

*City of Takoma Park*  
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OFFICE OF THE  
MAYOR

April 12, 2000

Gladys W. Mack, Chair  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, N. W.  
Washington, D. C. 20001

Dear Ms. Mack:

The City of Takoma Park, Maryland requests that you delay the selection of a developer for the Takoma Metro site. Enclosed is a letter from Corporation Counsel of the City of Takoma Park, Maryland and attorneys for Historic Takoma, Inc., a citizens group, to the General Counsel of the Washington Metropolitan Area Transit Authority (WMATA) setting forth our legal position.

The essence of our position is that more time and public process is due before the WMATA Board votes to select a developer for the Takoma Metro Station site. Our three arguments are briefly summarized below.

First, that citizens have not received the public process and local governments have not been given an opportunity to comment as required by law under the mass transit plan sections of the WMATA Compact and case law interpreting those sections.

Second, that citizens and local governments have not been afforded the public process legally due in the event of a proposed change to the site plan given the amount of public involvement and agreements made when the site plan was initially approved in 1974-75.

Third, that to date, although some portion of requested documents has been provided, WMATA has still not provided a full set of requested critical documents about the Takoma Metro site. Therefore, the thirty days that the vote was previously delayed has not been meaningful or adequate.

Sincerely,



Kathy Porter  
Mayor

Enclosure

**Silber & Perlman, P.A.**

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April 12, 2000

Cheryl Burke, Esq.  
General Counsel  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, N.W.  
Washington, D.C. 20001

Dear Ms. Burke:

This letter is to file a formal protest on behalf of the City of Takoma Park, the residents of Takoma Park and Historic Takoma, Inc. regarding the proposed award of contract rights to the designated developer for the Takoma Metrorail Station site. We believe that WMATA has failed to comply with federal and state procedural regulations in changing the use of this site and failed to promptly produce key documents requested by our office. The City of Takoma Park and Historic Takoma, Inc. reserve the right to challenge WMATA's decision if the agency fails to meet the legal requirements outlined below. These procedural requirements are not pro forma exercises, but are an integral part of the decision making process and are likely to have a significant impact on the final plan. We request that the WMATA Board postpone the vote to designate a developer for the Takoma Metrorail site until they meet the procedural requirements outlined below and produce all documents requested by the City.

Procedural Violations by WMATA

WMATA has failed to comply with the requirements of the Mass Transit Plan, the District of Columbia Environmental Assessment review process, the Metropolitan Council of Government rules requiring public involvement in a local dispute, and revisions to a site plan established 26 years ago after a two-year public review process.

The WMATA Compact requires the level of notice and public process that we are requesting when revisions, modifications and alterations of the Mass Transit Plan are proposed. D.C. Code Ann. § 1-2431 (Article VI, §§ 1-15). "The mass transit plan shall include one or more plans designating (1) the transit facilities to be provided by the [WMATA], including the locations of terminals, stations, platforms, parking facilities and the character and nature thereof ... and (7) the various other factors and considerations, which, in the opinion of the Board, justify and require the projects therein proposed." § 13(a). When "any revisions, alterations or amendments" are proposed, WMATA is required to "transmit ... for comment" to "the governing bodies of the Counties and Cities embraced within the [Washington Metropolitan Area Transit] Zone" as well as a list of other entities. § 15(a). The City of Takoma Park, Maryland is clearly within the Zone as it is a political subdivision of the State of Maryland located in Montgomery County, Maryland. § 3.

WMATA, through its Joint Development Solicitation, is proposing to revise, alter and amend the portion of the mass transit plan pertaining to the Takoma Metro Station. WMATA has solicited bids for development on the site, and the area of the site marked for development in the Joint Development Solicitation package covers the parking area, the "kiss and ride," the bus bays, and the open space "park" buffer.

In other words, these major elements would be significantly altered without the notice, comment, and public hearings required under The Bootery, Inc. v. WMATA, 326 F. Supp. 794 (1970) and Saunders v. WMATA, 359 F. Supp. 457 (1973). Both cases hold that "affected parties" are entitled to public hearings. Saunders further delineates that residents of an area qualify as affected persons who are thus entitled to be heard on "major elements" of the mass transit plan. "The word 'major' in this sense should not be defined by arguments over semantics." Saunders, 359 F. Supp. at 461. "The real public interest in opportunity to be heard should be measured in the impact of the facility on the people affected, whether that be by actual displacement, taking of property, or removal of trees and altering the character of the neighborhood." Id.

Without having given the requisite notice and opportunity for the public to be heard, WMATA is poised to contract with one developer who has a specific plan and budget to build a particular townhouse development on the site. The development project proposed would alter both the bus driveway and bays, perhaps locking in the number of bays at a time when both the City of Takoma Park, Maryland and Montgomery County have been requesting an expansion in bus service that may require more bays. The project would also require a change in the parking area from the current open lot area to a multi-level structure. Under the plan to build the townhouses, the developer would eliminate open space "park" buffer area, which is now green, grassy and planted with many different types of trees as an urban arboretum. This proposed development would definitely alter the nature and character of the area, which is now a green park-like area with trees that provides a buffer between the rail station, bus bays and parking and the surrounding residential neighborhood in an historic district and small businesses.

We understand that joint development projects are a priority of WMATA, but the procedures that are established and followed must comply with the public process requirements under the mass transit sections of the WMATA compact. There does not appear to be any private or joint development exception to the requirements of the WMATA compact.

#### Compact Twenty-Six Years Ago

In addition, the current site plan including parking area, "kiss and ride," bus bays, and open space "park" buffer, emerged and was approved as the result of a deliberative process and agreements among and between WMATA, the District of Columbia, Montgomery County, Maryland National Capital Park and Planning Commission, the City of Takoma Park, Maryland, citizens' groups from D.C. and Maryland, and concerned residents of the both jurisdictions. A multitude of documents in our possession, and probably even more in WMATA's files, demonstrate that the site plan was not a unilateral decision by WMATA, or even a decision of WMATA made in conjunction with the District of Columbia. Before the site plan can be altered, the local entities and communities which were involved in the 1974-75 agreements regarding the site plan for the Takoma Metrorail Station are entitled to participate in any revision to these understandings. The public, which for more than twenty-five years has used and currently enjoys the Takoma Metrorail Station in all of its aspects, in particular, is entitled to the same level of public process they were afforded when the original agreements were made. There is a document trail that substantiates WMATA's promises of participation to the Takoma Park government and community.

WMATA certainly well understands the value that open space or parkland adds to a Metrorail station and an urban community, and it has taken the position that urban parks are quite valuable. In one of its own pleadings in a different but related matter, WMATA represented that: "If public use constitutes a valid basis on which to assess the relative worth or value of recreational property, then the Silver Spring Urban Park is a very valuable asset to the community." Supp. Pleading of WMATA in North Takoma Citizen's Assn. v. Claude S. Brinegar, Civ. Act. No. 73-1040 (August 3, 1994). The open space buffer at the Takoma Park Metro Station is used, well-traveled and appreciated by the community around and ridership of the Takoma Metrorail Station.

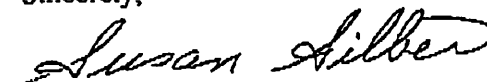
Document Control Procedures Lacking.

Finally, we protest that although the WMATA Board did delay its vote on the developer's selection to give us thirty days to review documents related to this matter, we did not receive an actual thirty days for review. The Mayor of Takoma Park submitted an initial request as early as possible, on February 27, 2000. We have received some documents, but it is by no means a complete package; for example, WMATA has not yet provided us with the final site plan approved by the WMATA Board in 1974-75. This document, which could show constraints on the land, and other key documents are central to the issues at stake in this matter. We appreciate the time that it takes to sort, review and copy documents, but we must assert that we are due thirty days from the date that WMATA actually provides us with a complete package of documents.

With a vote scheduled for April 13, we received notice after the close of business on April 11, 2000: WMATA gave us notice that they would make available to us another, but still not complete, set of documents on the evening of April 11 or the morning of April 12. The haphazard manner in which WMATA has produced these documents, and its inability to locate some documents at all, suggests to us a violation of the Mass Transit law requirement that a recipient of federal major capital project funds must have "a document control procedure and record keeping system." 49 U.S.C. § 5327(a)(4). It is certainly inappropriate for the WMATA Board to vote on a matter about which it is able to produce only a partial set of documents less than 48 hours prior to the scheduled vote.

For these reasons, we request that any vote be postponed until at least 30 days after all relevant documents have been produced, and that all public process required by law be promptly provided.

Sincerely,



Susan Silber  
Corporation Counsel  
City of Takoma Park, Maryland



Richard O'Connor  
Counsel, Historic Takoma, Inc.