

**Joseph R.
Membrino**
Citizen Member,
Walter Reed Local
Redevelopment
Authority Committee

7409 14th Street, NW
Washington, D.C. 20012

Sara Green
Advisory
Neighborhood
Commissioner,
ANC 4B01

7106 Piney Branch
Road, NW
Washington DC
20012

Faith E. Wheeler
Advisory Neighborhood
Commissioner, ANC
4B02
Alternate Citizen
Member, Walter Reed
Local Redevelopment
Authority Committee

818 Whittier Place, NW
Washington DC 20012

**Shannon
Cockett,**
President
North Washington
Neighbors
Incorporated

Post Office Box 55625
Washington, D.C.
20040

June 7, 2012

By Email: OGCwebmaster@conus.army.mil

The Honorable Brad R. Carson, General Counsel
Office of the Army General Counsel
104 Army Pentagon
Washington, DC 20310-0104
Department of the Army

Re: Walter Reed Army Medical Center--Building 18 Lease under 10 U.S.C. §2667

Dear Mr. Carson:

The Department of the Army is negotiating with the District of Columbia for the transfer of 67.5 acres of the Walter Reed Army Medical Center (Walter Reed) declared excess under a 2005 Base Realignment and Closure (BRAC) decision. The proposed transfer includes Building 18, which occupies a separate parcel of land on the east side of Georgia Avenue, opposite from the main Walter Reed campus. Under the pending transfer, the District may acquire Building 18 at no cost from the Department of the Army as a "public use conveyance." The public use the District has long proposed for Building 18 is a Fire and Emergency Medical Services station with support offices. The redevelopment of Building 18 for that use is an urgent and immediate health and safety need for the District. Attachment 1 to this letter is a chronology describing the history of Building 18 beginning in 2004, the year before the decision was made to close Walter Reed.

There are two purposes for this letter. The first is a request for a legal opinion on the authority of the Army to enter into an interim lease pursuant to the Special Rules for Base Closure and Realignment Property provisions of the Enhanced Use Lease statute, 10 U.S.C. 2667(g), to enable the redevelopment by the City of Building 18 as soon as possible and prior to the completion of the BRAC conveyance of the 67.5 acres. With respect to this request, Attachment 2 consists of discussion points that bear on the nature and extent of interim leasing authority under section 2667(g). They are provided to help inform your response on the authority for an interim lease.

The second is a request that you intercede with the Baltimore Corps of Engineers (COE) to direct the release of documents under a pending Freedom of Information Act Request (FA-12-0006 - Membrino (UNCLASSIFIED)) that COE had advised would occur beginning in February (See Attachment 1).

As you may know, Building 18 was in the news in 2007, culminating in a Pulitzer Prize for the Washington Post, when it was revealed that hospitalized service men and women were being housed there in dangerous and unsanitary conditions. Three years earlier, in 2004 the Department of the Army, which had been unable to secure public funds to rehabilitate Building 18 and another campus building--Building 40--entered into an Enhanced Use Lease with a third party. Lease No. DACA-31-1-05-037 (Building 40 Lease).¹ The Building 40 Lease provided for the redevelopment of Building 40 for the Army in exchange for the lessee/developer's long-term use of a portion of Building 40. The last paragraph of the Building 40 Lease authorized the lessee to apply to the Army to amend its business plan to add Building 18 into its plan of development, which it would also renovate. The lessee did not redevelop Building 40 and never applied to add Building 18 to the lease as health and safety conditions there spiraled downward.

Moreover, following the BRAC announcement, the Army amended the Building 40 lease, essentially to suspend the lessee's substantial performance obligations and to defer payment of rent for six years. That suspension expired in September 2011. But by that time the property was excess and subject to the termination/buyout provisions of section 36 of the Building 40 Lease. Because to our knowledge no work has been performed under the lease and Building 40 is excess property, there is no military purpose for the lease to continue. Any lease termination or buyout should involve little or no payment to the lessee, unless the lessee has performed under the original lease term since September 2011. If so consideration should be commensurate with the lessee's expenditures.

The BRAC decision is not mentioned as a basis for the lease Amendment. Instead the justification is "certain damage" and "other leaks" to what was a derelict building at the time of its lease. Cited as consideration for the amendment was the lessee's waiver of "any claims it may have against the Government as of the date of this amendment related to such damage and the need to obtain water service from 16th Street." It is not clear how the Army could have concluded it had potential liability for damages for leaks in a building the renovation and repair of which was the basis for the lease. See Exhibit C of Lease No. DACA-31-1-05-037. Nor is it clear how the need to supply water from 16th Street was a basis for federal liability. Both of these items raise the questions whether: (1) the Army received adequate consideration for deferring the millions of dollars in maintenance and repair benefits to which it was entitled under the lease. See Exhibit B In Kind Consideration; or (2) participated in a sham transaction to favor the lessee at the disadvantage of the government by preserving a lease right that might prove to be a valuable inholding following BRAC disposition of the property.

The dubious basis for the amendment to enable the Building 40 lease--which resulted in a private leasehold, its potential for its conversion to fee title--to continue until the BRAC disposition is complete should be investigated. This purported private interest in the midst of a secure parcel

¹ Building 40 was originally proffered under the BRAC process to the District but is now in the portion of Walter Reed allocated to the State Department.

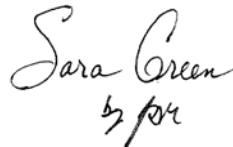
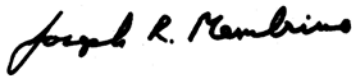
that is integral to the State Department's plan of development creates the prospect of a windfall to the lessee and a burden on the federal treasury and national security. Every action should be taken to avoid this outcome. Note also that under these circumstances, the value of Building 40 as a federal asset is diminishing as it falls further into disrepair.

In addition, to the extent that this matter delays the completion of BRAC conveyances to the State Department and the District, their joint planning efforts for more cost efficient reuse of Walter Reed will be impeded.

As set forth in the attached chronology, the District of Columbia was misled into concluding that the lessee of Building 40 had a property right in Building 18 that had to be honored in any development plan. After more than two years of challenges by citizens to that conclusion, the Army finally resolved that matter. See Attachment 1, May 1, 2012 entry. We would appreciate your affirming that conclusion. It is now past time to redevelop Building 18 as a much needed Fire and Emergency Medical Services facility for the District.

A hearing in the Council of the District of Columbia is scheduled for June 12 to consider the proposed Walter Reed reuse plan required under BRAC. Your response to this letter will assist the Council in its deliberation on this legislation and will be very much appreciated.

Sincerely,



Joseph R. Membrino

Sara Green

Faith E. Wheeler

Shannon Cockett

Phone: 202 726-6372 (H)
202 973-1219 (O)
Facsimile: 202 973-1212
E-mail:
jmembrino@hallestill.com

Phone: 202 882-7565
(H)
202 904-4988
(C)
Facsimile: 202 882-7565
E-mail: fewdcc@gmail.com

cc: Honorable Eleanor Holmes Norton
Honorable Vincent C. Gray, Mayor
Honorable Mary Cheh, Acting Council Chair
Honorable Muriel Bowser, Council Member (Ward 4)

Attachment 1**Building 18 Chronology**October 2004:

Building 40 Lease signed with BRAC buyout option and Building 18 add-in opportunity. Building 40 is not excess property at that time.

May 13, 2005:

Army recommends Walter Reed be closed pursuant to BRAC.

August 25, 2005:

BRAC Commission votes to close Walter Reed. All Walter Reed property becomes excess within meaning of EUL statute (10 USC 2667). Under that statute, only non-excess government property is eligible for EUL leasing.

September 8, 2005:

BRAC Commission report submitted to President.

September 13, 2005:

Building 40 Lease Amendment 1 signed, lease performance suspended, including repairs and maintenance valued at \$600,000 annually.

November 2005:

Congress approves Walter Reed closure.

February 2007:

Building 18 scandal erupts. Washington Post wins Pulitzer Prize for its coverage. Walter Reed officials relieved of command. Army itself undertakes Building 18 renovation.

November 2009:

Community members furnish files on Building 40/Building 18 and other Walter Reed matters to City.

December 15, 2010:

City official informs Community LRA that City is negotiating with Building 40 lessee re rights to Building 18 and declines to provide further information to community LRA members notwithstanding 10 USC 2667(g)(4)(B), which provides for interim leasing of BRACed property but only in consultation with the LRA.

June 15, 2011:

Army official discloses that Building 18 is not under lease.

July/August 2011:

Four items about Building 18 introduced in City Council:

PR19-0321 BUILDING 18 PROCUREMENT AUTHORITY
EMERGENCY DECLARATION RESOLUTION OF 2011 (adopted July
12, 2011).

B19-0385 BUILDING 18 PROCUREMENT AUTHORITY
EMERGENCY AMENDMENT ACT OF 2011 (introduced July 7,
enacted August 1, 2011).

B19-0386 BUILDING 18 PROCUREMENT AUTHORITY
TEMPORARY ACT OF 2011 (introduced July 7, 2011).

B19-0387 BUILDING 18 PROCUREMENT AUTHORITY ACT OF
2011 (introduced July 8, 2011).

Emergency declaration and enacted legislation exempt redevelopment of Building 18 site from District procurement laws based on PR19-0321's misrepresentation/misstatement of Building 40 lessee's property rights in Building 18: "A private third-party developer holds the development rights for a portion of Walter Reed, including rights to Building 18, through an enhanced use lease executed with the Army."

October 2011:

FOIA Request filed re Building 18 with Corps of Engineers, Baltimore. FOIA FA-12-0006 - Membrino (UNCLASSIFIED).

November 29, 2011:

Favorable initial FOIA response received from Corps of Engineers, Baltimore FOIA Officer Michael S. Fraer, NAB [mailto:Michael.S.Fraer@usace.army.mil].

November 28/December 2, 2011:

Advisory Neighborhood Commission 4B enacts resolution calling for City investigation of Building 18 activities and submits same to District Attorney General and Inspector General.

December 20, 2011:

Army Corps of Engineers (Baltimore) reaffirms that Building 18 is not under lease.

January 4, 2012:

The Northwest Current newspaper publishes: "Deal for Fire Station Parcel draws questions over lease." The article reports that "a spokesperson at the Army Corps of Engineers says that clause was `never executed'. She says however that `discussions are going on between the District, Keenan [developer] and the Army to exercise that option for Building 18."

January 10, 2012:

Baltimore COE FOIA Officer Fraer reports that more than 4000 pages of documents have been retrieved that are responsive to FOIA request and anticipated "releasability" review will be completed by January 27, 2012.

January 18, 2012:

District of Columbia City Council Member Muriel Bowser (Ward 4) requests opinion on legal status of Building 18, particularly whether it is encumbered with a third party lease.

February 8, 2012:

Baltimore COE FOIA Officer Fraer reports that review of 4000 pages is one-fifth complete and offers to release documents in increments as review progresses. That offer is accepted by email on February 8.

May 1, 2012:

James S. Turkel, Chief, Real Estate Division Baltimore COE informs Martine Combal, Walter Reed LRA Director for District of Columbia by letter that Building 18 was declared excess property on September 15, 2005 and as of that date could not be the subject of an enhanced use lease pursuant to 10 U.S.C. §2667.

May 15, 2012:

No documents released to date by Baltimore COE FOIA Officer. FOIA officer did not respond to inquiry on status of document disclosure.

June 12, 2012:

Hearing in District of Columbia Council's Committee of the Whole scheduled for B19-729: "Walter Reed Army Medical Center Base Realignment and Closure Homeless Assistance Submission Approval Act of 2012."

Attachment 2

Issues related to the Authority to make Interim Leases pursuant to 10 U.S.C 2667(g) Enhanced Use Leasing Authority in BRAC Context

1. Paragraph 1 of 10 U.S.C. §2667(g) states in part: “. . . pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or Local economic adjustment efforts.” Pursuant to that authority, may the Army make an interim lease directly with the District for the Building 18 site to enable its prompt redevelopment?

2. If the interim lease authority is available to the District in this context, would the Army furnish the District with an outline or schematic describing the critical path and timelines for review and approval of an interim lease under 10 U.S.C. §2667(g).

3. Section 2667(g)(4)(B) provides that “Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease.” The interim lease in this case would:

- (1) pertain to a parcel of excess property that has a distinct legal description and is not contiguous to the main campus but across the street from it;
- (2) enable the timely construction of a public health and safety facility;
- (3) not constrain the ultimate disposition of any other portion of the main campus
- (4) “facilitate [District] economic adjustment efforts”; and
- (5) be with the entity to which the Army ultimately proposes to convey full title to Building 18 by means of a public use conveyance.

In view of those factors can you conclude that an interim lease would not in fact “prejudice the final disposal decision” as to Building 18?

4. To implement an interim lease, the District would expend public funds for a public purpose to redevelop the property. Under those circumstances would the Army have the authority to waive any right it may have to terminate such a lease at will?

5. A Fire and EMS facility adjacent to Walter Reed could be the basis for an intergovernmental agreement for the District to provide coverage to the Walter Reed campus pending completion of the BRAC process.