

PLANNING BOARD DATE SEPTEMBER 12, 2002
AGENDA ITEM NO. 3

MARYLAND SOCCER FOUNDATION'S REQUEST FOR LEASE AMENDMENT TO EXPAND USES

TAB 1

STAFF REPORT



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF
THE GENERAL COUNSEL

(301) 495-4646
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September 5, 2002

MEMORANDUM

TO: Montgomery County Planning Board

FR: Michele Rosenfeld, Associate General Counsel *MR*

RE: Montgomery Soccer Foundation, Inc.'s Request to Expand Uses at SoccerPlex

Staff Recommendation: Approve Lease Amendment to provide for waiver to allow Foundation (1) to use entire Premises for business-related uses; and (2) to extend hours of operation on a case-by-case basis, subject to certain limitations.

I. Introduction

On July 16, 2002, the Commission received a request from Montgomery Soccer Foundation, Inc. ("Foundation") to increase the uses allowed under the Ground Lease Agreement between The Maryland-National Capital Park and Planning Commission (Landlord) and Montgomery Soccer Foundation, Inc. ("MSF") dated June 28, 1999. The lease has been amended twice¹ (Lease and Amendments hereinafter referred to as "Lease").

Section 6 of the Lease, entitled "Purpose of Lease and Use of SoccerPlex," reads in relevant part as follows:

- (a) **Purpose of Lease.** The purpose of this Lease is to authorize Foundation to construct, manage and maintain high quality outdoor Soccer Fields for the game of soccer and related uses, and to construct, manage and maintain an Indoor Multi-Purpose Facility for indoor soccer, basketball, lacrosse, in-line hockey, volleyball, sports-related meetings, dinners and functions and such other sports and community activities as may be approved by the Director of Park and Planning. An ice rink

¹ The Lease was amended July 26, 1999. The Commission and Foundation entered into this amendment in response to concerns raised by the County Council as it reviewed the initial Lease, and the changes primarily addressed the facility's hours of operation and traffic issues. The Lease was amended again on June 15, 2000 to modify the mortgaging provisions in order to allow the Foundation to obtain financing.

or sheet of ice is specifically excluded as a permitted use.

- (b) Permitted Use. Foundation shall have the right to use the Premises for the construction and operation of the SoccerPlex Improvements in accordance with the purposes, uses and terms of this Lease, and for no other purpose or use.

In addition, Section 13 of the Lease, entitled "Operation and Management of Soccer Facilities," specifically restricts the Foundation's use of the Indoor Multi-Purpose Facility² ("Indoor Facility") as follows:

The soccer fields in the Indoor Multi-Purpose Facility may be used throughout the year for indoor soccer, basketball, lacrosse, in-line hockey, volleyball, sports-related meetings, dinners and functions and such other sports and community activities as may be approved by the Director of Park and Planning.

In January, 2002, MSF requested and received approval from the Director of Park and Planning to include the following sports to the list of permitted uses in the Indoor Facility: field hockey, flag football, rugby, baseball/softball, cheerleading, and ultimate Frisbee.

On July 16, 2002 the Commission received a letter from the Foundation requesting in relevant part that the Lease be amended to "(a) enable more flexibility in the use of the Discovery Sports Center [Indoor Facility] for business-related meetings and functions; and (b) to provide a waiver amendment to take advantage of opportunities that will have a positive economic affect [sic] on MSF operations and do not conflict with the provisions in the lease regarding traffic and environmental impacts." This request also asked for a waiver provision to allow extended hours of operation, so the Foundation could hold events "after hours." The Indoor Facility currently can operate between 7:00 a.m. to midnight, seven days per week.

The Foundation makes this request for financial reasons. The SoccerPlex is still in its early stages of operation, and revenues have not kept pace with the initial financial projections. The Foundation hopes to expand its revenues by hosting business events on the Premises. Staff concurs that the Foundation should seek to increase its revenue stream during this startup period, and generally agrees with the concept of expanded business use of the SoccerPlex as a means to generate that revenue.

On July 18, 2002, staff met with Foundation representatives and agreed that in lieu of amending the lease to allow specific functions, that the Lease would provide for a waiver process authorizing the Director of the Department of Park and Planning to grant waivers of the use restrictions imposed by Sections 6 and 13 of the Lease, and waiving the hours of operation to allow after-hours use (e.g., an after-prom event). Staff and the Foundation at the time concluded that a waiver process allowed for more flexibility in the Foundation's ability to schedule non-sport uses, given that it is difficult to anticipate all of the varied requests that the Foundation may receive.

² Defined in the Lease as "that building located in the SoccerPlex containing up to three (3) indoor soccer fields."

On August 1 the Planning Board held a public hearing on the proposed lease amendment, based on a waiver concept for the expanded uses and hours of operation, and held the record open until September 12 to receive any additional public comment on these requests.

Subsequent to the August 1 hearing the Foundation amended its request to seek permission to use the entire leased premises³ (not simply the Indoor Facility) for non-sports events. (See Tab 23.) The Foundation also recently returned to its original request that it be able to schedule certain business events "by right," and not be required to go through the waiver process (see Tab 24).

II. Discussion

A. Expansion of Uses to Include Full Premises (Not Just Indoor Facility).

The Foundation's original request was to use the Indoor Facility for business-related activities. The Foundation now has asked that it have the ability to use the Indoor Facility and the outdoor premises for business-related activities. (Tab 23.) (For example, a business could hold a team-building day that would use the Indoor Facility for meeting space, and also use the outdoor facilities for related recreational activities.)

Staff Recommendation:

In the opinion of staff, the Foundation could hold business related uses outdoors that result in minimal community impact provided the business uses for the Premises are reviewed subject to the waiver provisions below. This expanded opportunity potentially would enhance the Foundation's revenues, consistent with the goal of the amendment from its inception. Consequently, staff recommends that subject to the same waiver provisions and traffic limitations discussed below, the Commission extend the waiver provisions to include the entire Premises.

B. Foundation Seeks to Eliminate Waiver Provision, Instead Seeking Amendment to Authorize Business-Related Uses By Right.

The Foundation seeks to modify the waiver concept. The Foundation wants the ability to schedule business-related uses⁴ with up to 1,000 attendees, during any weekday, without the need for a waiver. The Foundation also has asked that the Lease be amended to allow "such other uses as may be approved by the Director of the Department of Park and Planning." (See Foundation's Draft Lease Amendment – Tab 22; letter in support of request – Tab 24.) The Foundation has proposed this change because it does not want to seek approval on a case-by-case basis, citing both the time it takes to obtain a waiver approval, and the uncertainty involved (i.e., the request might be denied).

Staff Recommendation: Staff strongly urges that the Board retain the waiver concept for *all* business-related uses, with certain modifications to staff's original proposal

³ The premises are the entire 162-acre tract leased to the Foundation for SoccerPlex (hereinafter "Premises").

⁴ These uses are listed in the Foundation's Draft Amendment as "non-sports functions such as trade shows, business meetings and exhibitions" (defined in their draft amendment as "Incidental Uses.")

to address the Foundation's legitimate concerns about a timely response. Specifically, staff recommends that:

1. Weekday events with up to 1,000 attendees do not need a traffic analysis.⁵
2. Weekend events with up to 1,000 attendees do not need a traffic analysis if there is no soccer or swim tournament.⁶
3. Weekend events with up to 250 attendees when there is tournament play do not need a traffic analysis.
4. Staff will respond to a waiver request with no traffic study associated within 10 calendar days (eliminating the previous requirement that the waiver be submitted 30 days in advance, and that the Commission have 10 business days to respond).
5. Any waiver requests that exceed these attendance restrictions require a traffic analysis along with the waiver request. The Commission shall have ten calendar days to review these waiver requests.
6. A waiver request must include written assurance from the Conference and Visitors Bureau (CVB) that no member of the CVB can accommodate the event.
7. The Commission retains sole and subjective discretion to grant or deny a waiver request, and sole and subjective discretion to provide notice to the community on a waiver request.⁷

In the opinion of staff, these limitations allow events to occur within the capacity of the existing transportation network, offer the Foundation timely responses to its waiver requests, and retain Commission oversight with respect to the nature and type of non-sporting events that occur at the SoccerPlex.

C. Sunset Clause

Staff supports a five-year sunset clause.⁸ The Foundation requested the ability to schedule business uses based on its current financial needs. Specifically, in these early stages of operation, revenues have not kept pace with the initial financial projections. If the SoccerPlex ultimately becomes self-sustaining based on its sports-related revenue, however, then the need for these business uses becomes moot. The Foundation concurs with a sunset, but has asked that the Foundation have the ability to extend it if appropriate. Staff recommends that the Lease Amendment provide for the Foundation to seek from the Planning Board a two-year extension of the sunset without the need for a lease amendment.

⁵ These numbers are based upon Transportation Staff's analysis of the traffic impact of these events. See Tab 3.

⁶ Swim tournaments would occur within the adjacent swim center, to be built by Montgomery County.

⁷ The Foundation does not concur with this condition.

⁸ If the Foundation constructs an amended Phase II, it will not become operational – at the earliest – until Spring of 2004. Staff recommends that the sunset provision be long enough to allow that additional revenue source to be realized.

D. Reporting Provisions

The Foundation has agreed to provide a report on all business related uses (including those events they hold if allowed to do so by right, in lieu of the waiver process), including information on: (1) all waivers requested, indicating all waiver requests that were both granted and denied; (2) a description of all events held pursuant to a waiver, including the number of attendees, revenue generated, and additional expenses incurred; (3) projected waiver requests for the upcoming year; and (4) a list of all sport-related requests for use of the Premises that were not scheduled because of conflicting events already scheduled pursuant to a waiver.

III. Conclusion

Staff supports the Foundation's request to allow business-related uses within the SoccerPlex Premises, subject to the waiver provision and conditions listed above. On balance, staff is of the opinion that this format offers the Foundation great flexibility and opportunity to generate additional revenue at the SoccerPlex. At the same time the Commission will retain the ability to exercise appropriate oversight within its developing park and with respect to the potential impact of individual uses on the adjacent residential communities.

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MARYLAND SOCCER FOUNDATION'S REQUEST FOR LEASE AMENDMENT TO EXPAND USES

TAB 2

TRANSPORTATION STAFF REPORT





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

August 29, 2002

MEMORANDUM:

TO: Michele Rosenfeld
Associate General Counsel
Legal Department

VIA: Ronald C. Welke, Supervisor
Transportation Planning 

FROM: Ki H. Kim, Planner/Coordinator 
Transportation Planning

SUBJECT: Traffic Analysis for Expansion of Business Uses - Soccerplex

This memorandum represents Transportation Planning staff's review and recommendations on the proposed expansion of permitted uses to include business activities with a number of attendees up to 1,000 at the Discovery Sport Center, indoor multi-purpose facility of the Germantown Soccerplex as recommended by Trish Heffelfinger with the Soccerplex Foundation. We analyzed the traffic impact of the proposed expansion of permitted uses on the surrounding roadway system from the perspective of both daily and peak hour traffic during weekdays and on the weekend.

RECOMMENDATION

Based on our analysis using the current and future traffic conditions, we support the proposed expansion of permitted uses at the indoor multi-purpose facility, as follows.

1. The number of attendees is limited to up to 1,000 during weekdays.
2. The number of attendees is limited to up to 1,000 during the weekend when neither a soccer tournament nor a swim tournament is scheduled.
3. The number of attendees is limited to up to 250 during the weekend when either a soccer tournament or a swim tournament is scheduled.

DISCUSSION

Staff's analysis indicates that the local area roadway network will accommodate the projected traffic volumes from the area growth and the South Germantown Recreational Park development including the proposed expansion of permitted uses at the multi-purpose facility of the Germantown Soccerplex. Staff's analysis used the assumptions developed for the initial traffic analysis for full development of the South Germantown Recreational Park and updated them based on data collected during several soccer tournament weekends in 2000 and 2001.

Staff's analysis indicates that no roadway link examined is projected to approach its maximum desirable **daily** traffic volume under any scenarios. However, the projected traffic conditions based on the **peak hour** traffic are approaching the maximum desirable volume on MD 118. This peak hour traffic constraint was the basis for staff's recommendation in our memorandum to Terry Brooks dated July 26, 2002 of not scheduling weekend soccer and swim tournaments on the same day or days in the Phase II traffic analysis.

Staff's analysis indicates that the area roadways can accommodate the weekday use of the indoor complex with the proposed 1,000 attendees. The same number of attendees can be accommodated during the weekend except when a soccer tournament or a swim tournament is scheduled. When either a soccer tournament or a swim tournament is scheduled during the weekend, the maximum number of attendees is limited to 250 due to the peak hour traffic constraint on the local roadway network.

KHK:cmd

Traffic Analysis for Business Activity of Soccerplex 2.doc

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TAB 3

STAFF'S DRAFT LEASE AMENDMENT

DRAFT

THIRD AMENDMENT TO GROUND LEASE AGREEMENT

This Third Amendment to Ground Lease Agreement is made this ____ day of _____, 2002, by and between THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic ("Commission"), and MARYLAND SOCCER FOUNDATION, INC., a Maryland non-profit corporation ("Foundation").

WITNESSETH

WHEREAS, Commission and Foundation entered into a certain Ground Lease Agreement, as amended by that certain Amendment to Ground Lease Agreement (together, the "Lease"), by which the Commission leased an approximately 162-acre portion of the South Germantown Recreational Park, Germantown, Maryland, to the Foundation, and

WHEREAS, the Foundation has requested certain amendments to the Lease be made, which amendments are set forth and mutually agreed to by the parties hereto.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Section 2(ddd). "Phase II" is deleted in its entirety and the following is substituted in lieu thereof:

"Phase II" means that period of time from the commencement of construction of the next three (3) Soccer Fields (Fields 18, 19 and 20 on the attached Exhibit A), and a portion of another Parking Area (the field 18 – 22 Parking Area on the attached Exhibit A), until the commencement of Phase III.

2. Section 2(eee). "Phase III" is deleted in its entirety and the following is substituted in lieu thereof:

"Phase III" means that period of time from the commencement of construction of the next two (2) Soccer Fields and one (1) Parking Area (Fields 1 and 2 and the Field 1 and 2 Parking Area on the attached Exhibit A), and one (1) Baseball/Softball Field and one (1) Parking Area (Field C and Field C and D permanent Parking Area on Exhibit A).

3. Section 6. The following sentence is added to the end of Section 6(b).

6(b) The Foundation may seek a waiver of these use restrictions in accordance with the terms of Section 13(b)(11)(i).

4. Section 7. The following Section 7(i) is added to the end of Section 7.

7(a) Foundation shall not commence any construction of any kind on Phase II until (i) Foundation has provided Commission with evidence that the Foundation holds sufficient funds for the payment of the cost of

such construction, plus a contingency fund for cost overruns to be established on a contract-by-contract basis, to be mutually agreeable to the parties; (ii) Foundation obtains in advance of construction all funding for Phase II from a source of funding not currently committed to operating revenue (*e.g.*, an independent grant or donation); and (iii) the County Council has approved an amendment to PDF No. 998712 implementing this lease modification.

4. Section (13). The following Section (13)(b)(11)(i) is inserted at the end of Section 13(b)(11):
- (i) The Director of the Department of Park and Planning, or designee, may waive the use restrictions in Section 6(a) and 13(b)(11) to allow business-related activities in the Indoor Multi-Purpose Facility such as meetings, dinners, functions and exhibitions. Any such waiver must meet the following conditions:
 - 1. Before submitting any request to the Commission, the Foundation shall obtain written assurances from the Conference and Visitors Bureau (CVB) that the event cannot be accommodated by any of the CVB members, and concurs with the Foundation's request for a waiver.
 - (i) The Foundation must submit all waiver requests in writing to the Director of Park and Planning, with a copy to Park Police. The Director will approve or reject each waiver request within 10 calendar days of its receipt.
 - (ii) Traffic capacity is adequate for the following events:
 - (A) If there is no soccer tournament OR swim tournament AND the event does not exceed 1,000 people; or
 - (B) If there is a soccer tournament AND the event does not exceed 250 people.
 - (iii) If the event does not qualify under (ii), above, then the Foundation must submit with the waiver request a traffic statement that includes the maximum number of attendees and the means by which they arrive at the facility (*e.g.*, car, bus, vanpool) for the Commission's transportation staff to review and assess the traffic impact of the proposed event. The Director may deny a waiver request based upon excessive traffic. If a proposed event generates excessive traffic, the Director may approve a waiver request if the Foundation implements mitigation measures such as carpooling, or use of vans or buses, as approved by the Director.
 - (ii) The Foundation's primary use of **time** for the Indoor Multi-Purpose Facility must remain sports-oriented.
 - (iii) The Director retains sole and subjective discretion to grant or deny a waiver request, and sole and subjective discretion to provide notice to the community on a waiver request.
 - (iv) The waiver provision will expire after five years. The Foundation may seek an extension of the waiver with a written request.

5. Section 13(b)(13): The following new Section 13(b)(13)(v) shall be added:

(v) The Director of the Department of Park and Planning may waive the hours of operation on a case-by-case basis for any use permitted under Section 13.

6. Section 15. Section 15 shall be amended by deleting “and” from the end of Section 15(iv) and deleting the entirety of 15(v), and replacing those deletions with the following language:

(v) all waivers requested pursuant to Sections 13(b)(11)(i) and 13(b)(13)(v), indicating all waiver requests that were both granted and denied; a description of all events held pursuant to a waiver, including the number of attendees, revenue generated, and additional expenses incurred; projected waiver requests for the upcoming year; and a list of all sport-related requests for use of the Indoor Arena that were not scheduled because of conflicting events scheduled pursuant to a waiver; and (vi) any other information reasonably requested by Commission.

SIGNATURE LINES TO BE ADDED.

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