

# Fort Myer Swim Request Resolution Worksheet

Date: February 16, 2022

## **Suggested Motion:**

“I move to approve, the Fort Myer Swim Team’s request to rent the Martha Custis pool during the 2022 season.”

2<sup>nd</sup>:

## **Vote:**

	In Favor	Opposed	Abstained	Absent
Scott Buchanan				
James Konkell				
Dave Bush				
Jeff Lisanick				
Robin Woods				
Peggy Clancy				
Claire Eberwein				
Peter Ferrell				
Hector Mares				

## Dana Cross

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**From:** Francisco Foschi  
**Sent:** Monday, January 31, 2022 11:27 AM  
**To:** Board of Directors  
**Cc:** Dana Cross  
**Subject:** Ft Myer Swim Team Proposal Analysis and Recommendation:

### **Ft Myer Swim Team Proposal Analysis and Recommendation:**

Dear Board members,

After analyzing our legal counsel's notes regarding the possibility of renting one of our pools to the Ft Myer Swim team, It is my duty as Parkfairfax General Manager to bring my concerns and recommendations to you. These are based on what I believe is best for our community and residents at this particular time.

First, I would like to include our attorney's below for reference purposes and comments in red:

*Dave and Francisco:*

*Good afternoon! Hope all is well with both of you!*

*Set forth below are my responses and opinions to the issues previously raised in your e-mails and for which you sought our opinion and or clarification:*

*1) Fort Myer Swim Team Proposal: Based on our review of the Association's condominium instruments, it is our opinion that the Board of Directors would have the authority to provide a Revocable License Agreement to the Fort Myer Swim Team ("Swim Team") to use one of the Association's pools so long as there is Consideration received from the Swim Team in exchange for the intended use of the pool. Obviously, the License Agreement should be in writing and should include specific provisions related but not limited to the following:*

*After reading the first paragraph, my impression is that we will incur a lot of back and forth correspondence with counsel, including reviewing legal agreements, waivers, etc. This action will most likely cost the Association more money in legal fees than the income will be receiving for the rental of the pool.*

*a. Intended Purpose of Use;*

*b. Days and Time of Use;*

*c. Consideration to be Provided;*

*d. Insurance Coverage and Association named as additional insured under the Swim Team's Coverage; This item is a cause for concern. Even if the swimming team manages to provide us with a certificate of insurance with Parkfairfax added as an additional insured, it is possible that given a loss event, their carrier still tries to "charge it" to Parkfairfax insurance. This will not only create an additional burden to the Association in case of a claim, but it will also add to our loss report making it more difficult for us to keep low insurance premiums or certain coverages in the near future. As I reported at our last meeting, we recently were notified that our umbrella carrier would no longer insure us starting April 1<sup>st</sup>. With the current insurance market's unpredictability, an added loss of this nature would only make things more difficult for our Association regarding insurance coverage and/or premiums.*

*e. Indemnification of the Association;*

f. *Termination/Revocation of License Provision and under what circumstances;*

The process of finalizing such a License will be an added cost to legal expenses paid by Parkfairfax for the benefit of an outside organization.

g. *Required General Release and Waiver Agreements for all participants;*

**Virginia's Supreme Court has ruled that it will not enforce pre-injury liability waivers that violate the Commonwealth's public policy.**

**Most liability waivers are not enforceable in Virginia**

h. *Covid-19 Waivers and Release;*

**Most liability waivers are not enforceable in Virginia**

i. *Rules of Use;*

j. *Emergency Closure of Pool;*

k. *Obligations of the Association with respect to Pool and Use by Swim Team;*

**Add challenges to the pool operations of Parkfairfax Management, Maintenance, and High Sierra Pools.**

l. *Obligations of the Swim Team before, during and post use, both daily and seasonal;*

m. *Safety Rules, Supervisions of Participants, and Precautions Associated with Use;*

n. *Lifeguard Requirements and payment for same; etc.;*

*Obviously, we should check with the Association's insurance carrier to determine what, if any, additional requirements they might have to ensure that coverage under the Association's policy is extended to this third-party use of the Association facilities in addition to any coverage provided by the Swim Team.*

*As you have raised in your e-mail, there is an increased risk of exposure to liability as a result of allowing this use of the Association's facility to a third-party Swim Team but many (\*) of those risks can be mitigated by having a well-drafted Revocable License Agreement and making sure the Association and the Swim Team are adequately covered by insurance coverage, in place.*

**(\*)Many, not ALL.**

*Finally, and as you normally do, I would recommend that the Board consider this matter in and during open session of the Board so that the members of the Association can be made aware of this possibility and can provide input to the Board during the open forum portion of the Board meeting, especially since the pool is a common element facility normally used by the members of the Association. In this manner, the Board can protect itself against any allegations that members did not have any knowledge of this situation or possibility.*

**Based on the concerns mentioned above, the difference between risks and benefits is clear. Moving forward with this request will take time and money that should be invested in our community and its residents and put the Association at risk of unnecessary liabilities at uncertain times.**

**We should be doing our best to provide our residents with a successful pool season this year, given all the challenges communities have and are facing lately regarding Covid and Lifeguards shortage.**

**I would recommend that the Board declines the request and let the swim team know that we are happy to consider their request at a different time when the conditions are less risky.**

**Thank you,**

*Francisco Foschi*, CMCA®, AMS®, PCAM®

General Manager – Parkfairfax Condominium

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December 7, 2021

Dana Cross  
Acting General Manager, Parkfairfax  
3360 Gunston Road  
Alexandria, Virginia 22302

**RE: Martha Custis pool rental 2022**

Dear Ms. Cross –

I'm reaching out on behalf of the Fort Myer Swim Team to inquire about renting the Martha Custis pool for the 2022 season. This may seem premature to discuss next summer, but one of our lessons learned from the pandemic is that things take longer and it's important to plan early.

First, a little bit about who we are. We are not affiliated with the U.S. Army, but we have been using the Joint Base Myer Henderson Hall swimming pool since the 1960s as part of the Colonial Swim League. As a non-profit, our mission is to serve area military and federal employee families. We are the only team that prioritizes military families since they don't have the time to get on a waitlist since their tour in the Washington area is limited.

While we are independent of the Army, the pandemic in 2020 showed us how much our fate is dependent on Army regulations. As such, the pool never opened last summer, and we lost a good portion of our swim families who found other alternatives. We were dealt additional setbacks this summer, most recently when a large tree smashed our 25m pool during the violent storm. Fortunately, we still have access to the 50yard pool on base, but that is not an ideal situation for summer swim.

We don't anticipate the 25m pool being repaired by next summer. In our most recent discussion with the base leadership, we have set an early 2022 deadline for making a final decision about our status on base for next season.

In terms of logistics, our season runs from the Tuesday after Memorial Day till the end of July/first week in August.

We are inquiring about renting your pool starting the third week in June, once Arlington/Alexandria schools finish and we transition to morning practices.

- Morning practices run from 7-10am, five days a week, Monday-Friday.
- We will provide our own certified lifeguards for the morning practices. All our coaches are also certified.
- Each practice will have a max of 30-40 swimmers.
- Parents are not allowed on the pool deck during practices. Due to parking limitations at your pool, we will also discourage parents from waiting in the parking lot.

Please let me know if there is any other information that I can provide to you at this time for us to continue the conversation.

Best,

Jeannie Andress  
FMST President  
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email: andressjeannie@gmail.com