



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of December 12, 2006**

REVISED REPORT **REVISED RECOMMENDATION**

DATE: December 12, 2006

SUBJECT: Approval of a License Agreement ("License Agreement") Between the County Board of Arlington County, Virginia ("County") and Transwestern Monument Randolph Square, L.L.C. ("Licensee") to Grant Licensee Permission to Use a Portion of County Property Known As Lot 17A2, VILLAGE AT SHIRLINGTON, Arlington County, Virginia, RPC #29014013, to Install, Maintain and Repair Subterranean Soil Nails; and Approval and Authorization of Acceptance of a Deed of Easement ("Deed of Easement") for Public Purposes Between the County, Street Retail, Inc. ("SRI"), and Others Relating to a Portion of a Parcel Owned by SRI, Known as Lot 6, in the Subdivision STREET RETAIL, INC., ADDITION TO VILLAGE AT SHIRLINGTON, Arlington County, Virginia, RPC #29014020.

REVISION EXPLANATION:

The Report has been revised to include a recommendation of approval of a dedication of a Deed of Easement to County as additional compensation for the License Agreement, as well as to incorporate changes reflected in the final License Agreement and Deed of Easement agreed to by all parties.

C. M. RECOMMENDATIONS:

- ~~1. Take no action.~~
1. Approve the attached License Agreement between the County and Transwestern Monument Randolph Square, L.L.C., concerning use of a portion County property Known As Lot 17A2, VILLAGE AT SHIRLINGTON, Arlington County, Virginia, RPC #29014013, such License Agreement is attached hereto as Exhibit A;
2. Approve the attached Deed of Easement for public purposes from SRI and others to the County Board within a Portion of a Parcel Owned by SRI, Known as Lot 6, in the Subdivision STREET RETAIL, INC., ADDITION TO VILLAGE AT SHIRLINGTON, Arlington County, Virginia, RPC #29014020, and authorize the acceptance of such Deed of Easement, attached hereto as Attachment 1; and,

County Manager: _____

County Attorney: _____

Staff: Michael Halewski and Linda Collier, DES – Real Estate Bureau

3. Authorize the Real Estate Bureau Chief, Department of Environmental Services, to execute, on behalf of the County, the License Agreement and fully executed Deed of Easement, simultaneously, and all related documents regarding the License Agreement and Deed of Easement, subject to approval of the License Agreement and the Deed of Easement as to form by the County Attorney.

ISSUE: None.

SUMMARY: Under the terms of the License Agreement, the County would grant the Licensee a license to install, maintain, and repair Soil Nails in fifty-eight (58) specified subterranean portions of the County-owned property known as Lot 17A2, VILLAGE AT SHIRLINGTON, as duly platted and dedicated in Deed of Resubdivision recorded in Deed Book 3743 at page 2772, among the Land Records of Arlington County, Virginia, RPC #29014013 (i.e. the new Shirlington Theater and Library facility – as shown on the Vicinity Map attached as Exhibit A-1) (“County Parcel”). The fifty-eight (58) specified subterranean portions of the County Parcel, collectively referred to herein as the "Licensed Premises", total approximately three thousand eight hundred and eighty (3,380) cubic feet. The Licensee is proposing to use the Licensed Premises solely to install, maintain and repair subterranean soil nails (“Soil Nails”). The Soil Nails are necessary to support a retaining wall located on adjacent property known as Lot 6, in the subdivision STREET RETAIL, INC., ADDITION TO VILLAGE AT SHIRLINGTON, as duly platted and dedicated in Deed of Resubdivision recorded in Deed Book 3755 at Page 1030, among the Land Records of Arlington County, Virginia, RPC #29014020 ("Garage/Office Parcel"), owned by SRI and being developed by Licensee as the ground lessee. The Licensee has agreed to pay the County a license fee of Fifteen Thousand Dollars (\$15,000) for the use of the Licensed Premises, and as compensation for the increased cost of any future excavation of the County Property as a result of the Soil Nails placement. In addition, County shall be granted an easement for public purposes, from Licensee and SRI, for an area of alleged encroachment of the County Library/Theater building and loading dock retaining wall onto the adjacent Garage/Office Parcel, said Deed of Easement is attached hereto as Attachment 1.

BACKGROUND: The Licensee is the ground lessee and developer of Randolph Square, a mid-rise office complex and parking garage on the Garage/Office Parcel, adjacent to the County Parcel. The Licensee plans to erect a temporary retaining wall located on the western side of the Garage/Office Parcel and adjacent to the County Parcel as a part of the excavation phase of its development of the Garage/Office Parcel. The Soil Nails will be installed into the Licensed Premises to support the temporary retaining wall on the Garage/Office Parcel. This License Agreement grants the Licensee permission to use the Licensed Premises for installation, maintenance, and repair of the Soil Nails.

DISCUSSION: This License Agreement allows continued location of the Soil Nails on the County Property as shown on “Exhibit Showing Soil Nail Projection Under County Library/Theater Property, Lot 17A2, Village of Shirlington, D.B. 3743, PG. 2772, Arlington County, Virginia”, prepared by Dewberry & Davis LLC, dated October, 2006. The proposed License Agreement includes the following provisions:

Approval of License Agreement

- The County grants Licensee a license to use fifty-eight (58) specified subterranean portions of the County Parcel, such portions further described as follows: fifty (50) of the specified subterranean portions each measure approximately sixty-eight (68) cubic feet (the dimensions being seventeen (17) feet in length, two (2) feet in width, and two (2) feet in height); and, the remaining eight (8) of such specified subterranean portions of the County Parcel each measure approximately sixty (60) cubic feet (the dimensions being fifteen (15) feet in length, two (2) feet in width, and two (2) feet in height). (*See License Agreement, § 1*).
- The License Agreement allows the Licensee to use designated subterranean portions of the County Property solely to install, maintain and repair the Soil Nails. (*See License Agreement, § 3*).
- As consideration for the License Agreement, the Licensee agrees to pay the County a one-time, lump sum license fee of Fifteen Thousand Dollars (\$15,000) for use of the County Property, and will grant to the County, along with SRI, upon the execution of the License Agreement, the above-described Deed of Easement. (*See License Agreement, §§ 4 & Recitals*).
- The License Agreement expires upon the earlier of the completion of construction of the permanent foundation wall of the parking garage structure, as such completion is evidenced by the earlier of: a) the delivery to County of "as-built" plans for such permanent foundation wall of the parking garage structure, such plans having been approved and signed by the Licensee's engineer, and being acceptable to County; b) the issuance of a first certificate of occupancy for the parking garage structure; or, c) the expiration of five (5) years from the Commencement Date. Upon expiration or termination of this License Agreement, Licensee agrees to terminate its use of the County Property and vacate all areas of the County Property. (*See License Agreement, § 2*).
- The Licensee is not obligated to remove the Soil Nails upon the expiration or termination of this License Agreement, as such removal might cause undesired settling of the County Property. Thus, the fee paid by Licensee to County includes, as a portion of the compensation, the cost of excavation and removal by the County of the Soil Nails within the County Property, if the County chooses to do so. (*See License Agreement, § 7*).
- The Licensee also agrees to repair all damage to any utilities and related facilities located on or installed within the County Property or the Garage/Office Parcel, at its sole expense, caused by any use permitted under the License Agreement. (*See License Agreement, § 9*).
- The Licensee agrees to give the County at least 48 house notice before entering the County Property unless there is an emergency where the advance notice is not possible. (*See License Agreement, § 7*).
- The Licensee agrees to be fully liable during the term of the License Agreement, and for one calendar year thereafter, for any and all damages and losses arising from the terms of

the License Agreement and to defend, indemnify and hold harmless the County for any such damages or losses. (*See License Agreement, §§ 7 & 15*).

- During the term of the License Agreement, and for on year thereafter, the Licensee is required to obtain and maintain commercial general liability insurance with a minimum amount of not less than \$1,000,000 per occurrence, and must name the County as an additional insured. (*See License Agreement, § 16*).

It is recommended that the County Board approve the attached License Agreement, approve the attached Deed of Easement, and authorize the Real Estate Bureau Chief, Department of Environmental Services, to execute, on behalf of the County Board, the License Agreement, the Deed of Easement, and all related documents, simultaneously, subject to approval as to form by the County Attorney.

FISCAL IMPACT: The County will receive the sum of Fifteen Thousand Dollars (\$15,000) for the License Agreement, which amount will be deposited with the County's general fund.

VICINITY MAP
SHIRLINGTON VILLAGE SOIL NAIL LICENCE AGREEMENT
DECEMBER 12, 2006

