

TO: FARMC  
FR: BUD RIS  
CC: LISA SCHIMMEL  
RE: INFORMAL INQUIRY: "GREENWAY UNCOVERED"  
DT: JULY 24, 2016

In June of 2016, the Greenway Conservancy (GC) became aware that a report entitled "Greenway Uncovered (GU)" had been produced by a self-described group of "Greenway Whistleblowers" and circulated to the news media. The report made a number of allegations "to shed light on certain of the Conservancy's business practices that we believe directly impact the efficient use of the money received from the public and private donors."

Consistent with the Conservancy's Whistleblower Policy, the Finance, Audit, Risk Management Committee (FARMC) directed that an informal inquiry be conducted to determine if a more formal investigation into the allegations made in the "Greenway Uncovered" report was warranted. I was asked to lead this informal inquiry, with accounting assistance provided by Lisa Schimmel, a former Director of Finance at the Conservancy. Neither Lisa nor I were on the board or in paid staff positions during the time period that is subject to the "Greenway Uncovered" report. I am currently co-chair of the FARMC and have extensive experience in non-profit management spanning more than 35 years. Lisa Schimmel is a CPA and presently unaffiliated with the Conservancy.

Given the informal nature of this inquiry and the need to complete it as expeditiously as possible, we have attempted to identify and respond to only the most serious allegations made in the "Greenway Uncovered" report. The GC's Whistleblower Policy is designed to address allegations of "Improper Conduct," which is defined in the policy as follows:

Any action or activity by a director, officer, or employee that is undertaken in the performance of the individual's official duties or with the appearance or representation that it is undertaken in the performance of official duties whether or not it is within the scope of the individual's employment responsibilities, and that 1) is in violation of federal or state law or regulations or reporting requirements thereunder, 2) constitutes an intentional omission to perform a duty, 3) constitutes an intentional violation of a policy of the Conservancy, 4) involves gross misconduct, 5) creates potential exposure for the Conservancy to unwarranted liability, 6) involves questionable accounting or auditing practices, 7) constitutes unethical behavior or practices, 8) endangers the public health or safety of individuals, 9) involves improper dissipation of the Conservancy's assets, 10) constitutes fraud, 11) involves private inurement, 12) involves mishandling or misuse of the Conservancy's assets, or 13) involves overriding or circumventing the

Conservancy's internal controls. The foregoing list is not an exhaustive list of possible Improper Conduct.

We note our view that certain of the complaints in the GU document are not allegations of Improper Conduct. They are instead criticisms of the GC's management approach, organizational priorities, staffing and spending decisions, or board effectiveness. Our charge is to address allegations of Improper Conduct, not to conduct a management audit or organizational review in response to critiques made in the GU report. Nonetheless, in the interest of providing a comprehensive inquiry, we offer some observations in response to the categories described below.

We have grouped the allegations in the GU document into eight categories, and identified the allegations that we believe are allegations of Improper Conduct and the allegations that we believe are allegations of the organization's operational effectiveness. For each set of allegations we summarize our findings, based on our review of relevant financial schedules, meeting minutes, public records, and information provided to us by staff in response to our requests. I personally interviewed four board members who served in leadership positions during the time period that is the focus of the "Greenway Uncovered" document. The author or authors of the GU document have not identified themselves to us, so we have not had the opportunity to interview them.

In undertaking this informal inquiry, our responsibility was to provide information sufficient for the FARMC to determine whether a more formal investigation of any or all of the allegations made in the Greenway Uncovered report is warranted. We have attempted to do so in an objective and unbiased manner.

***We have concluded that there is no reasonable basis for launching a formal investigation into the complaints set forth in the GU document.***

## ALLEGATIONS OF IMPROPER CONDUCT

As noted above, in our view certain of the allegations set forth in the GU document are complaints of Improper Conduct, as defined in the GC's Whistleblower Policy. These complaints have been the primary focus of our informal inquiry.

### **1. FISCAL YEAR CHANGE**

Allegation: The GC changed the term of its fiscal year as a means of "budgetary manipulation" to cover up costs of the Public Art/Echelma Project.

Findings:

- FARMC and GC Board had discussed the merits of changing the term of its fiscal year on multiple occasions over several years prior to 2015, well before the advent of the Echlema Project.
- The end of the FY was changed from June 30 to December 31 for operational reasons – so that the GC's high season of spring to fall would fall within one fiscal year, rather than straddling two fiscal years.
- The decision to change the fiscal year term was fully reviewed and approved at a meeting of the FARMC and a subsequent meeting of the GC Board. (April 28, 2015 FARMC minutes and June 14, 2015 Board minutes)
- MassDOT was consulted about the change in the fiscal year and raised no objections.
- Execution of the fiscal year change was fully vetted with the GC's auditors and the implications for various audits and tax filings were fully understood.
- ***The decision to change the fiscal year was purely an operational decision that was implemented for reasons that had nothing to do with the Echelma Project. There is no reasonable basis for the allegations made in the GU document.***

### **2. USE OF MassDOT FUNDS**

Allegation: The GC misappropriated public funds from Mass DOT for the Echlema Project, "... to pay for the shortfall and cover project-related personnel expenses. Management masterfully hides the facts."

Findings:

- GC provides quarterly and end-of-year financial reports to MassDOT detailing how public funds from the agency were used. (MassDot FY15 Final Report)
- MassDOT funds were used only for Horticulture, Maintenance and Related costs.
- No Mass DOT funds were used for the Echelma Project, which was fully paid with other sources of funds (see next section).
- ***There is no reasonable basis for the allegations made in the GU document.***

### 3. ECHLEMAN PROJECT

Allegations: The GC incurred "...over \$2 million in costs overruns on a single project. Management knowingly underestimating (sic) and repeatedly misreporting (sic) the costs of the project to the board and donors." "MassDOT's public money was used to pay for the shortfall and cover project-related personnel expenses." "Management masterfully hides the facts." There was a "serious breach of procurement policy by failing to follow the RFP process for contract over \$100,000... and heightened financial risk." "Auditors report omits material elements by not providing the actual breakdown of the costs of a major project such as Echleman." "Private donors are provided with fabricated reports, misleading project costs, and befuddled overhead expenses."

#### Findings:

- The Echleman Project was originally estimated at \$500,000, but senior staff and board understood at that time that there was little or no precedent for a project of this scale and complexity in Boston and that the project entailed multiple risks, ranging from concerns about cost to public safety. Throughout the course of design, installation, and de-installation, these risks were weighed against the goal of making a bold, innovative, and imaginative statement about the role public art could play in the City of Boston.
- Total costs for installation and de-installation of the Echelman Project were \$1,775,968. There was also \$431,960 in-kind services associated with the project, which included items such as production of a video about the project. In addition, \$533,200 in items such as staff salaries and overhead were allocated to the project, although much of these costs would have been incurred for Public Art projects whether or not the Echelman Project was undertaken.
- ***The expenses for the Echelman project were paid in full with restricted or unrestricted funds from private donors and foundations and earned income. No MassDOT funds were used for the Echleman Project.***
- The original selection of Janet Echelman and associated contractors was done on a competitive basis via an RFQ. The board of directors approved this initial procurement on July 15, 2014. As the costs for the project increased, subsequent procurement decisions were reviewed by the FARMC, recommended to the board, and approved by the board on February 5, 2015 and July 14, 2015. Materials provided in advance of these meetings summarized costs and the basis for selection of contractors.
- During the life of the Echelman Project, senior staff consulted often with board leadership to keep them informed of the project's costs, installation/de-installation issues, and management of public safety concerns.
- The GC's auditors reviewed and tested releases of all restricted funds during year-end audits. The auditors plan and perform the audit to obtain

reasonable assurance about whether the financial statements are free from material misstatement.

- The finance and development staff of the GC maintain detailed schedules tracking the use of restricted and non-restricted donor funds.
- Donors making restricted gifts to the GC were provided with detailed reports on the use of their funds. We reviewed a sample of such reports during the course of this inquiry and did not find any evidence of attempts to mislead donors.
- ***There is no reasonable basis for the allegations made in the GU document.***

#### OTHER CRITICISMS OF GC OPERATIONS

As noted above, certain of the allegations in the GC report, even if the facts alleged are true, do not constitute Improper Conduct as defined in the Whistleblower Policy. Nonetheless, in the interest of providing a comprehensive inquiry, we offer some observations in this report in response to each of the categories described below.

#### **4. STAFF EXPANSION**

Allegation: There are multiple statements in the GU document criticizing the expansion of the GC's staff. They are exemplified by the following quotes: "The misuse of public and private funds by the Conservancy is no more apparent than in the size of its staff, and this year's hiring spree and paid bonuses. The Conservancy employs a record of 32 employees as of May 2016 (a dramatic 45% increase in personnel from 22 people in 2015!)"

Findings:

- The census of GC employees increased by 3 FTE's from 32.6 at 6/30/15 to 35.6 at 6/30/16. ***This represents an increase in FTEs of 11%, considerably less than suggested by the GU report.***
- The increases in the census of GC employees were primarily due to the creation of a full-time Play Space Coordinator (funded with restricted funds); a full-time seasonal Volunteer Assistant; a part-time Public Art Curator (funded by the Barr Foundation) and various summer interns.
- ***The GC does not pay bonuses to any staff.***

#### **5. HORTICULTURE AND MAINTENANCE COSTS**

Allegation: The RKG is "one of the most expensive parks in America. It cost the Conservancy a record \$420,538 (per acre) in FY 2015."

Findings:

- Care of the Rose Kennedy Greenway (RKG) is extremely complex because of its location immediately over the Central Artery Tunnel and decisions made during the design phase to include a number of features (e.g. fountains) that require an exceptional level of care and maintenance.
- ***Comparisons with other parks should focus on actual horticulture and maintenance costs – not the full functional expense budget, as was done by the GU authors.***
- Various studies over the years, such as one conducted by HR&A in 2009 and one conducted by ABC in 2010 (which was presented to an ABC committee co-chaired by this author at the time) have demonstrated that the GC's annual expenses for horticulture and maintenance compare satisfactorily with its peers.
- While we have not done any detailed computations as a part of this inquiry, it appears that the H&M costs for the Greenway would be less than half of that suggested in the GU report.

## **6. COMPENSATION OF THE EXECUTIVE DIRECTOR (ED)**

Allegation: The GC squanders public funds on “unprecedented high salaries and bonus payments” especially for the Executive who received a “30% increase salary in one year.”

Findings:

- Each year the GC board chair requests assistance from 2-3 board members on an *ad hoc* basis to review the ED's performance and recommend salary increases. The ED prepares a self-evaluation for consideration by this group. Any changes to the ED's salary are included in the organization's proposed annual budget, which the FARMC recommends to the board for approval, along with all other staff salaries.
- Comparative compensation data for Executive Director positions at other non-profit organizations was collected in 2012 and updated in 2014, using publicly available data on IRS 990's. Recognizing the complexity of comparing salaries for non-profits with substantially different missions, budgets, and operational structures, ***the ED's salary does not appear to be inconsistent with the market data collected for this assessment.***
- The ED's salary was set at \$180,000 on April 3, 2014, retroactive to the starting date of the ED's employment in this position, January 29, 2014. Based on what was considered an outstanding performance and a desire by the board leadership to bring the ED's salary more in line with peer organizations, the ED's salary was increased to \$210,000 on July 11, 2015. This represents a 17% increase over a 17 month period – not a 30% increase in one year as alleged in the GU report.
- The FARMC reviewed the GC's organization chart and all position salaries at a meeting on September 29, 2015.

- The ED’s salary, and the salary of other top managers, is reported in the Form 990 as required.

## 7. FUNDRAISING COSTS

Allegations: “Costs of fundraising are extravagant averaging 32% in 2015 and 50% in 2016. “ “There is no oversight or monitoring over the use of donor money,” “no accurate reconciliation of how donor’s money is being spent.”

Findings:

- Various guidelines are used to measure the effectiveness of fundraising expenses by non-profit organizations, but virtually all of them have strengths and weaknesses. Two such measures are fundraising efficiency and the ratio of fundraising expenses to overall functional expenses. Based on this author’s experience, I believe the latter formula is more widely used a measure of effectiveness.
- ***The GC’s fundraising efficiency improved from 64% to 30% over the three-year period ending in 2015. During the same period, the organization’s ratio of fundraising expenses to overall expenses improved from 12% to 9%.*** The positive change in these ratios was due in large part to the success of fundraising for the Echelman Project.

## 8. GOVERNANCE

Allegations: “The board is accomplice of the management’s practice of unbudgeted projects...” “The board functions as a “ceremonial and rubber stamp board.” Leadership is totally unchallenged in its business conduct.” “Leadership uses the tactic of assigning board seats to key stakeholders (City, Mass DOT,etc) and by implicating them in the process, it avoids inspections and shun criticism.” “Board fails in stewardship of both public and donors’ money...” FARMC fails to perform independent oversight of conduct effective control.” “Lack of finance risk control continues to expose the Conservancy to significant financial uncertainty...”

Findings:

- The GC’s enabling legislation requires the assignment of board seats to appointees of various public officials including the Governor, the Mayor, MassDOT, and members of the state legislature.
- The FARMC has a Charter that specifies its duties and responsibilities. The FARMC regularly reviews and updates various “best practice” governance polices. It also reviews risk management questions warranting ongoing vigilance and preparedness.
- The FARMC and Board of Directors regularly reviews the status of the GC’s income and expenses v. the current fiscal year budget, as well as the

organization's balance statement and the status of its investments. Minutes of these meetings are made available to the public on the organization's website.

- Auditors review their role and responsibilities with the FARMC before conducting the annual audit. At the end of the audit, the auditors meet in confidence with the FARMC without the Executive Director and Director of Finance in attendance to discuss any issues and/or concerns that may have arisen during the course of the audit.
- The most recent annual audit, for the 18 month period ending December 31, 2015, confirmed the financial statements present fairly, in all material respects, the financial position of the Rose Kennedy Greenway Conservancy as of December 31, 2015, and the changes in its net assets and its cash flows for the eighteen months then ended in accordance with accounting principles generally accepted in the United States of America . ***Neither the "clean" audit nor subsequent discussions with the FARMC suggested any evidence of mismanagement of public or private funds nor any lack of financial internal controls.***
- The GC's audit, 990 filings, and other financial statements can be found on the GC's website at: <http://www.rosekennedygreenway.org/about-us/documents/>