

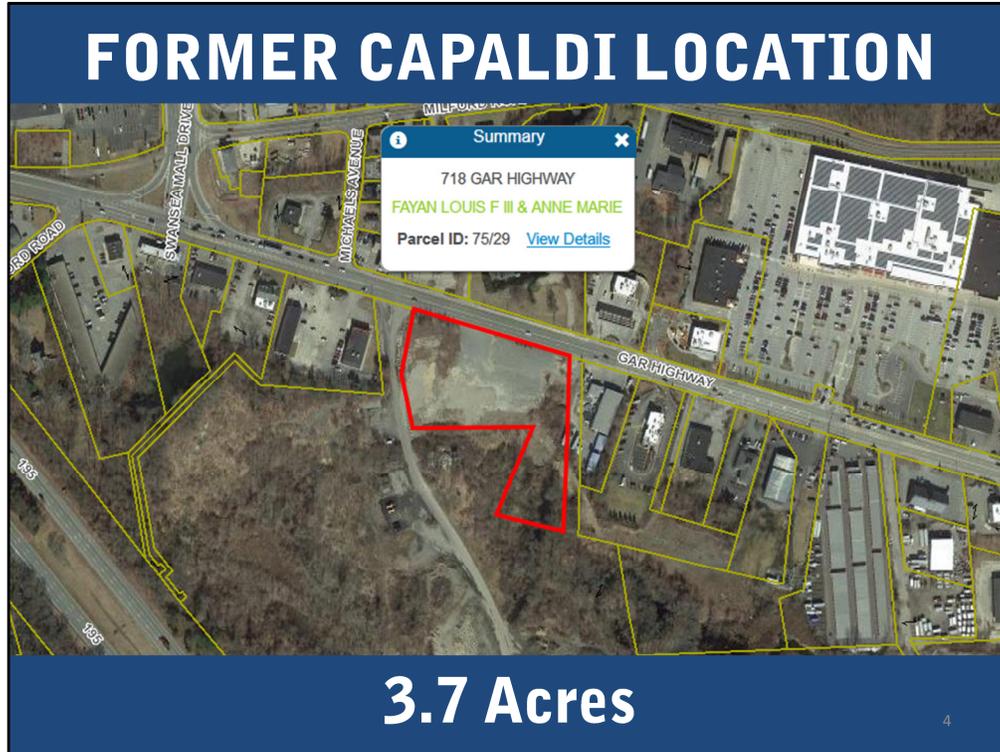
1. The Board of Selectmen has made economic development a top priority. Every Selectman's 2018 initiatives and priorities are predominantly economic development related.
2. This presentation is about economic development and the tools the Board of Selectmen have available to effectuate redevelopment. However, the Swansea Mall precipitates most our economic development discussions and if we can resolve our blighted Swansea Mall problem, many other opportunities will likely fall into place.
3. I want to make it unequivocally clear, this presentation is not asking the Board of Selectmen to take the Swansea Mall by eminent domain, it merely asks the Board to take the initial steps to create a Swansea Redevelopment Authority to begin the process of developing an economic development urban renewal plan.



1. The owners of the Swansea Mall also own a significant amount of land across from the Mall on Swansea Mall Drive, which includes a wastewater treatment facility with the capacity of upwards of 100,000 gallons per day.
2. This presentation will focus on the obstacles and challenges that have inhibited the Swansea Mall from being redeveloped.



1. This property is diagonally across from Target and its frontage and entrance is along the property that houses the Verizon Wireless store on Route 6.
2. This property owner has been marketing this property for sale for quite some time. There have been several failed development proposals.
3. Last year, the Town Administrator, Town Planner, and myself met with ownership to talk about the opportunities for the property.
4. In this meeting, the broker representing the owner, indicated the current owners were not interested in developing the property, due to family circumstances, they just wanted to sell.
5. However, property owners were also interested in purchasing nearby Town owned land to increase the size of their parcel to make it more marketable for a potential distribution facility.



1. This parcel has been the topic of the Board of Selectmen's discussions concerning nuisance properties.
2. Several dilapidated structures were recently demolished, due to the Town of Swansea's threats of the Town securing the buildings and placing a lien on the property for the cost incurred in connection with making the property safe.
3. Although structures have been demolished, the property is still a blight along the Route 6 corridor, and likely contributes to the reason why the former Burger King across the street, can't secure a tenant.
4. This parcel has been vacant for over a decade, is ripe for redevelopment, and it would benefit the community if this property was included in an economic development plan.

## OVERVIEW

- Swansea Mall Attempts at Redevelopment
- Subdivision of Mall parcel and Sale of 20 acres to Wal-Mart
- Imposition of Restrictions by Wal-Mart on Swansea Mall Parcel
- Impact of Restrictions on Leasing and Selling Property
- Swansea Mall's Multiple Attempts at Selling
- Swansea Mall Owner's Decision Not to Invest in Infrastructure and Modernization

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## **OVERVIEW (Continued)**

- Method of Terminating the Restrictions on Mall Property**
- Roles of Redevelopment Authorities and Urban Renewal Plans**
- Procedure to Establish a Redevelopment Authority**
- Cost of Urban Renewal Plan & Economic Development Consultants**
- Possible Integration of Solutions to Swansea's Municipal Capital Project Needs i.e. Town Hall, Highway Dept., etc**
- Development of the Capaldi and Ceruzzi Property on Route 6**

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## HISTORY OF CARLYLE'S OWNERSHIP OF SWANSEA MALL

- In August 2001, current ownership, Carlyle Swansea Partners, LLC, purchased mall for \$39,420,000.
- In 2007 J.C. Penney entered into agreement to build a two story J.C. Penney store in footprint of former Apex location.
- J.C. Penney would have required the mall to make multi-million dollar investment in renovating and modernizing the entire mall.
- In early 2008, the economic down-turn began, and J.C. Penney withdrew from the project.
- In 2017, the Mall ownership proposed, but did not follow through with the construction of over 200 40B housing units.

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1. Carlyle Swansea Partners, LLC purchased mall in 2001 for \$39.4 million.
2. 2007 Redevelopment plan included J.C. Penney in former Apex Location.
3. J.C. Penney plan required updating and modernization of the entire mall.
4. 2008 Plan was withdrawn with economic downturn.
5. 2017 40B Housing Development for former Apex was proposed, but stalled.

## SWANSEA MALL LAND SOLD TO WALMART



- **Mall owners subdivided the Swansea Mall parcel and created a separate 20 acre parcel.**
- **The 20 acre parcel was sold in February 2014 to JMAR Realty, LLC (real estate holding LLC for Wal-Mart) for \$10,675,000.00.**
- **Prior to the sale, Swansea Mall agreed to Wal-Mart imposing restrictive covenants that greatly limited what types of business operations could be located at the Swansea Mall. These restrictions also gave Wal-Mart “veto” power on many uses for the Swansea Mall.**

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1. Mall owners subdivided mall parcel, creating a new 20 acre parcel that would be sold to a real estate holding company for Wal-Mart.
2. The 20 acres was sold for \$10.6 million or \$533,750.00 per acre.
3. The parcel contained a substantial amounts of ledge and hundreds of thousands of dollars was spent on blasting in connection with ledge removal.
4. The 20 acre parcel was likely sold at premium due to restrictions that Wal-Mart imposed on the Swansea Mall that limited the types of businesses that could operate in the Swansea Mall.

Produced and Presented By:

Christopher Carreiro, Esq.

E-Mail: [ccarreiro@town.swansea.ma.us](mailto:ccarreiro@town.swansea.ma.us)

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## EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR")

THIS EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND (this "Agreement") is made as of the 12<sup>th</sup> day of June, 2012, between WAL-MART STORES EAST, L.P., a Delaware limited partnership ("Wal-Mart"), and CARLYLE SWANSEA PARTNERS, LLC, a Massachusetts limited liability company ("Developer").

### WITNESSETH:

WHEREAS, Developer is the owner of the real property with a shopping center located thereon as shown on the plan attached hereto as Exhibit A-1 (the "Site Plan") and more particularly described in the legal description attached hereto as "Exhibit B" (the "Shopping Center");

WHEREAS, Developer, as lessor, and Wal-Mart, as lessee, have entered into that certain Ground Lease dated September 18, 2006, as amended by a First Amendment to Ground Lease dated December 5, 2008 (as so amended, the "Original Lease") and as amended and restated by an Amended and Restated Ground Lease of even date herewith (as so amended and restated, the "Lease") in connection with the tract shown on the Site Plan as the "Wal-Mart Tract," as more particularly described on Exhibit C attached hereto (the "Wal-Mart Tract"), notice of which Lease is recorded herewith in the Bristol County Registry of Deeds (the "Registry") (the term "Original Effective Date" as used herein shall mean September 18, 2006; the term "Effective Date" shall mean the date first above written; and all references to the "Lease" shall be deemed to mean and refer to the Lease as defined above and as the same may hereafter be further amended by Wal-Mart and Developer);

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1. These restrictions are recorded in the Bristol County (Fall River District) Registry of Deeds.
2. The document is entitled Easements with Covenants and Restrictions Affecting Land.

# RESTRICTIONS ON MALL

## PROHIBITED USES

<ul style="list-style-type: none"><li>- No Cafeteria</li><li>- No Call Center</li><li>- No Theatre</li><li>- No Bowling Alley</li></ul>	<ul style="list-style-type: none"><li>- No business serving or selling alcoholic beverages</li><li>- No Billiard Parlor</li><li>- No Night Club</li></ul>
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**→ “No club or other place of recreation or amusement...” ←**

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# RESTRICTIONS ON MALL



## WALMART EXCLUSIVITY RESTRICTIONS

- "Gas Station Exclusive": no facility that dispenses gasoline.

- "Dollar Store Exclusive": no discount department store or other discount store .

- "Pharmacy Exclusive": no facility that serves the purpose of a pharmacy.

- "Grocery Exclusive": no grocery store or supermarket.

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## ALL RESTRICTIONS ON MALL FOR 30 YEAR TERM

“Buildings in the Shopping Center shall be used for commercial purposes of the *type normally found in a retail shopping center* including, without limitation, financial institutions, service shops, offices, and retail stores” (Page 2 of Restrictions)

**Takeaway:** Extremely ambiguous and open ended restrictions. Buildings must be used for traditional Shopping Center purposes, other uses are prohibited without Wal-Mart’s approval.

*How about: Housing? Storage? Entertainment? Medical Facility?*

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1. What does “the type normally found in a retail shopping center” actually mean?
2. What is a type of business that is not normally found in a retail shopping center?

## **ATTEMPTED SALES OF SWANSEA MALL**

### **THESE ARE SOME PROPOSED TRANSACTIONS IN WHICH THE COMMUNITY HAS KNOWLEDGE:**

- 1. November 2014: \$6.65 Million winning bid, owner accepted, but sale was never completed.**
- 2. October 2015: \$5.875 Million, which did not reach the minimum bid amount via internet auction.**
- 3. October 2018: >6.00 Million, Purchase and Sale Agreement signed, buyer backed out during the due diligence phase.**

**(Likely many more than 3 attempts.)**

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1. Review transactions in which public has knowledge.
2. There have been many more sale attempts that have not been made public.

## PROBABLE REASONS FOR FAILED TRANSACTIONS

1. Restrictions are intentionally ambiguous, it is unclear what type of meaningful and successful redevelopment Wal-Mart would allow a new buyer to pursue.
2. Given the current legal predicament between the Mall and Wal-Mart, a prospective buyer may have to litigate what kind of redevelopment would be allowed.
3. In the most recent proposed transaction, the prospective buyer approached Wal-Mart, and Wal-Mart wouldn't commit to what would be allowed until after the prospective buyer purchased the property, creating an extraordinarily risky real estate investment.

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1. Wal-Mart drafted restrictions intentionally ambiguous to protect Wal-Mart's interest in the event that unfavorable circumstances arise that were not contemplated by Wal-Mart at the time the agreement was executed.
2. A prospective buyer will likely have to litigate the scope of the restrictions and a Court would have to deem the restrictions invalid as they are against public policy or reform the agreement striking the unenforceable restrictions individually.
3. Due to the uncertainty of the restrictions, purchasing the Swansea Mall becomes an extremely risky real estate investment.
4. In the most recent proposed transaction, Wal-Mart told prospective buyers, purchase the property, obtain site control, develop a site plan, and then Wal-Mart will engage in dialogue with new owner as to what would be allowed and not allowed for redevelopment.

## QUICK RECAP ON TIMELINE

- ❑ After agreeing to significant restrictions on the Swansea Mall, Carlyle Swansea Partners, LLC sold 20 acres to a developer for the purpose of constructing Wal-Mart, .
- ❑ In 2013/2014 the Swansea Mall immediately began to market the property for sale and stopped making investments in the modernization or infrastructure of the Mall.
- ❑ Improvements made to entrances were made to pacify an anchor tenant and to induce them into signing a lease extension.
- ❑ In 2014, 2015, and 2018, prospective buyers failed to close on the sale, likely due to the Mall's restrictions being discovered in their due diligence.

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1. Wal-Mart and Swansea Mall owners agree to restrictions on Swansea Mall.
2. Swansea Mall subdivides and sells 20 acres to Wal-Mart at premium price.
3. Carlyle Partners, LLC immediately begins marketing Swansea Mall for sale.
4. In 2014, 2015, and 2018, attempts at selling Swansea Mall failed when the extent of restrictions were discovered.
5. Traditionally, in the course of a commercial or residential real estate transaction, the buyer will conduct due diligence which generally may include: 1) physical inspection of premises; 2) title examination; and (3) survey of the land.
6. If problems are discovered in the due diligence process, the buyer and seller will engage in dialogue and make concessions or renegotiate terms of the agreement to consummate the sale.
7. The fact that the Swansea Mall has been under agreement so many times over an extended period of time indicates that the restrictions on the Swansea Mall are so inhibitive and onerous that these restrictions make the sale and redevelopment of the mall impossible.

Produced and Presented By:

Christopher Carreiro, Esq.

E-Mail: ccarreiro@town.swansea.ma.us

## IN OTHER WORDS

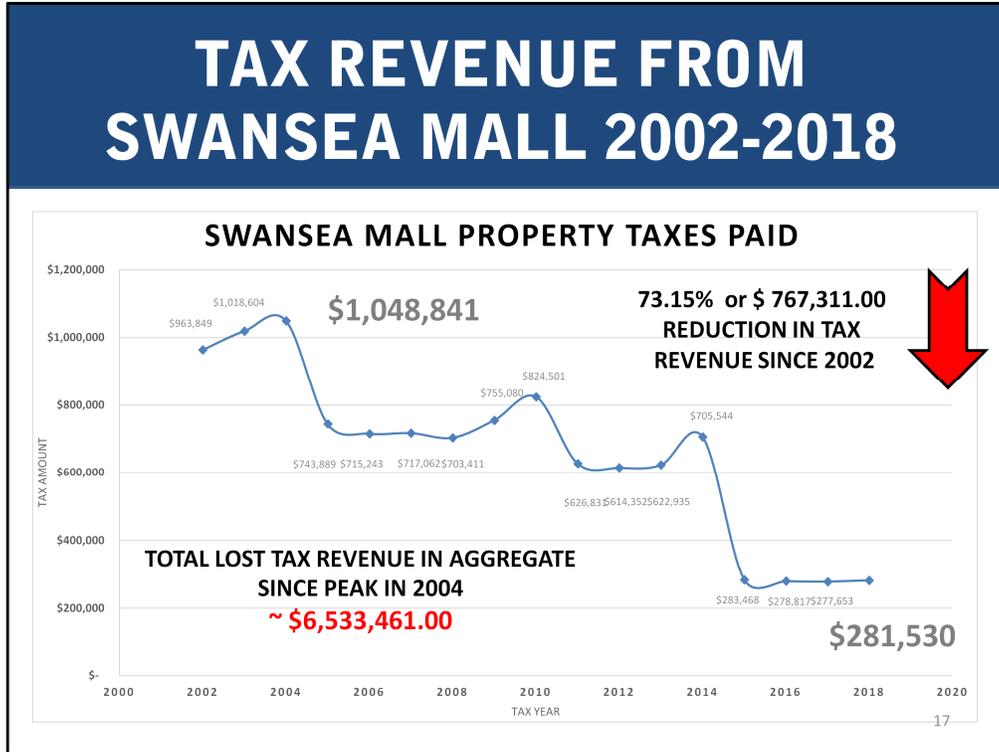
Based on my information and belief, Mall ownership never fully comprehended the impact of the restrictions they allowed to be placed on the mall or the burden the restrictions would impose on future redevelopment, repurposing, or sale of the Mall.

Allowing these restriction was a shortsighted decision to step over dollars to pick up pennies, which is the sole reason why, without government intervention, the Swansea Mall cannot meaningfully be redeveloped.



1 ) Mall ownership never understood and/or accurately predicted the impact the restriction would have on: 1) development; or (2) sale of Mall.

2) Agreeing to restrictions was a short sighted decision. Carlyle Partners, LLC stepped over dollars to pick up pennies.



1. Explain graph.
2. Yearly abatements taken into account.
3. 16 year span.

## REPOSITIONING OF MALL REQUIRES RESTRICTIONS TO BE TERMINATED

1. The Mall has been unsuccessful in overcoming the Mall's restrictions to engage in meaningful redevelopment. It has become clear that the Mall does not intend to maintain, improve, or invest funds into redevelopment.
2. We can deduce from the timeline of events that the mall never intended to hold the property this long, and planned to immediately sell shortly after capitalizing on the sale (\$10.6 million) of 20 acres to Wal-Mart that also significantly encumbered the Swansea Mall property with restrictions.
3. Today, Mall's ownership has exhausted all their exit strategies.
4. Based on all the information available to this community, it would be logical to conclude that in order to redevelop the mall and reinvigorate economic development in the Route 6 corridor and Route 118, **the restrictions imposed on the Swansea Mall, by Wal-Mart, must be terminated.**

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- 1) Carlyle Partners, LLC hasn't been able to overcome restrictions. Mall hasn't made any investment in facility.
- 2) Carlyle Partners, LLC likely never intended to hold the property this long. Seems like plan was make \$10.6 million and immediately sell mall.
- 3) Carlyle Partners, LLC does not have an exit strategy and may welcome opportunity to engage Town in redevelopment plan that provides opportunity for Carlyle Partners, LLC to sell mall.
- 4) Based on all the information available to the community, it would be logical to conclude that restrictions must be terminated or significantly reformed so that comprehensive redevelopment can take place.

## EXTINGUISHING RESTRICTIONS

- **When a property is taken by eminent domain for public use, property rights and restrictions are extinguished by operation of law and the property owner or easement holder would be entitled to compensation.**

**Public use is defined in case law to include economic growth for a community. (Kelo v. City of New London)**

- **The only way to terminate the restrictions placed on the Mall would be to take the Mall by eminent domain.**
- **The Town of Swansea does not have the bandwidth, resources, or financial capacity to take the mall by eminent domain to release the restrictions and then engage in a comprehensive redevelopment of the Swansea Mall.**

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1. If property taken by eminent domain for public use, restrictions are extinguished by operation of law. Property owner would be entitled to compensation of appraised value.

2. The Town of Swansea doesn't have the resources, bandwidth, expertise or financial capacity to engage in a comprehensive redevelopment of the mall. The Town of Swansea is not in the business of commercial real estate development.

# SWANSEA REDEVELOPMENT AUTHORITY

**Swansea is not the first municipality in the Commonwealth to face economic development challenges resulting from blighted properties. Swansea is a small town faced with a big city problem and there are mechanisms built into the Massachusetts General Laws that can assist our community .**

**Massachusetts Law provides for a town, through Town Meeting, to adopt certain provisions of the law that establishes a Redevelopment Authority.**

**A Redevelopment Authority is not an agency of a municipality and therefore, does not answer directly to the executive branch (Board of Selectmen). This affords the Redevelopment Authority autonomy in planning and implementing revitalization and redevelopment projects.**

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1. Our community isn't the first municipality to face this type of economic development challenge. The legislature realizes that communities may need additional tools to effectuate redevelopment and there are laws already on the books that can assist the Town of Swansea in developing a solution.
2. Establishing a Redevelopment Authority is likely the first step to crafting a plan as to how the Town of Swansea will approach the Swansea Mall and other parcels of land in our commercial districts that could benefit from a redevelopment plan.
3. The Redevelopment Authority would not answer to the Board of Selectmen and would be independently elected.

Produced and Presented By:

Christopher Carreiro, Esq.

E-Mail: [ccarreiro@town.swansea.ma.us](mailto:ccarreiro@town.swansea.ma.us)

## WHAT IS A REDEVELOPMENT AUTHORITY?

Redevelopment Authorities have broad powers to plan and implement activities needed to redevelop underutilized, deteriorated or blighted open areas, to encourage new development and to promote sound growth.

Redevelopment Authorities have the power to:

- Assemble and dispose of land, including the taking of real estate through eminent domain;
- Demolish and/or rehabilitate substandard structures;
- Participate in real estate development and commercial revitalization;
- Issue bonds, borrow money, invest funds, and receive grants; and
- Accept gifts.

In a Town form of government, the Redevelopment Authority would be comprised of 4 elected members, and 1 appointed by Massachusetts Department of Housing and Community Development.

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1. RDAs have broad powers to implement activities needed to redevelop underutilized, deteriorated or blighted open areas.
2. In a Town like Swansea, a RDA would be comprised of 4 elected members and 1 member appointed by the Massachusetts Department of Housing and Community Development.

# WHAT IS AN URBAN RENEWAL PLAN?

## **First Step, Establish Urban Renewal Plan:**

**Once the Redevelopment Authority is established with sitting members. In order to begin taking redevelopment or economic revitalization action, an Urban Renewal Plan must be proposed and approved by the Commonwealth of Massachusetts.**

## **Urban Renewal Plans include in part:**

- **Maps of project area;**
- **Data demonstrating substandard, decadent or blighted open area;**
- **Project objectives, including proposed redevelopment and details concerning job creation;**
- **Financial Plan and cost estimates; and**
- **Report on citizen participation, describing meaningful citizens participation in planning process.**

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1. An RDA can't take any economic development action until an Urban Renewal Plan is in place, which ultimately requires public hearings, and approval by the Commonwealth of Massachusetts.
2. Urban Renewal Plans are comprehensive plans that include maps of project area, socioeconomic data, citizen participation, and more.

## DOES SWANSEA HAVE TO SPEND MILLIONS OF DOLLARS ON MALL?

- **The Town of Swansea, acting through its newly created Redevelopment Authority, would not expend its own funds to purchase the Mall, instead it would utilize its eminent domain powers to act as an intermediary, and bring the buyer and seller together, for the purpose of releasing all restrictions on the land to effectuate meaningful redevelopment.**
- **Money is never exchange between the Town of Swansea or Redevelopment Authority for the transaction, nor is the Town required to appropriate funds for acquisition.**



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1. Taking the Swansea Mall by eminent domain so the Town of Swansea can operate it, is not what we are trying to accomplish. We merely want to release the restrictions that Wal-Mart has placed on the Swansea Mall, however eminent domain may be the only legal viable option.
2. This does not mean that the RDA or the Town of Swansea will own or operate the mall at any point.
3. This does not mean the RDA or the Town of Swansea would have to appropriate millions of dollars to purchase the mall. In fact, money is never exchanged between any prospective buyer or seller and the Town of Swansea.
4. The RDA would act as an intermediary to bring the buyer and seller together, for the purpose of releasing the restrictions.

## ADDITIONAL BENEFITS

Urban Renewal Plan may be able to integrate solution to municipal capital projects that the Town of Swansea has had difficulty bringing to fruition, like a new Swansea Town Hall, Highway Department, Animal Shelter, etc. These projects could be accomplished for a small fraction of what it would cost the Town of Swansea to solve these problems on its own, as **Redevelopment Authorities are exempt from the Uniform Procurement Act.**

The Swansea Redevelopment Authority and Swansea Board of Selectmen may be able to work with a developer to help Swansea meet its long term municipal needs while also revitalizing the Swansea Mall and underperforming properties on the Route 6 corridor.

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1. An Urban Renewal Plan could help solve Swansea's municipal needs, including a new Town Hall, Highway Department, Animal Shelter, etc.
2. These needs could be met for a fraction of the cost that the Town of Swansea would pay, as an RDA is exempt from the Uniform Procurement Act.

## ADDITIONAL BENEFITS (Cont.)

- **The Swansea Redevelopment Authority could negotiate for land, free space, or below market rent for town offices in return for a local Tax Increment Financing Agreement (TIF), state and federal infrastructure grant securements and/or re-zoning.**
- **An example of this type of arrangement can be seen in Fall River, where consultants (Bristol County EDC), representing the Fall River Redevelopment Authority, negotiated no cost first floor space for the Flint Senior Center in exchange for the City's assistance with the state to secure low income housing tax and historic tax credits to offset their overall cost of development.**

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1. RDA could negotiate with a developer for land, buildings, free space, or below market rent for Town Offices in return for Tax Increment Financing (TIF) or rezoning.
2. In Fall River, the RDA negotiated for free space for the Flint Senior Center, in exchange for the City's assistance with the state to secure low income housing tax and historic tax credits to offset development costs.

# ESTIMATED COST TO TOWN OF SWANSEA

## Cost Break Down for Establishment of Redevelopment Authority and Approved Urban Renewal Plan

**Focus Areas:** Capaldi Property on Route 6 to 118 to Swansea Mall.

**Emphasis on:** Swansea Mall, Former Capaldi Property and Ceruzzi Property.

**Quotes Received from:** Bristol County Economic Development Consultants

**Consultant Fee for Urban Renewal Plan:**

\$4,000 per month for 12-15 months = \$48,000 to \$60,000

**Cost of Development of Urban Renewal Plan:** \$125,000 to \$150,000

**Total cost between \$173,000 to \$210,000**

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1. The total cost may be less than estimate above. This original quote was for a urban renewal area that was greater in geographic size than what is being proposed in this presentation and is only one prospective vendor's estimate of cost.

## **BOARD OF SELECTMEN'S ROLE**

- 1. Schedule a Special Town Meeting;**
- 2. Include two articles in the next Special or Annual Town Meeting warrant that would adopt the provisions of the Massachusetts General Laws to establish a Redevelopment Authority;**
- 3. Include one article to make an appropriation to fund an Urban Renewal Plan that will establish an economic development strategy for the Swansea Mall and areas along Route 6; and**
- 4. Once the Swansea Redevelopment Authority is established, the Board of Selectmen will appoint four community members to serve on the newly created Redevelopment Authority, who will run for election in the next election cycle.**

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