

**Government of the District of Columbia
Office of the Chief Financial Officer**



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: FEB 13 2008

SUBJECT: Fiscal Impact Statement: "Benning-Stoddert Recreation Center
Property Lease Approval Act of 2008"

REFERENCE: Draft Legislation – No Number Assigned

Conclusion

The proposed ground lease agreement (the Agreement) specifically states that the District shall not be liable for the payment of any costs unless and until appropriations for such costs are made available and approved by Congress. Therefore enactment of the proposed legislation would not in itself require the District to expend funds and thus does not have an impact on the budget and financial plan. However, funds that are currently not included in the the FY 2008 through FY 2011 budget and financial plan would need to be appropriated in order for the District to implement its portion of the Agreement should that future decision be made.

Background

The proposed legislation would approve the lease of a portion of the Benning-Stoddert Recreation Center property, which is District-controlled for a period of greater than twenty years to the Washington Tennis & Education Foundation (WTEF), a non-profit corporation which operates in the District. The District received jurisdiction and control of the leased premises pursuant to a federal transfer of jurisdiction to the District, authorized May 20, 1932, requiring the District to use the leased premises for recreational purposes.

The proposed Agreement also includes a co-location project that would provide programs and services to children and youth at no cost to the community, as set forth by the Agreement and a Memorandum of Agreement¹ (MOA) between WTEF and the Department of Parks and Recreation (DPR).

Section 41 of the Agreement states that, "...since funds have not yet been appropriated for the undertakings contemplated herein, Landlord's (the District's) legal liability for the payment of any costs shall not arise unless and until appropriations for such costs are approved for the applicable fiscal year by Congress." Federal and District anti-deficiency laws² prohibit District officers and employees from exceeding agency appropriations in any fiscal year.

Section 11 of the Agreement, however, provides that if WTEF and the District reach agreement as to the conceptual design plans but WTEF does not receive approval from the District to commence construction on or before October 1, 2008 (the first day of FY 2009) because funds have not been appropriated to DPR for construction costs of its portion of the facility, WTEF would still be permitted to construct its portion of the facility and "...make commercially best effort to permit the construction of DPR's portion of the facility at a subsequent date." If it would not be "commercially feasible" for WTEF to proceed in this manner, then the Agreement provides that WTEF's portion of the facility would be connected in such a way that the facility would constitute one building for zoning purposes.

Financial Plan Impact

The Agreement specifically states that the District shall not be liable for the payment of any costs unless and until appropriations for such costs are made available and approved by Congress. Therefore enactment of the proposed legislation would not in itself require the District to expend funds and thus does not have an impact on the budget and financial plan. However, funds that are currently not included in the the FY 2008 through FY 2011 budget and financial plan would need to be appropriated in order for the District to implement its portion of the Agreement should that future decision be made.

As draft architectural plans have not been developed, many of the costs and potential costs to the District explained below cannot be estimated or quantified at this time.

Per the proposed ground lease agreement provided to the Office of the Chief Financial Officer (OCFO) on February 1, 2008, the following costs would be incurred by the District should funding be made available to implement the District's portion of the Agreement.

¹ This fiscal impact statement is based in part on the proposed MOA provided to the OCFO on February 1, 2008.

² 31 USCA § 1341 (2000) and D.C. Official Code § 47-355.01 *et sequitor* (2003).

A. Building Costs

The Agreement includes a provision for the building of a shared recreational facility or two separate recreational facilities, to be owned and operated by WTEF. It is likely that they will be two separate facilities with some type of connection, one of which would be paid for by the District (but still built and owned by WTEF). The District would be responsible for hard and soft costs for the construction and maintenance of one of the facilities, which would include a basketball gym, child daycare center, and bathrooms, offices, and storage spaces. The District would also be responsible for the hard and soft costs of its *proportional share* of all architectural, engineering, construction management, and other similar costs or fees incurred or paid by WTEF in connection with construction of both buildings.

Using DPR figures provided to the OCFO on February 6, 2008, the total development cost (hard and soft) for a building that would include a gym comparable to a high school basketball gymnasium, a childcare center for 15-20 infants and 30-45 toddlers, and bathrooms, offices, and storage space, is provided in the table below, using different assumptions on the total square footage of the District-funded facility. DPR has indicated that a building that would accommodate the features listed above would likely be 15,000 – 20,000 square feet in size, with a price per square foot of \$600 - \$615.

Table A: Construction cost estimation – District-funded portion of proposed facility

Size and Cost per sq ft	FY 2008	FY 2009	FY 2010	FY 2011
15,000 sq ft, \$600 per sq ft	\$9,000,000	\$9,315,000	\$9,641,025	\$9,978,461
15,000 sq ft, \$615 per sq ft	\$9,225,000	\$9,547,875	\$9,882,051	\$10,227,922
20,000 sq ft, \$600 per sq ft	\$12,000,000	\$12,420,000	\$12,854,700	\$13,304,615
20,000 sq ft, \$615 per sq ft	\$12,300,000	\$12,730,500	\$13,176,068	\$13,637,230

Table notes

- Each cell represents the *net* cost of the District-funded portion of the proposed facility for the FY in which it would be constructed. For instance, a 20,000 square foot facility constructed in FY 2010 would have a net cost to the District of between \$12.9 and \$13.2 million.
- The table includes hard and soft costs and assumes 3.5% annual inflation in the out-years
- Figures are based on a DPR calculation that a 15,000 - 20,000 sq ft facility would cost approximately \$600-\$615 per sq ft. DPR also noted that larger buildings between 25,000 – 65,000 square feet would have a cost of approximately \$500 per square foot (marginally lower than the price per square foot of a building in the 15,000 - 20,000 sq ft range).
- Estimates take into consideration building standards required pursuant to the District of Columbia Green Building Act of 2006, which increases development cost (design and construction) by approximately 10-15%. Pursuant to the Act, beginning in FY 2008, when District-owned or District instrumentally-owned property is leased to private entities, new construction (or substantially improved construction) must follow the building standards set forth in the Act. Although "District-owned" is not clearly defined in the Act, it is the interpretation of the OCFO and OPM that the building standards set forth in the Act would apply to this Agreement.

B. Other Costs

Other costs to the District, should funding be made available, include:

- The potential cost of relocating the baseball diamond that is currently on the Benning-Stoddert Recreation Center Property. Per the Agreement, the District and WTEF will

decide if the baseball diamond is to be relocated and who will pay for the costs of relocation after the Due Diligence Period.³ The cost of such, if any, cannot be estimated at this time as a preliminary plan for moving the field does not exist.

- The cost of utilities pertaining to the District's portion of the facility including but not limited to water, sewage, electricity, heating oil, gas, and telephone. Per the MOA, these utilities will be separately metered between WTEF and the District.
- Costs related to the staffing, management and operation of the District's portion of the facility, and the cost of paying WTEF staff should DPR conduct adult and senior programs on WTEF's portion of the facility.
- The District's proportion of other miscellaneous costs such as trash removal, parking area maintenance, landscaping, and snow removal.
- In addition, as WTEF would own both buildings, the District would likely be responsible for paying WTEF—perhaps via a rent payment—to fund the cost of property insurance and liability insurance to cover WTEF's cost for said insurance for the District-funded facility, as the Agreement explicitly requires WTEF to obtain this insurance.

C. Additional comments on fiscal impact

Implementation of the proposed ground lease may generate recordation tax and possessory interest tax revenues⁴ for the District, but this amount would not be known until the exact dimensions of the leased property are determined.⁵

Given the federal restrictions on the use of the leased premises, the opportunity cost (or, forgone uses and revenues associated with them) to the District is negligible.

³ Section 2(c) of the Agreement provides for a "Due Diligence Period" whereby WTEF shall have ninety (90) days from the Commencement Date to perform its due diligence with respect to the Leased Premises. This shall include, without limitation, title search, survey, engineering, architectural and soil testing, all at WTEF's cost and expense.

⁴ This amount would be zero if WTEF applies for and is granted exemptions from said taxes by the Office of Tax and Revenue (OTR), or through Council action.

⁵ Per the Agreement, "WTEF shall have ninety (90) days from the Commencement Date to...deliver to the District a legal description for the Leased Premises prepared by a surveyor which provides a metes and bounds description of the dimensions and boundaries of the Leased Premises."