

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
200641

Resolution:
 Yes No

TITLE:

Indemnification of the Commonwealth of Virginia

PRESENTATION SUMMARY:

To obtain Board approval to indemnify the Commonwealth of Virginia in order to apply for and obtain a permit to operate parking meters on VDOT-controlled Saintsbury Drive at the Vienna/Fairfax-GMU Metro Station.

PURPOSE:

Approve the VDOT permit form requiring the indemnification of the Commonwealth of Virginia so Metro can obtain a permit to allow Metro's continued use of VDOT-controlled Saintsbury Drive at the Vienna/Fairfax-GMU Metro Station.

DESCRIPTION:

The Virginia Department of Transportation (VDOT) will not issue Metro a permit for Metro's continued use of Saintsbury Drive for parking meters and signage at the Vienna/Fairfax-GMU Metro Station unless, in accordance with the boilerplate provisions of VDOT's permit application form, Metro agrees to indemnify the Commonwealth of Virginia against any liability arising from Metro's use of Saintsbury Drive. Board approval is necessary to indemnify the Commonwealth of Virginia.

Key Highlights:

Metro will need a permit from VDOT to continue to operate on Saintsbury Drive as Metro previously operated when Metro owned Saintsbury Drive in the past and as Metro has operated since Fall 2011 under a license from Fairfax County.

The VDOT permit requires that Metro indemnify the Commonwealth of Virginia from any liability arising from Metro's operations on Saintsbury Drive.

Board approval is necessary to indemnify the Commonwealth of Virginia.

Background and History:

Metro previously owned Saintsbury Drive, a road that parallels and provides the access to the southern entrance to the Vienna/Fairfax-GMU Metro Station. As part of

the development of adjoining land sold by Metro to the private sector, Fairfax County required that Metro convey ownership of Saintsbury Drive to Fairfax County for eventual acceptance by VDOT for maintenance purposes. That conveyance relieved Metro of maintenance responsibility. Metro agreed and completed the conveyance to Fairfax County.

Fairfax County now wishes to implement the next stage, which is the acceptance of maintenance responsibility for Saintsbury Drive by VDOT. As part of that acceptance of Saintsbury Drive by VDOT from Fairfax County, Metro must obtain a permit from VDOT to allow the continued use by Metro of Saintsbury Drive. Metro's use was (when Metro owned Saintsbury Drive), is (under Fairfax County's ownership of Saintsbury Drive), and is proposed to continue to be, the operation of parking meters on Saintsbury Drive and wayfinding signage for the Metro Station.

VDOT's application form for the permit requires that the applicant (Metro) indemnify the Commonwealth of Virginia from any liability arising from the applicant's use. Board approval is necessary to indemnify the Commonwealth of Virginia.

Discussion:

It was to Metro's benefit to sell the adjacent land for private sector development and to convey Saintsbury Drive. Metro has received significant improvements to its bus and other transit facilities on Saintsbury Drive as part of the sale. By conveying Saintsbury Drive to Fairfax County, Metro also shed maintenance responsibility for Saintsbury Drive to the County. As part of that conveyance, Metro has continued to operate its parking meters and wayfinding signage on Saintsbury Drive under a license from Fairfax County. However, once the County yields maintenance responsibility to VDOT, Metro will need a permit from VDOT to continue those operations.

To obtain a permit from VDOT, Metro must agree to VDOT's permit form. That form requires that the permittee, Metro in this case, indemnify the Commonwealth of Virginia against liability arising from Metro's use of Saintsbury Drive.

In concept, this is similar to recent Board actions authorizing the indemnification of the Commonwealth of Virginia in order to obtain permits from VDOT for Phase I of the Silver Line (MEAD 200534, January 2014) and the construction of the Cinder Bed Road Bus Garage (MEAD 200498, December 2013).

FUNDING IMPACT:

There is no quantifiable impact on funding, except to the extent that inability to continue to operate parking meters will negatively impact Metro's current and future revenues. The legal agreement to indemnify under hypothetical future events does not obligate or require expenditures at this time or at any specific future time or in any quantifiable amount.	
Project Manager:	Steven A. Teitelbaum
Project Department/Office:	DGMA/CFO / LAND

TIMELINE:

<p>Previous Actions</p>	<p>March 17, 2006 -- Metro and Pulte Home Corporation signed a sales contract for Metro-owned land for private development. That agreement anticipated that ownership of an improved Saintsbury Drive would be conveyed by Metro to Fairfax County and then accepted by VDOT for maintenance purposes (Section 16.4(D)).</p> <p>September 20, 2011 -- Fairfax County granted Metro a license to continue to operate its parking meters and signage on Saintsbury Drive.</p> <p>October 20, 2011 -- Metro conveyed ownership of Saintsbury Drive to Fairfax County.</p>
<p>Anticipated actions after presentation</p>	<p>2014 -- VDOT will accept the maintenance obligation for Saintsbury Drive from Fairfax County and issue a permit to Metro for Metro's continued operation on Saintsbury Drive.</p>

RECOMMENDATION:

Board approval to indemnify the Commonwealth of Virginia when executing permits with VDOT for Metro's continued operations on Saintsbury Drive at the Vienna/Fairfax-GMU Metro Station.

PRESENTED AND ADOPTED: March 27, 2014

SUBJECT: INDEMNIFICATION OF THE COMMONWEALTH OF VIRGINIA IN CONNECTION WITH SAINTSBURY DRIVE AT THE VIENNA/FAIRFAX-GMU METRO STATION

2014-17

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, On March 17, 2006, WMATA and Pulte Home Corporation (Pulte) entered into a Sales and Development Agreement providing for, among other things, the sale by WMATA to Pulte of land on the south side of the Vienna/Fairfax-GMU Metro Station for development; and

WHEREAS, That Sales and Development Agreement also provided for the conveyance by WMATA to Fairfax County of WMATA-owned Sainsbury Drive located between the development site and the Vienna/Fairfax-GMU Metro Station after Pulte made improvements to Sainsbury Drive and the WMATA facilities located on it; and

WHEREAS, That Sales and Development Agreement also provided for the eventual acceptance of maintenance responsibility for Sainsbury Drive by the Virginia Department of Transportation (VDOT); and

WHEREAS, On October 20, 2011, WMATA conveyed Sainsbury Drive to Fairfax County; and

WHEREAS, Fairfax County had previously granted WMATA a license to continue to operate WMATA's parking meters and wayfinding signage on Sainsbury Drive; and

WHEREAS, The development project has progressed to the point where it is now proposed that VDOT accept maintenance responsibility for Sainsbury Drive from Fairfax County; and

WHEREAS, WMATA desires to continue to operate its parking meters and wayfinding signage on Sainsbury Drive via a permit from VDOT; and

WHEREAS, VDOT requires, as a condition to issuing such a permit, that WMATA indemnify the Commonwealth of Virginia and affiliated persons against any liability arising from WMATA's operations under that permit as follows:

Motioned by Mr. Acosta, seconded by Mr. Dyke

Ayes: 8 – Mr. Downs, Mr. Downey, Mr. Nichols, Mrs. Hudgins, Mr. Dyke, Mr. Bulger, Mr. Acosta and Mr. Goldman

"...indemnify and save harmless the Commonwealth Transportation Board, members of the Board, the Commonwealth, and all Commonwealth employees, agents, and officers, from responsibility, damage, or liability arising from the exercise of the privileges granted in such permit to the extent allowed by law;" and

WHEREAS, The approval of the Board of Directors is required for WMATA to indemnify a third party; now, therefore be it

RESOLVED, That the Board of Directors approves the granting of the requested indemnification described in this Resolution; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Kathryn H.S. Pett
General Counsel

WMATA File Structure No.:
15.2.1 Grants of Indemnification