

Air Rights and Complex Vertical Development in Northern Virginia: *What You Need to Know*

January 23, 2014

Presenters:

Stuart Mendelsohn

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Air Rights and Complex Vertical Development in Northern Virginia – What You Need to Know

- Potential for Air Rights Development in Arlington, Tysons and Dulles Corridor
- Zoning Considerations and Advantages of Air Rights Development
- The Air Rights Condominium as an Ownership and Development Vehicle
- The Air Rights Subdivision as Alternative
- Structuring Air Rights Condominium to Address the Challenges of Mixed-Use Development
- Addressing the For-Sale Residential Component
- A view from the Public Side of the Table and the Pressures a Public Entity will face

Air Rights and Complex Vertical Development in Northern Virginia – Zoning Discussion



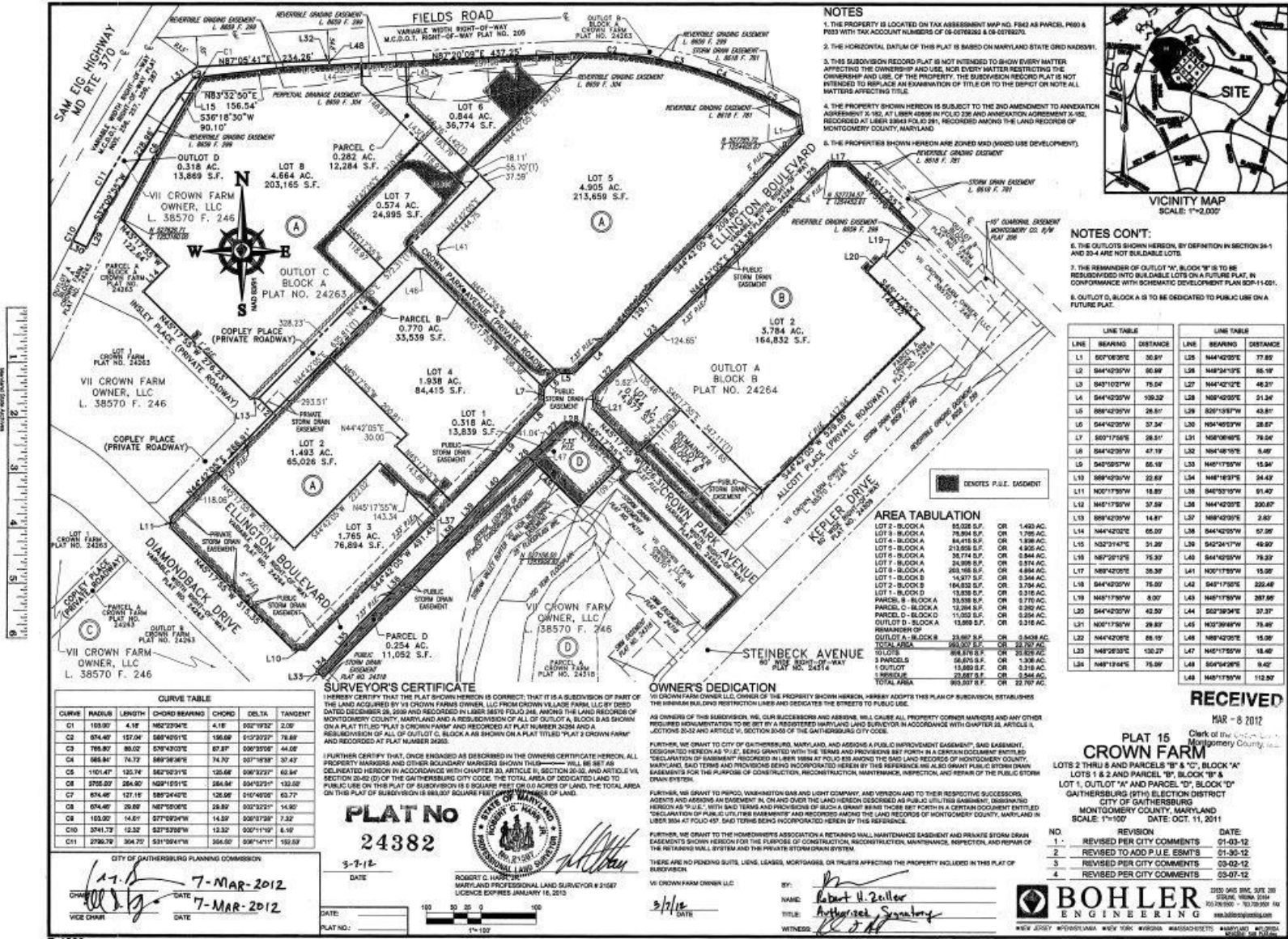
- Potential for Air Rights Development in Arlington, Tysons and Dulles Corridor
- Zoning Considerations and Advantages of Air Rights Development

Air Rights and Complex Vertical Development in Northern Virginia – Transactional Issues



- The air rights condominium as an ownership and development vehicle
- The air rights subdivision as an alternative
- Structuring air rights condominiums to address the challenges of mixed-use development
- Addressing the for-sale residential component

Air Rights and Complex Vertical Development in Northern Virginia – Traditional Subdivision



CURVE TABLE

CURVE	RADIUS	LENGTH	CHORD BEARING	CHORD	DELTA	TANGENT
C1	109.00	4.19	N82°29'42"E	4.18	002°19'22"	2.00
C2	874.49	157.04	S00°42'01"E	156.89	013°39'22"	78.89
C3	785.80	80.02	S78°43'01"E	87.81	009°35'08"	44.00
C4	668.84	74.79	S69°38'48"E	74.70	007°18'38"	37.43
C5	1101.47	125.74	S62°02'15"E	120.66	008°12'29"	62.84
C6	3705.00	264.90	N69°15'21"E	264.94	004°12'29"	133.00
C7	874.49	157.18	S00°42'01"E	156.96	013°39'22"	78.87
C8	874.49	20.88	N67°50'25"E	20.89	002°32'27"	14.80
C9	103.00	14.61	S77°00'00"W	14.59	000°17'38"	7.32
C10	3741.73	12.32	S27°52'09"W	12.32	000°11'19"	6.10
C11	2792.70	304.70	S91°30'00"W	304.60	008°44'11"	150.69

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON IS CORRECT; THAT IT IS A SUBDIVISION OF PART OF THE LAND ACQUIRED BY VII CROWN FARM OWNER, LLC FROM CROWN FARMS, LLC BY DEED DATED 02/06/2012, AND A RESUBDIVISION OF PART OF OUTLOT D, BLOCK B AS SHOWN ON A PLAT TITLED "PLAT 3 CROWN FARM" AND RECORDED AT PLAT NUMBER 20384 AND A RESUBDIVISION OF ALL OF OUTLOT C, BLOCK A AS SHOWN ON A PLAT TITLED "PLAT 3 CROWN FARM" AND RECORDED AT PLAT NUMBER 20384.

I FURTHER CERTIFY THAT, ONCE ENCLOSED AS DESCRIBED IN THE OWNER'S CERTIFICATE, HEREON, ALL PROPERTY MARKERS AND OTHER BOUNDARY MARKERS SHOWN THEREON, WILL BE SET AS DELINEATED HEREON IN ACCORDANCE WITH CHAPTER 20, ARTICLE 18, SECTION 20-32, AND ARTICLE 18, SECTION 20-42 OF THE GAITHERSBURG CITY CODE. THE TOTAL AREA OF DEDICATED LAND TO PUBLIC USE ON THIS PLAT OF SUBDIVISION IS 8.9 SQUARE FEET OR 0.00 ACRES OF LAND. THE TOTAL AREA ON THIS PLAT OF SUBDIVISION IS 167,500 SQUARE FEET OR 3.8 ACRES OF LAND.

OWNER'S DEDICATION

VII CROWN FARM OWNER, LLC, OWNER OF THE PROPERTY SHOWN HEREON, HEREBY ADOPTS THIS PLAN OF SUBDIVISION, ESTABLISHES THE HEREBY SHOWN RESTRICTIONS, LINES AND DESIGNATES THE STREETS TO PUBLIC USE.

AS OWNERS OF THIS SUBDIVISION, WE, OUR SUCCESSORS AND ASSIGNEES, WILL CHARGE ALL PROPERTY OWNERS MARKERS AND ANY OTHER REQUIRED INFORMATION TO BE SET BY A REGISTERED MARYLAND LAND SURVEYOR IN ACCORDANCE WITH CHAPTER 13, ARTICLE 1, SECTIONS 20-32 AND 20-42, OF THE GAITHERSBURG CITY CODE.

FURTHER, WE GRANT TO CITY OF GAITHERSBURG, MARYLAND, AND ASSIGNS A PUBLIC IMPROVEMENT EASEMENT, SAID EASEMENT, DESIGNATED HEREON AS "P.I.E.", BEING GRANTED WITH THE TERMS AND PROVISIONS SET FORTH IN A CERTAIN DOCUMENT ENTITLED "DECLARATION OF EASEMENT IN LIEU OF A PUBLIC UTILITY EASEMENT" AND THE SAID LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, SAID TERMS AND PROVISIONS BEING INCORPORATED HEREIN BY THIS RESUBDIVISION. ALSO, GRANTING PUBLIC UTILITY EASEMENTS FOR THE PURPOSES OF CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, INSPECTION, AND REPAIR OF THE PUBLIC STORM DRAIN SYSTEM.

FURTHER, WE GRANT TO HENCO, WASHINGTON GAS AND LIGHT COMPANY, AND VERSON AND TO THEIR RESPECTIVE SUCCESSORS, AGENTS AND ASSIGNEES AN EASEMENT IN, ON AND OVER THE LAND HEREON DESCRIBED AS PUBLIC UTILITY EASEMENT, DESIGNATED HEREON AS "P.U.E.", WITH SAID TERMS AND PROVISIONS OF SUCH A GRANT BEING THOSE SET FORTH IN A CERTAIN DOCUMENT ENTITLED "DECLARATION OF PUBLIC UTILITY EASEMENTS" AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND, ON 04/18/10 AT FOLIO 457. SAID TERMS BEING INCORPORATED HEREIN BY THIS RESUBDIVISION.

FURTHER, WE GRANT TO THE HOMEOWNERS ASSOCIATION A RETAINING WALL, MAINTENANCE EASEMENT AND BRINKLE STORM DRAIN EASEMENTS SHOWN HEREON FOR THE PURPOSES OF CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, INSPECTION, AND REPAIR OF THE RETAINING WALL SYSTEM AND THE PRIVATE STORM DRAIN SYSTEM.

THERE ARE NO PENDING EJECTA, LINES, LEASES, MORTGAGES, OR OTHERS AFFECTING THE PROPERTY INCLUDED IN THIS PLAT OF SUBDIVISION.

VII CROWN FARM OWNER, LLC

BY: Robert H. Zeller
 AUTHORIZED SIGNATORY
 DATE: 3/1/12

PLAT NO 24382

DATE: 3-7-12

ROBERT C. HARRIS
 MARYLAND PROFESSIONAL LAND SURVEYOR # 21567
 LICENSE EXPIRES JANUARY 16, 2015

CITY OF GAITHERSBURG PLANNING COMMISSION
 DATE: 7-MAR-2012

DATE: 7-MAR-2012

DATE: 3/1/12

DATE: 3/1/12

NOTES

1. THE PROPERTY IS LOCATED ON TAX ASSESSMENT MAP NO. F843 AS PARCEL P803 AND P033 WITH TAX ACCOUNT NUMBERS OF 08-0276363 & 08-0276270.
2. THE HORIZONTAL DATUM OF THIS PLAT IS BASED ON MARYLAND STATE GRID NAD83.
3. THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE, NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND USE OF THE PROPERTY. THE SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO THE DEFECT OR NOTE ALL MATTERS AFFECTING TITLE.
4. THE PROPERTY SHOWN HEREON IS SUBJECT TO THE 2ND AMENDMENT TO ANNEXATION AGREEMENT 2-182, AT LIBER 4095 IN FOLIO 236 AND ANNEXATION AGREEMENT 2-182, RECORDED AT LIBER 4095 IN FOLIO 236, RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.
5. THE PROPERTIES SHOWN HEREON ARE ZONED M10 (MIXED USE DEVELOPMENT).

VICINITY MAP
 SCALE: 1"=2,000'

NOTES CONT:

6. THE OUTLOTS SHOWN HEREON, BY DEFINITION IN SECTION 20-41 AND 20-42 ARE NOT BULDBLABLE LOTS.
7. THE REMAINDER OF OUTLOT "A", BLOCK "B" IS TO BE RESUBDIVIDED INTO BULDBLABLE LOTS ON A FUTURE PLAT, IN CONFORMANCE WITH SCHEMATIC DEVELOPMENT PLAN SDP-11-001.
8. OUTLOT D, BLOCK A IS TO BE DEDICATED TO PUBLIC USE ON A FUTURE PLAT.

AREA TABULATION

LOT #	AREA (S.F.)	OR	AREA (AC)
LOT 1 - BLOCK A	82,028 S.F.	OR	1.883 AC
LOT 2 - BLOCK A	79,800 S.F.	OR	1.828 AC
LOT 3 - BLOCK A	64,418 S.F.	OR	1.480 AC
LOT 4 - BLOCK A	38,774 S.F.	OR	0.884 AC
LOT 5 - BLOCK A	24,995 S.F.	OR	0.570 AC
LOT 6 - BLOCK A	16,822 S.F.	OR	0.383 AC
LOT 7 - BLOCK A	14,977 S.F.	OR	0.341 AC
LOT 8 - BLOCK A	16,822 S.F.	OR	0.383 AC
LOT 1 - BLOCK B	13,838 S.F.	OR	0.316 AC
PARCEL C - BLOCK A	13,838 S.F.	OR	0.316 AC
PARCEL D - BLOCK A	11,052 S.F.	OR	0.254 AC
OUTLOT D - BLOCK A	13,838 S.F.	OR	0.316 AC
REMAINDER OF OUTLOT A - BLOCK B	23,880 S.F.	OR	0.548 AC
TOTAL AREA	663,200 S.F.	OR	15.170 AC

PLAT 15 CROWN FARM

LOT 2 THRU 8 AND PARCELS "B" & "C", BLOCK "A"
 LOTS 1 & 2 AND PARCEL "B", BLOCK "B"
 & LOT 1, OUTLOT "A" AND PARCEL "D", BLOCK "D"
 GAITHERSBURG (17th) & SECTION DISTRICT
 CITY OF GAITHERSBURG
 MONTGOMERY COUNTY, MARYLAND
 SCALE: 1"=100' DATE: OCT 11, 2011

NO. 1. REVISION DATE: 01-03-12
 2. REVISED PER CITY COMMENTS DATE: 01-30-12
 3. REVISED PER CITY COMMENTS DATE: 03-02-12
 4. REVISED PER CITY COMMENTS DATE: 03-07-12

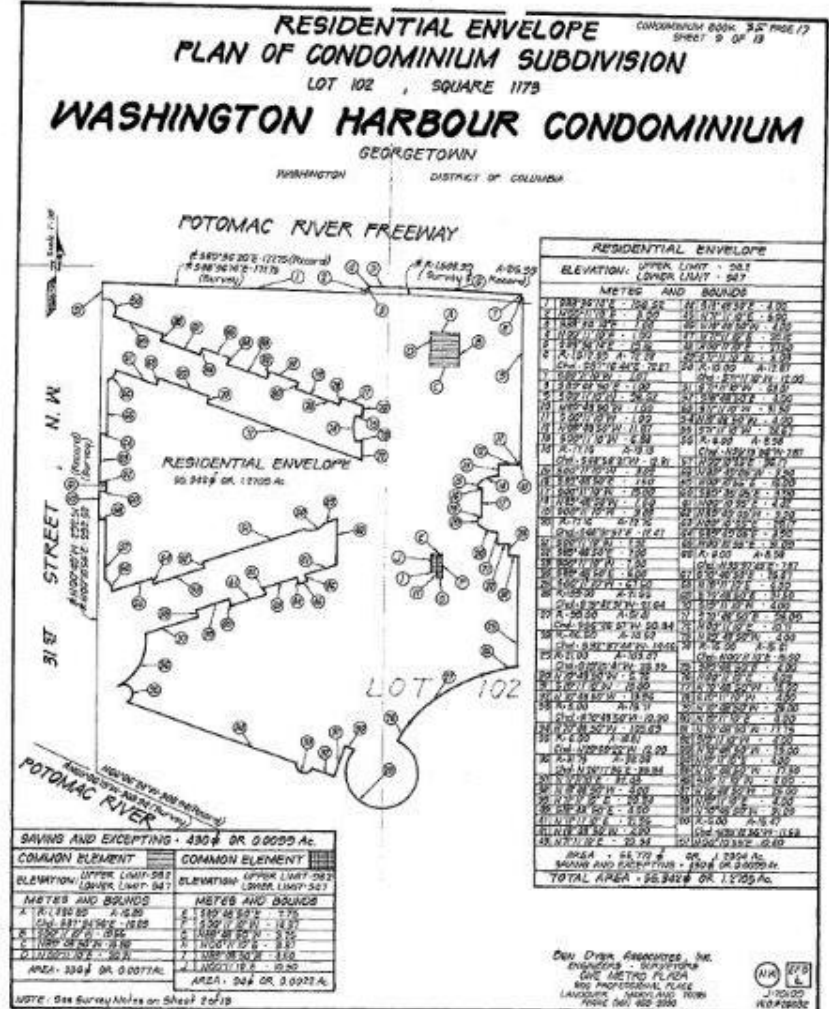
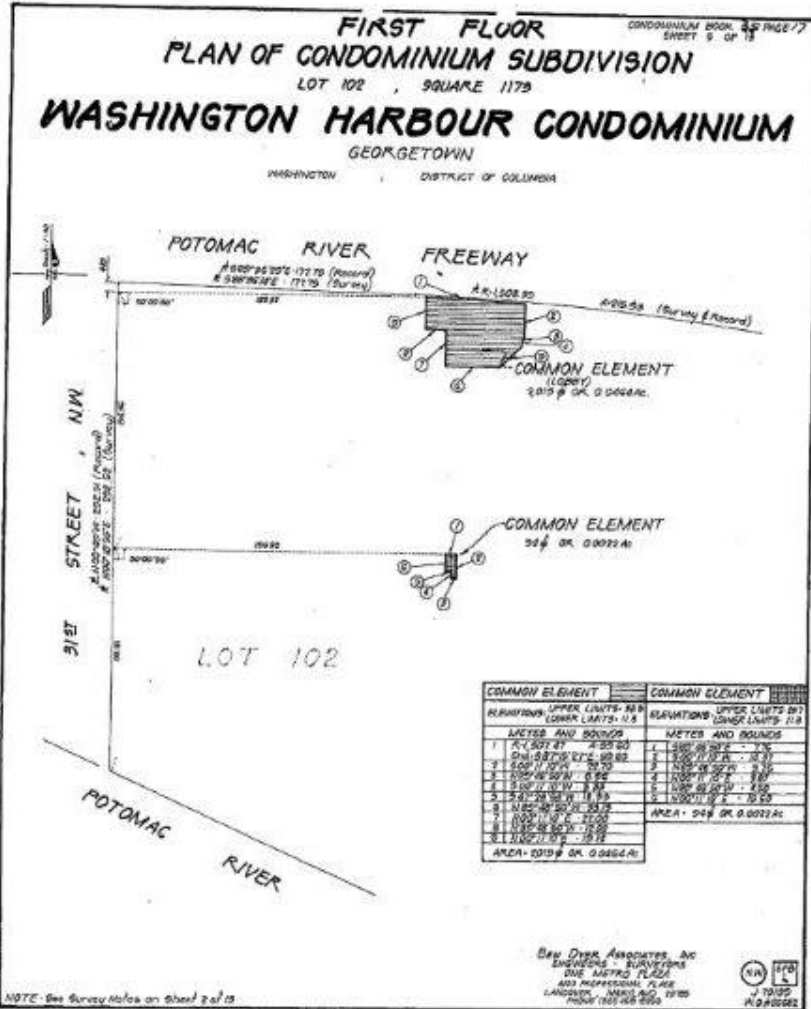
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Air Rights and Complex Vertical Development in Northern Virginia – Example Air Rights Condo (cont'd)

This plan prepared by 2204242111 5/21/13 10:33 AM from CONDO PLAN of the developer

This plan prepared by 2204242111 5/21/13 10:33 AM from CONDO PLAN of the developer



Air Rights and Complex Vertical Development in Northern Virginia – Example Air Rights Condo (cont'd)

This print prepared by 00462432 5/26/23 10:32 AM From O&A Office of the Surveyor

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Air Rights and Complex Vertical Development in Northern Virginia – Transactional Issues



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Air Rights and Complex Vertical Development in Northern Virginia – Update: OTP3 Information Request



The Public Actors: Motivations

- Non-Traditional Revenue Stream (vs. Fares/Tolls)
- More Efficient Asset Utilization
- “Heal the Scar” – Restore Pre-Corridor Conditions
- Promote Economic Development: Particularly TOD
- Build User Base: New Transit Riders

The Public Actors: Concerns

- Not the Core Mission: Can Get Lost in a “Crisis”
- Maintain Operations Without Inconvenience to Public
- Transparency
- Completion Guaranty
- Security Post 9/11
- Other Public Actors “Upstream” and “Downstream”

Questions?

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Thank You!

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Stuart “Stu” Mendelsohn



Stuart Mendelsohn practices in the areas of real estate, land use, litigation, government affairs and corporate law. His clients include a broad range of corporations, nonprofit organizations, builders and developers. Mr. Mendelsohn serves as executive partner for Holland & Knight's Northern Virginia office. Mr. Mendelsohn served eight years on the Fairfax County Board of Supervisors and two years as vice Chairman of the Fairfax County School Board. He has also served on a number of regional transportation commissions, land use committees and councils. Prior to entering private practice, Mr. Mendelsohn was a senior manager of a defense contractor. In the community, he has committed an extensive amount of time to community service in Fairfax County, the Commonwealth of Virginia and nationally.

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Douglas M. “Doug” Irvin



Douglas Irvin is a partner in Holland & Knight's Washington, D.C., office. Mr. Irvin has more than 25 years of experience as a transactional real estate attorney. His practice focuses on condominium law and he has overseen the structuring and development of many of the largest and most complex condominium, mixed-use and vertical development projects in the Washington, D.C., area over the last decade. Mr. Irvin represents commercial and residential developers and builders in all facets of the planning, creation and operation of retail, office, commercial, mixed-use and residential associations, master-planned communities, condominiums, homeowners associations, and other common interest developments under applicable state and federal law.

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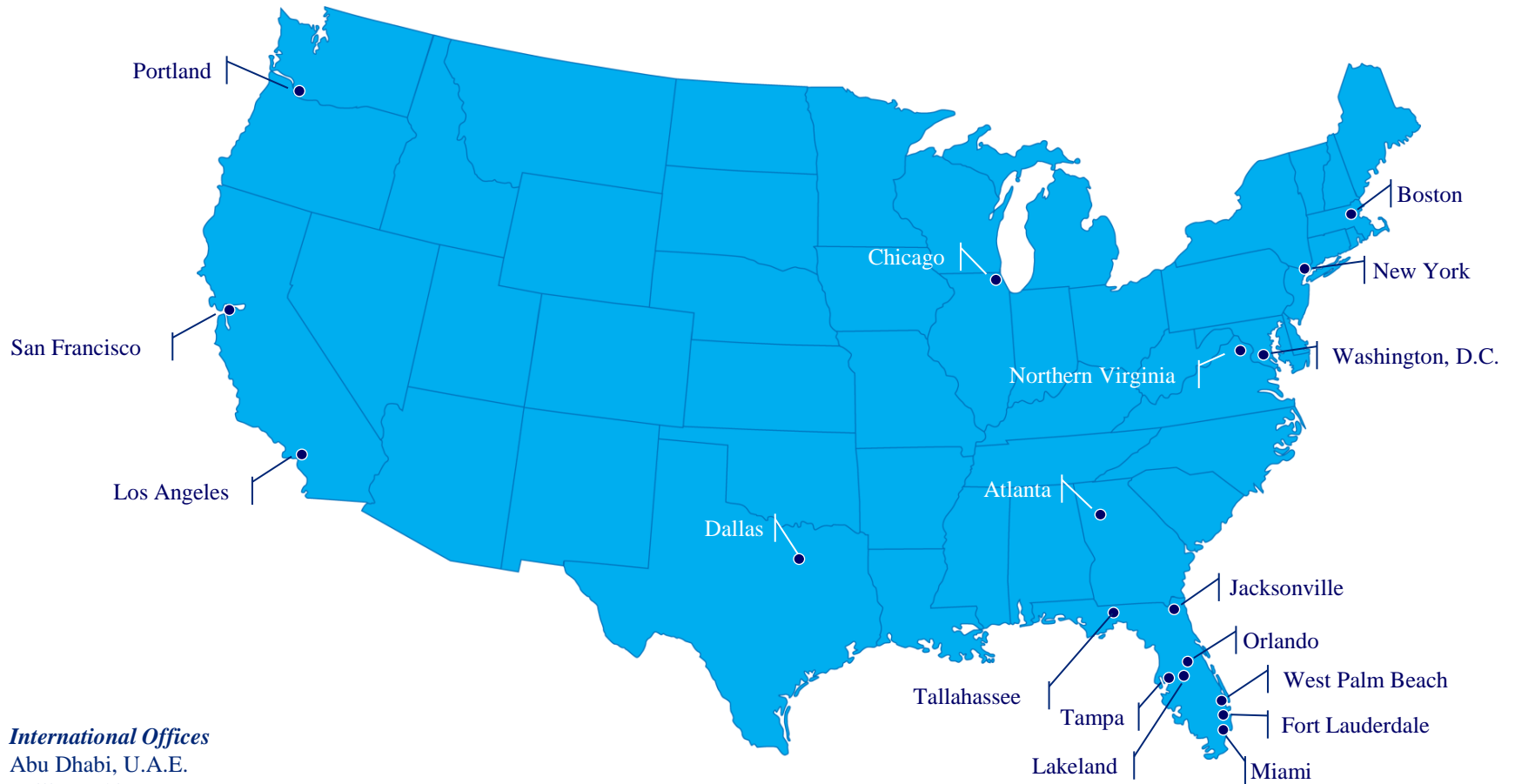
Robert M. “Bob” Ruzzo



Bob Ruzzo is a senior counsel in Holland & Knight's Boston office. He possesses a wealth of public, quasi-public and private sector experience in affordable housing, transportation, real estate, transit-oriented development, public private partnerships, land use planning and environmental impact analysis. Prior to joining Holland & Knight, he served in a number of leadership roles in the transportation sector. For the Massachusetts Turnpike Authority, he was chief of real estate development and previously its general counsel. At the Massachusetts Executive Office of Transportation, he was the general counsel to the secretary and, prior to that, deputy secretary for environmental policy. He is an acknowledged authority in all aspects of the Massachusetts Comprehensive Permit Law (Chapter 40B) and has been a featured speaker at the Rail~Volution conference on transit-oriented development.

	Practice	Education	Bar Admission
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