. Success with their renewal efforts in the 1960's, and experiences wrestling with more recent projects like Faneuil Hall, had given the BRA an important sense of balance between their civic/public responsibility and the private sector's pragmatism and need to generate profits. This manifested itself as what could be described as *flexibility in the*

face of reality. The BRA's handling of the redevelopment of Faneuil Hall illustrates this point well.

Despite the fact that many respected real estate professionals remained naysayers, the Rouse company undertook the Faneuil Hall project. Yet James Rouse was also painfully aware of the high amount of risk. To help mitigate the risks as well as to prove key to Rouse's taking on the project, was creative financing agreements such as tax breaks and below market ground leases with the city sharing in the upside of future profits. Furthermore, when cost overruns became apparent, the BRA agreed to *reopen* negotiations even though there was an agreement in place. The BRA realized that the success of the project, and by extension the city, rested with the viability and success of the developer. The BRA was able to adopt the "entrepreneurial style" while employing "adroit deal making" that Frieden says was so critical to the success of downtown projects.¹¹⁷

This experience was obviously applied at the Navy Yard. The evidence collected clearly shows that this type of "deal making" flexibility was a major determinant of private sector investment, and ultimately, of success. The Yard is somewhat unique in that its redevelopment authority, namely the BRA, was an existing entity with experience managing complex redevelopment projects. Generally, military base redevelopment authorities are created to solely manage a specific base reuse. This may result in a steep learning curve for the LRA, although this is being mitigated by the increasing body of experience with base redevelopment and help from consultants specializing in advising LRA's.

The Lowry Experience

The Lowry Redevelopment Authority's reuse plan is both comprehensive and specific. It is also apparently quite inflexible. Lowry officials make a point of the fact that they are creating a masterplanned community. They also point out that they are committed to that vision. Ann Rosen, Lowry's person in charge of commercial development, expressed this recently when she said, "We want to make sure that we're developing a community, not just selling real estate...So to the extent that we are flexible, *no*, we're asking the developers to do their homework before they sign a contract with us."¹¹⁸ Furthermore, when queried as to what would happen if a developer approached Lowry

¹¹⁷ Ibid. pg. 153.

¹¹⁸ Rosen, Ann, Interview with author, (June 27, 1997).

with proposed changes once an agreement was underway, Rosen suggested that "it would certainly put the existing contract in peril, but I'm not going to say we wouldn't look at it."

Despite the above, currently, flexibility with regard to the development process is not much of a concern for any of the developers working at Lowry who were interviewed. They all, however, have different perspectives on this issue. For Randy Stein, flexibility is somewhat irrelevant because his project has a specific single use with little room for change, as well as a short and unphased development cycle. Moreover, he has specific tenants either committed to the project or contemplating it, as well as a clearly defined market upon which the project will stand or fall. Of great concern to him (and related to this), however, is the amount of *control* the redevelopment authority is exerting over the process. Stein is obviously frustrated by what he believes is Lowry's onerous oversight.

Allied Jewish Apartments also does not find flexibility to be an issue with regard to working at Lowry. From Allied's perspective, however, this is a function of the type of product they are providing and the type of organization they are. In regard to the latter, Allied is, by virtue of being a HUD subsidized non profit provider of elderly housing, highly regulated and therefore used to working within very inflexible guidelines. Similarly, their product is so specific that any implied flexibility would be superfluous to Allied. Of course, the site that Allied was offered had been designated as elderly housing in Lowry's masterplan. Barbara Caley, while delighted with their site, questions whether elderly housing was actually the most efficient use for their site given the amount of modifications to the building that are needed. She also wonders whether a site would have been made available to them all had their specific use not been in the masterplan. In fact, Lowry had received a higher bid for Allied's site. Given these factors, Allied has therefore *benefited* from Lowry's inflexibility.

Likewise, flexibility is not an issue for Village Homes. For them, this is a function of the *size* of their commitment. In fact, concern over the Lowry Masterplan's inflexibility was a *limiting* factor on the size of the project that Village Homes was willing to undertake. Gary Ryan emphasizes that their "initial commitment is relatively small…only 83 lots, and we don't think that's a significant time horizon." He goes on to say that if Village Homes was contemplating a bigger investment, "flexibility would be much, much more of an issue. We'd be looking at having some kind of *framework* for development, and then

we'd want to buy a superpad and do all our own development and set our own precise standards within a more flexible framework."

While control of uses and types of uses is not an issue for Village Homes, it appears that Lowry's concentration on specificity of product and control of all aspects of development has resulted in Pulte Homes' as of yet unsuccessful attempts at acquiring a site. A major factor for Village Homes being selected to work at Lowry was the fact they had specific experience building a particular type of product. If Pulte's difficulty in getting a site from Lowry is due to a focus on the specificity of product *within* a type, the question arises whether this is appropriate for an entity that must ultimately develop 3200 houses in a single market. Moreover, with regard to limiting themselves to adherence to a rigid plan with such specific guidelines, Alan Hyden points out that the Denver market will not always be as strong as it currently is, and is also "getting more sophisticated, which will require greater flexibility to satisfy."

Certainly, control and flexibility become less important as the demand increases. Given strong enough demand, an LRA could conceivably require almost anything. The experience at Charlestown Navy Yard illustrates this as they clearly modified their strategy in negotiating with developers as a function of demand for their sites. It is also clear that developers have a commensurate decrease in concern with flexibility and control in the face of increased certainty. Only time will tell if Lowry's current inflexibility will have to be modified. The experiences at Charlestown and Watertown suggest that if the Denver market cools off and Lowry faces more competition from sites such as Stapleton, that their strategy *will* have to change. This point is articulated by Mouchly et al, in their discussion of masterplanned communities, recognizing the very long time horizon of "20 or more years before the first product recycling ...[that]... will go through several economic cycles" and the need for "superior planning and design, along with permitting for maximum flexibility" to "assure survival."¹¹⁹

Externalities and Public Amenities

Another dimension of the LRA acting in the capacity of the master planner or developer is the LRA's ability to create positive externalities which may benefit the private investor. As Wheaton and DiPasquale point out in their book, *Urban Economics and Real Estate Markets*,

¹¹⁹ Mouchly, Ehud, and Peiser, Richard, "Value for Everyone," <u>Urban land</u>, (August 1993), pg. 18.

"there is substantial empirical evidence that the value of each particular site depends not just on its own intrinsic characteristics, but is also strongly influenced by the uses that occur on other nearby sites, the overall design of the neighborhood, and by the way streets, infrastructure, and open space that are provided throughout the community."¹²⁰

They also point out that property owners will generally act independently, or in their *own* best interest, thereby disregarding the collective interest. Therefore, there is a problem created where individual property owners will attempt to internalize their *own* externalities while hoping to "free ride" on others for public amenities. While a common attempt at a solution is governmental intervention such as taxes, or more progressive subsidies, a closely controlled masterplan may offer the best solution. As introduced in Chapter 1, a master developer will presumably attempt to maximize value on an aggregate level. Again, as Mouchly et al point out, "the developer's basic task with these projects is to create value to all the participants in the process".¹²¹

The evidence collected for this paper suggests that this argument may be taken a step further for the unique case of military bases where the LRA is acting as the master developer. This is because the LRA may, by virtue of its being a quasi-public entity that is not necessarily profit driven, actually forgo maximizing gross aggregate value of the entire site for maximizing aggregate value for the individual developers of the sub-parcels. An example of this is the vast amount (800 acres) of open space that Lowry has provided for. While open space and public amenities are a common way that value is maximized on an aggregate level to the owner of the entire site, it stands to reason that by providing *more* space than required to reach this maximum, a master developer could *transfer* the value lost through this inefficiency. Certainly the developers interviewed support this notion implicitly. At both the Navy Yard and Lowry, developers suggested that while there are some negatives to working under the control of an LRA, at both sites there is a level of amenities that they doubt would be provided by the private sector.

Of course, there is another side to this coin. The LRA could, conceivably, create negative externalities that could have a detrimental effect on value. Gary Ryan recognized this point saying, "if Lowry decided to allow a tattoo parlor down the street from our

¹²⁰ Wheaton, William, and DiPasquale, Denise, <u>Urban Economics and the Real Estate Markets</u>, Prentice-Hall, 1996, pg. 350.

development, it would certainly hurt us." Yet, he went on to say that Lowry was not only bound by the masterplan, which they had reviewed and felt comfortable about the potential uses at other sites, but that there was an "element of trust" in their relationship with Lowry. Likewise, this was not an issue for Allied. Barbara Caley said that not only did she trust Lowry, but that the neighboring communities also bear enough pressure to keep what Allied would consider an "objectionable use" away. Yet certainly the possibility for negative externalities exist. Suggestive of this is both Lowry's and potential developers early struggle with the issue of housing for the homeless.

6.1.2 Timing & Certainty

Closely related to the discussion above and of obvious concern to developers, is that they feel confident that they will be able to pursue their project with reasonable certainty, and that once underway, they will be able to finish it on a timely basis. This issue is tremendously important to private developers for two reasons. First, real estate projects, and especially those of the scope typical at bases, are very capital intensive. Not only does it take large amounts of capital to actually build the projects, but the planning is also tremendously expensive. This, then, has two implications; 1) developers want to be reasonably assured that they will be able to pursue a project before committing vast sums to planning, and 2) because of the typically high returns that real estate development must generate (both on equity and debt), any delays in a project once committed to and underway are very expensive. The second reason that timing is crucial to developers is their dependence on the capricious nature of the markets on whom they rely. Any unanticipated delays could mean that a developer may miss a window of opportunity upon which success was contingent.

Evidence suggests that this issue varies significantly between developer. Certainly, smaller developers such as Randy Stein have fewer resources and less patience to wade through the procedural complexities attendant to base reuse. In fact, Stein suggests that if he had to do it over again, he would probably not choose Lowry. From Barbara Caley's perspective, however, the process was reasonably fast. Allied is an organization that is organizationally compatible to working within complex bureaucracies. Likewise, Steve Karp is no stranger to the maze of bureaucratic process that typifies the retail mall development business. Yet even developers who specialize in "complex urban development," such as Robert Kenney, are not always immune to

¹²¹ Mouchly, Ehud, and Peiser, Richard, "Value for Everyone," <u>Urban land</u>, (August 1993), pg. 16.

these issues. With regard to Building 105 at the Charlestown Navy Yard, delays resulting from environmental issues may ultimately shelve the project if he feels that these delays will cause him to miss the current residential investment opportunity.

Another nuance of certainty is related to how title is held and/or transferred to the developer. At Lowry, for instance, much of the site is still under lease with the Air Force pending final disposition. The redevelopment Authority has overcome this obstacle by negotiating leases with a payment equal to the agreed upon purchase price. The property is therefore leased until title can be transferred. For a sophisticated commercial developer, this structure presents little problem, simply requiring slightly more diligence on the part of the attorneys. For a residential developer, however, this structure is unacceptable no matter how sophisticated the developer is. This is because residential homeowners demand a fee simple transaction, lacking both the where-withall and inclination to participate in the complexities of ground leases. The same issues arose at the Navy Yard, where the buildings in the Historic Monument Area are all subject to ground leases. Therefore, any residential development contemplated there (as Bob Kenney may build) will almost certainly have to be rental.

6.1.3 Signaling & Externalities

As suggested in Chapter 1, little has been written on the herd mentality of developers. Caplin et al explore this question in relation to retail tenants on Sixth Avenue in New York.¹²² In their paper they suggest that the opening of the Bed, Bath & Beyond on lower Sixth Avenue, an area that had been shunned by upscale retailers, generated information externalities that signaled to other retailers of the viability of locating there, and that this signaling went beyond retailers who shared the same customer base. James Rauch also touches upon this issue in his article, *Does History Matter Only When it Matters Little? The Case of City-Industry Location*.¹²³ In it, Rauch concludes that there has been a "first mover disadvantage" to firms locating at "new sites." He also says that developers have been able to partly overcome this through discriminatory pricing.

These issues have direct relevance upon base reuse experience. Despite the fact that little anecdotal or quantitative research has been done on the subject, the above

¹²² Chaplin, Andrew and Leahy, John, <u>Miracle on Sixth Avenue: Information Externalities and Search</u>, Working Paper, Columbia University & Harvard University.

¹²³ Rauch, James E., "Does History Matter Only When it Matters Little? The Case of City Industry Location," <u>Quarterly Journal of Economics</u>, (August 1993).

discussion is not ground breaking in the sense that conventional wisdom has long applied these ideas.

Bases are typically untested sites. As such, evidence suggests that there is a reluctance to be the first developer in "to test the water." Despite Lowry's confidence and great early success, Ann Rosen is introspective on this point acknowledging that "there's skepticism in the market place...It takes those individuals with an entrepreneurial spirit to see, understand, and exploit the opportunity at this point in time."¹²⁴ With regard to "first mover disadvantage," although Randy Stein has probably not read Rauch's article, he believes that he was at a distinct disadvantage by being Lowry's first commercial sale. He also believes, however, that he paid a well below market price for his building and site. While this points to evidence of what Rauch refers to as "price discrimination" aimed at mitigating the "first mover disadvantage," in retrospect, Stein says that "I'm not sure that the great deal was such a great deal. I feel as though I was the Guinea pig-and still am." ¹²⁵

The developers interviewed who have worked at the Navy Yard all recognized these points. For Bob Kenney, although he was pioneering office development, the fact that the residential projects were being met with success was highly important. Similarly, Raymond Company had paid close attention to Kenney's experiences. INE *was* the first developer to work at the Yard, and they recognized the implications of being so in the context of the above discussion. Paul Davis says that they knew they were the "information gatherers." This resulted in certain hardships for INE such as having to educate the public through unconventional marketing and offering initial discounted rents. Furthermore, the implicit market risks were obvious. As Rauch suggests, these disadvantages were able to be mitigated by discriminatory pricing by the BRA.

6.1.4 Infrastructure

It comes as little surprise that concerns over infrastructure, namely what will be provided and when, are of major concern to developers contemplating working on bases. Indeed, this is also readily apparent to LRA's as well. As Ann Rosen pointed out, "they're counting on us to bring infrastructure to the site by X date, they're counting on us to bring infrastructure to the deal making process is all about." As noted in Chapter 1, this stems from the fact that the military did not have to abide by

¹²⁴ Rosen, Ann, Interview with author. (June 27, 1997).

¹²⁵ Stein, Randall, Interview with author, (July 28, 1997).

local codes and the reuse plans typically call for significant changes to street design. Because of the enormous size of these bases, sites are typically contained wholly within the larger base. Therefore, developers are dependent upon the LRA to provide access and utilities to their sites. Failure or delays to do so can trigger consequences as discussed above in Section 6.2.2. Also, different uses are affected differently by this issue. For example, Randy Stein says that he is not terribly concerned with the pace of road and sidewalk construction as his future clients are already able to access his site. These people will be coming to his site to use the skating arena and are therefore probably indifferent to minor inconvenience due to ongoing construction. Conversely, this issue is very important to Allied. Their clients are retired seniors who will be using the roads and sidewalks daily, walk frequently, and accordingly are greatly affected by any delays in completing these projects.

6.1.5 Environmental Remediation

Liabilities associated with environmental contamination proved to be a major concern of the developers interviewed, either when contemplating their projects or in hindsight. This is hardly surprising, given the legal minefield facing the owners of toxically contaminated sites, combined with the infamous prevalence of contamination at military installations. Key to the understanding of this issue appears to be developers fear of incurring either direct or indirect liabilities associated with contamination that may be found subsequent to commencement of the project. This is despite the fact that the DoD is liable for all cleanup, even for as yet unknown contamination. The developers spoken to also allude to the need for sophistication concerning this issue *prior* to purchase. As Steve Karp, a *very* sophisticated real estate investor said, a developer "cannot just rely on the information that is given to us by the federal government or any third party." This means having the willingness and the resources to hire consultants and do an *internal* environmental due diligence report.

While the DoD, under section 120(h) of CERCLA, is responsible for all remedial action required to clean up hazards that its activities have caused in the past, as well as requires the DoD to warrant that it will perform any necessary actions in the future, this does not provide a panacea to the developer of sites where this legislation is applicable. Since Section 120(h) requires the government to only give covenants that remedial action has been completed to parties who would *not qualify* as potentially responsible parties, it is unclear whether a developer purchasing a site would be held liable. To not be held liable, it is conceivable that he would have to qualify as an Innocent

Landowner/Purchaser. However, as Larry Schnapf points out in his paper, *Sales of Military Bases and Surplus Supplies Pose Environmental Threats*, "it is difficult to see how any purchaser of a military installation could qualify as an Innocent landowner since the requisite due diligence would almost certainly give the purchaser reason to know that hazardous substances may have been disposed at the property." ¹²⁶ Indeed, while the Air Force Base Conversion Handbook specifically says that the EBS satisfies *its* due diligence requirements for real estate transactions, it also warns that purchasers should not rely on the EBS to satisfy *their* due diligence to qualify as an Innocent Purchaser.

Other confusing issues remain as well. For instance, the DoD is responsible for performing a phase I investigation to determine whether hazardous substances or petroleum products have been stored for more than a year. But what about sites where materials were stored for less than one year? Also, it is unclear whether leases fall within Section 120(h). Given the fact that ground leases appear to be a valuable instrument to base redevelopment, this is important. Finally, Bruce Amos raises important questions related to property transfers. He suggests that while Section 120 applies to a parcel's designated reuse at the time of transfer, it may not cover subsequent changes of use in the future.¹²⁷ Amos' article discusses the options that private sector investors have in applying environmental insurance products. With regard to this type of insurance, many developers seem to be fairly unfamiliar. Others, such as Paul Davis, suggested that this type of insurance is prohibitively expensive.

The developers interviewed also specifically expressed concerns over potential delays related to hazard detection. This issue relates closely again to the discussion in Section 6.2.2 regarding timing and certainty. Several developers captured this sentiment, referring to the uncertainty of *when* the DoD would commence a cleanup and *how long* it would take. For a developer like Randy Stein, whose project is already underway, these questions could prove devastating.

One thing is clear, despite statutes that are in the developer's favor, developers must be diligent on their *own* account and be aware that military bases pose unique traps whose risks must be understood.

¹²⁶ Schnapf, Larry, "Sales of Military Bases and Surplus Supplies Pose Environmental Traps," <u>The Real</u> <u>Estate Finance Journal</u>, (Winter 1994), pg. 25.

¹²⁷ Amos, Bruce, "The Application of Environmental Insurance in Redevelopment Associated With Military Base Closures," <u>The Real Estate Finance Journal</u>, (Fall 1996)

CHAPTER 7 CONCLUSIONS

The evidence collected in this study strongly suggests that there are issues facing private investors that are attendant to the military base reuse experience. While these issues may not be completely unique to military bases per se, they are unique in the sense that they are endemic rather than incidental.

Primarily, these issues are those identified in Chapter 1 and discussed in Chapter 6. However, as the evidence and discussion suggest, the issues themselves are multifaceted and cannot be looked at in isolation. They are all both interrelated and interdependent.

Successful base reuse will always be dependent on a healthy economy and adequate demand. Therefore, base experience will vary as a function of the real estate markets, regardless of its being a base. However, I believe that military bases are also subject to a demand curve of their own making. Here, I suggest that demand is derived as a function of the private sector's implicit application of a matrix composed of considerations for the issues uncovered in this paper. This is important because it suggests that by paying attention to these issues, *in addition to* the typical market considerations that typify other sites, military bases are able to have a significant impact upon their success. In fact, it appears that these issues may sometimes even outweigh other market considerations. In this case, a base's success or failure may not necessarily reflect its local economy. For example, Hamilton Air Force Base, which lies in Marin County--one of the nations wealthiest, has been surprisingly unsuccessful in its redevelopment efforts. Conversely, England Air Force Base, outside of Alexandria, Louisiana, has been quite successful in its efforts despite a lackluster local economy.

Therefore, while bases will always be subject to market or systematic uncertainty, by keeping these issues in mind, bases may be able to neutralize unsystematic or idiosyncratic uncertainty. Generally, broad concepts to stay aware of are;

- Flexibility Flexibility appears to be the one general formula for success. For bases such as Lowry who have been relatively inflexible in the past, it will be interesting to see what impact market challenges will have, and how the redevelopment authority reacts.
- **Control** Control appears to be a double edged sword. It is certainly important that the LRA, once it has a viable reuse plan, implement it with authority. However, the

LRA must also be willing and able to temper the amount of control it exerts (related to flexibility above).

• **Pragmatism** Perhaps above all, the LRA should be pragmatic. The success of the reuse plan ultimately stands or falls upon private sector investment. The private sector is profit driven, period. Therefore, while issues discussed in the introduction certainly preclude turning these sites over to private developers to run amok, the LRA must act in the best interest of the community *and* the developers.

Consideration of these issues also suggests that certain types of developers may be better equipped to work at bases than others. While there is a broad range of *types* of developers who have successfully worked at bases, there appears to be a surprising *commonality* between them with regard to their skills, capabilities and tolerances. Furthermore, the steep learning curve and significant "education" that these developers gain, suggests that perhaps there is an opportunity to specialize in these types of transactions. The experience at the Navy Yard implies this, as some of the original developers of the Yard are still building or contemplating future projects there. Moreover, the extremely long redevelopment period of a base (the Yard, one of the most successful, is only two third completed after 20 years) means that this may be a viable niche for an investor to pursue.

There are several factors or capabilities that appear to effect developers ability to successfully meet the attendant challenges at military bases;

• Sophistication. All of the successful developers interviewed possessed a level of sophistication that allowed them to wade through the procedural complexities that must be understood to pursue a project at a base conversion. For example, Lowry's unusual use of ground leases while waiting for title transference requires that the developer be comfortable with atypical and creative legal agreements. Moreover, the sheer volume of procedural issues requires that the developer not only be able to understand and execute the requisite process, but also must be *willing* to do so. Therefore, a developer such as Allied Apartments is especially well suited for this challenge as they are very procedurally and bureaucratically oriented themselves. Others, such as New England Development are also well equipped. NED is very comfortable with difficult and complex negotiations and real estate transactions as a result of their experience building suburban malls, with all of the attendant municipal planning and community resistance. Likewise, familiarity with the "system" is also an advantage. As mentioned above, many of the original developers at the Navy

Yard are still investing in projects there twenty years later. Also, as evidenced by Bob Kenney and Jim English, who both worked for the BRA before becoming developers at the Yard, familiarity and comfort working with the redevelopment authority is important.

Similarly, many of the projects require unconventional approaches with regard to product type and financing. Developers such as Village Homes, who were able to demonstrate they had the capability and willingness to provide an unusual product type are at a distinct advantage when these products are favored. With regard to financing, the feasibility of a project may rest upon the developer's sophistication and ability to devise and negotiate creative financing packages. Certainly this was the case with INE at the Yard.

Resources The developers who have had satisfying experiences all have notable resources which enable them to develop market research and environmental studies, and to overcome the significant legal challenges. One of Randy Stein's biggest objections to his experience to date are the relatively large legal expenses he has incurred relative to what he believes he would have spent at a conventional site. This points to the fact that perhaps larger organizations with large legal budgets may find this facet of base redevelopment less objectionable. Also, larger projects may have an advantage over smaller ones by being able to diffuse the large legal and administrative expenses over a larger budget, thereby generating economies of scale.

Developers also need access to, and the ability to afford, good market research and forecasting. This is critical because of the long time it can take between the time negotiations begin and the time the product hits the market. Firms such as Pulte Homes are able to use this to their advantage, Alan Hyden suggests, because they have "great research." Other firms such as NED, whose product development cycle is particularly long, are also at an advantage.

• Patience As suggested, the base redevelopment process is not only complex, but also very lengthy. Related to the discussion above, developers *and* their investors must have the willingness, confidence, and product type to allow them to work within a very slow process and possibly realize their profits in the future. This favors some organizations over others. Certainly, organizations such as non-profits are uniquely appropriate in this regard. Others, such as home builders, probably

need to have a project that is large enough to have a development cycle sufficiently long as to be able to value profits that are not quickly realized. Likewise, projects that require ongoing operation and management and that generate recurring revenues such as Randy Stein's ice arena, retail malls, and rental apartments, also may be particularly well suited for base redevelopment.

In general, the closing of many of these bases have offered developers the opportunity to sites which have been, until now, unavailable to the public. Because of the large size of these sites, combined at many sites, with good locations and amenities, the investment opportunities may be substantial. There are, however, significant issues associated with these sites by virtue of their ex-military status. In light of these issues, developers must possess the qualities discussed above to successfully meet the challenges posed by them. For the developer who does, the rewards can be great.

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