

February 6, 2008

County Response to Carol Bengle Gilbert's January 25 article on the Live Nation Fillmore-style music hall

Carol Bengle Gilbert's January 25 article posted on AssociatedContent.com regarding the new Fillmore music hall in downtown Silver Spring, Maryland has a number of errors.

Here are the facts:

In the Fillmore, Montgomery County gets a top-flight, world-class operator with local roots that will bring the very best of a wide range of music to an area of downtown Silver Spring that needs revitalizing. That means more business for Silver Spring restaurants and Silver Spring stores.

The Fillmore, working with the American Film Institute and Discovery Communications, will create a synergy that will allow things to happen in Silver Spring that may not happen anywhere else.

The County will own a facility that will more than pay for itself from the very first -- generating a net to the State and County of \$1.6 million annually.

And the facility will be available for a range of community uses when it is not being used for performances.

Montgomery County worked with the Birchmere for five years to try to locate a new live music venue in, first, Bethesda and then in at the site of the old J.C. Penney building in downtown Silver Spring. Parenthetically, of course, the site looks nothing like the forested paradise used to illustrate the article and probably hasn't for a couple hundred years.

The purpose was to advance economic development and revitalization in Silver Spring – on a site right across from the American Film Institute that has been vacant for 18 years.

At the end of July, the County suspended negotiations with the Birchmere. After five years we still didn't have even a "letter of intent" and Birchmere had still not put a single dime into the project – despite a \$1 million pledge. We thought the Birchmere belonged there. They were unwilling to commit. It was time to move on.

They responded to our suspension of talks with a letter saying negotiations were over. They said that, not the County.

The County received interest from other vendors – including a jazz club in New York and a small folk club in Takoma Park -- and began talks with Live Nation about opening a Fillmore on the site.

Far from being “shrouded in secrecy,” the County Executive briefed all Councilmembers individually prior to the County signing a “letter of intent” with Live Nation, solicited their concerns and met broadly with community people and civic groups to get their feedback – something that was not done in the earlier Birchmere stage. This was one of the most open and transparent economic development projects in the County in recent memory.

The “letter of intent” reflected that feedback.

Live Nation will create a Fillmore-style music hall in Silver Spring with a variable capacity of 500 to 2,000, inspired by the original Fillmore in San Francisco, which launched the careers of such rock, soul and jazz legends as Jefferson Airplane, Janis Joplin, Jimi Hendrix, Santana, Miles Davis, and Otis Redding. It will feature crystal chandeliers, hardwood floors, dark painted red walls, historic rock art posters – and the iconic barrel of complimentary apples at the door.

Live Nation is an unparalleled global leader in live music entertainment, and the second-largest entertainment venue management company in the world. Live Nation and its predecessors, with their roots in the metropolitan area, have been bringing top quality talent to the DC area since 1971 through The Cellar Door and The Bayou. The company also programs the Ram’s Head, Warner Theatre, and the Nissan Pavilion. In addition, the company promotes shows in a variety of other venues in the area, including The Kennedy Center, Verizon Center, Constitution Hall, and RFK Stadium, to name a few.

Live Nation also frequently puts its expertise to work in social causes, just in the past year producing the “Live Earth” concerts in New York, London, Washington, DC, Shanghai and Hamburg; the “Concert for Diana,” in London; the Paul Simon Library of Congress concert in Washington; and the recent Virginia Tech benefit concert. The company also produced the “Pray for Peace” event at the Washington Cathedral.

After that “letter of intent” was signed, the 9:30 Club indicated possible interest in the site. It should be noted that 9:30 showed no interest in Silver Spring during the five years the County was working with Birchmere, no interest when the County suspended talks with Birchmere -- an event covered widely in the Washington Post and elsewhere – and no interest during the eight weeks before a “letter of intent” with Live Nation was announced.

Later, 9:30 asked the County to intervene in final negotiations and allow them to submit an 11th-hour proposal.

For obvious reasons, it is inappropriate for the County to enter into an agreement with one operator only to subsequently decide to engage in simultaneous negotiations with a second proposed operator that has the benefit of seeing and undercutting the signed terms of its competitor's agreement. This is totally unacceptable.

Had the County originally signed a Letter of Intent with the 9:30 Club, or any other operator, and a third party inserted itself into the negotiations at the last minute by cherry-picking an existing proposal, the County's attitude would be the same.

Montgomery County -- or any credible entity -- cannot do business this way. After the fact -- and after careful and serious negotiations produced a Letter of Intent, any other party could claim -- plausibly or not -- that they could offer a better deal. If this was the manner in which we operated, we would be flouting the County's established process and good government. The County's reputation as a credible negotiating partner with outside entities would be severely damaged and could cost us financially and otherwise for a considerable period of time.

The agreements with the Lee Development Group and Live Nation are land transactions and not procurements. The Lee Development Group is providing the land to the County for the express purpose of the County entering into a lease with Live Nation for an entertainment venue. This type of a land transaction is not covered by the County's Disposition of Property Regulations. Moreover, it is and always has been a project that is a significant economic development interest.

Even if the lease to Live Nation could be considered to be a procurement, the County's procurement provisions do not apply to obtaining entertainment services. From the very beginning, even with Birchmere as the partner, the County did not issue a "Request for Proposals" for the Silver Spring project because the idea was that the County wanted to select a unique partner for a unique project in conjunction with the deal being worked out between the donor of the land and the County. We continued that approach with Live Nation.

Gilbert also makes lots of mistakes in describing the land arrangement. The County, under previous County Executive Doug Duncan, crafted a novel approach to locating, at that time, the Birchmere at the old J.C. Penney site. The Lee Development Group would donate the land to the County (valued at \$3.5 million). That donation of land would count as the required "amenity" for a future development that the company would build adjoining the site. Usually the amenity comes after the project is built. In this case, the owners would be providing it in advance.

Amenities, by the way, are more often paved courtyards, atrium, or frontage than wooded paths. At any rate, this arrangement would give the Lee Development

Group no more density on their site than they would otherwise be entitled to get under what's called the Optional Method of Development.

And – this is important – the proposed agreement with the developer has not changed on iota since the original Birchmere conception. Still the same. No conspiracies.

Gilbert is entitled to her own opinion but, as they say, not her own set of facts. She talks of “\$8 million in County and State funds to be turned over to a private entity.”

That's totally false. In fact, Live Nation does not receive a dime in this deal.

The \$8 million in public funds will construct a County-owned facility that will be leased to Live Nation for performances.

In fact, the facility won't cost money – it will make the County and State money from the very start.

An economic impact analysis done by the County's Department of Finance shows an annual cost to the State and County on projected bond issues as approximately \$355,000 and annual direct and indirect income to the State and County from sales, income, beverage, fuel, and other taxes, as well as rent, as about \$1,067,000. This results in a net annual profit to the public of \$712,000.

When the value of Live Nation's improvements to the County-owned building and Live Nation's ongoing and structural maintenance work are included – as well as the value of community use and Live Nation community contributions – the net benefit to the public increases by another \$951,000 to a total net public benefit annually of about \$1,663,000.

Among the highlights of the lease agreement are:

- Montgomery County will retain ownership of the land donated by the Lee Development Group -- at an estimated value of \$3.5 million -- and of the facility. (The original Letter of Intent included an option for Live Nation to purchase the property after 16 years.)
- Live Nation will invest at least \$2 million in the facility, will address any potential cost overruns on the project, will pay all utilities, and will assume responsibility for all upkeep and maintenance costs (saving the County about \$186,000 per year) – including structural maintenance -- on the County-owned building, including for the “green roof” envisioned in the design of the building.
- Live Nation will pay \$90,000 yearly in rent, indexed to increase throughout the term to total \$3.26 million in rent over the term of the lease.

- There will be at least 36 free or discounted community uses of the facility annually.
- A community “Silver Spring Arts & Entertainment District Advisory Committee” will be established to advise the County Executive on community issues impacted by arts and entertainment venues, including the Fillmore. Live Nation will meet with the County throughout the lease term to discuss impacts and uses.
- Live Nation agrees that no performance will go later than 1 AM and that no alcohol will be served after 12 midnight.
- Live Nation will contribute \$30,000 annually to the “Celebrate Silver Spring Foundation” for community uses for a total contribution of \$600,000. It will also collect signed memorabilia from headlining performers for an annual auction to benefit Silver Spring community needs.
- All construction must meet County requirements for LEED “green building” standards.

This is a good deal for everyone.

Alan Friedman, co-leader of Silver Spring Forward, which led the community effort to bring the Birchmere to Silver Spring has said, “Silver Spring Forward’s central message all along is that the downtown revitalization is not done. This is a huge step in creating a sparkling entertainment district for the region.”

Those are the facts. Sorry to take so long but I believe that the debate over public policy alternatives ought to be based on facts – even if we disagree.

For more information on the project, visit www.livemusicss.com

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