

SPECIAL COMMITTEE ON THE CIVIC CENTER

September 7, 1999

5:15 PM

Chairman Wihby called the meeting to order.

The Clerk called the roll.

Present: Aldermen Wihby, Rivard, Cashin, Hirschmann, O'Neil

Messrs: S. Ashooh

Chairman Wihby addressed item 3 of the agenda:

Continuing discussions relative to the proposed Civic Center.

Skip Ashooh stated you had received information in November of 1997 (or 1998) relative to selection of Ogden vs. Volume Services, SMG or the other 5 or 6 candidates. We put together a matrix that went down each of their original proposals and counter proposals to our counter. It states Ogden's contract acquisition fee and internal rate of return. That 20% number was used in our analysis comparing all of the others.

Alderman O'Neil stated that he does not remember receiving anything on the management companies and this Committee did not exist in 1997.

Mr. Ashooh stated that he might have mistaken the date, however this was an item that was distributed. The next handout was dated August 12, 1998 and it was Ogden's acceptance of the proposal with the City that was presented to this Committee for approval. These are the terms that Ogden confirmed with us (length of time of their management contract) including a 20% equity position in the project and the rate of return.

Chairman Wihby stated that there was no Committee but the Board of Mayor and Aldermen was updated. This Committee had asked for some information from Mr. Clougherty and it has not yet been received. Jay Taylor's information was received answering Alderman Shea's question. Steve Stern sent some information the next day.

Mr. Ashooh stated I am here to answer questions that this Committee may have from the first session. Mr. Clougherty is in New York all week for a bond conference and Mr. Stern is in Florida and is due in tomorrow. He may have that information available for you then. I have not received the FF&E budget that Alderman O'Neil had asked for. I am prepared and able to answer any of the questions that came out about the 20% rate of return or how we arrived at any of the figures and the terms of the deal.

Alderman O'Neil referenced the 20% rate of return on the loan from Ogden and stated it is no longer an issue with regards to negotiations. The issue that some Aldermen feel very strongly about is the term "loan" when it was never used before.

Alderman Cashin stated that he had never seen this memo.

Mr. Ashooh stated that the memo was part of the August 1998 final report acceptance. It was reiterated in Ogden's submission of a Memorandum of Understanding, which is part of the appendix of that final report.

Alderman Cashin stated if I had seen 20% interest, I would have remembered it.

Mr. Ashooh stated two things came out of the last meeting that left people up in the air as far as what was actually presented. The use of the word "loan" was one in the 20% figure and it was inappropriate. It was done to provide a term that would give you an equal comparison between what is in place right now and a way to characterize what was happening with Ogden. It was inappropriate and inaccurate because it was not money that was being loaned to the City or put at risk. The capital that came from Ogden and Enron would be put into the building as an investment and then Enron and Ogden would have control of all the revenues in that building. The 20% rate of return that was in there was the negotiating point at what level would Ogden then share excess revenues with the City from that building. That 20% level was a rate of return they would look for and assume all of the risk in the building. This was a way to engineer a position where we could get the private investment into the facility and at the same time continue to insulate the City from any risk on the business side of that building. Ogden had to earn that 20% rate of return for themselves first. If they did not, the City was not "on the hook" for it. If they did achieve that 20% rate of return, they would share any excess revenues with the City. "Loan" was an unfortunate term to use and in my discussions with this Committee; I refer to it as Ogden and Enron buying the revenues of the facility. They would put in that capital and get all the revenues of the facility but they would then be in charge of earning their own rate of return. But at what point would the City share in that money; we had to pick a number that was being negotiated at that 20% level and that is the reason it was used as a

comparison. The City was never “on the hook” to pay 20% interest or to pay back a loan of \$11.5 million dollars if something happened to the building. That is where the term “loan” was unfortunately used.

Alderman Cashin stated that is not the way it was explained to us at the last meeting, Mr. Ashooh. Everytime we have a meeting we go over the same issues and there is always a different connotation.

Mr. Ashooh referenced the handout with the matrix and stated that was the sheet (or slide) that was used in helping you understand the reason Ogden was selected over the others at the end of a very lengthy review process. In Ogden’s column: the \$180,000 plus 3% a year and 20% acquisition fee investment – IRR (Internal Rate of Return) \$316,000; based on their investment capital that was their 20% rate of return expressed in numbers. This was a way for us to compare one bid against another. An RFP went out in 1997 asking for a straight management contract. Then we asked what their bid would be if they were interested in investing in the building and having control of all revenues. The revision here is under those new terms. The criteria that we used was the financial ability to perform on their promises and to deliver to the City a guarantee against operating deficits. The “Guarantee Conditions” column was a little bit different from each other. For example, Ogden was looking for a tenant for a certain period of time. The “Guarantee” column under Ogden’s revised September 5, 1997 bid, which is what we took to this Board, states no operating deficits. Volume Services would give a partial guarantee structured as a loan. SMG would contribute up to \$300,000 against operating losses. The only absolute against an unconditional guarantee against operating deficits was Ogden.

Chairman Wihby referenced the handout titled “Question #12” and asked what it was.

Mr. Ashooh replied that is the response we received from Ogden Entertainment to a series of questions. We had asked them a third time to refine their bids and try to make a decision. This was an extra from Ogden’s response to the MDC Committee and Finance “*Under what conditions would you provide protection against operating deficits?*” The bullets Ogden listed states their internal rate of return factor, the conditions under which contractually obligated income would allow them to participate in the building, level of repair in the building, and how they would maintain the building. In their response, Question #12 is part of the documents of public record; the internal rate of return that was discussed. It was still under negotiation and not firm at that point as we had not signed Ogden to a deal.

Alderman O'Neil referenced "Terms" on the second page of "Question #12" term "A" and stated that he was not sure if we were close to meeting that term and asked on term "B" we were discussing a seven (7) year term with one (1) three (3) year renewal so why are we at fifteen (15) years now for the contract.

Mr. Ashooh referencing term "A" stated one of the benchmarks that we have to bring back to this Board is a bank financing commitment. Referencing term "B" he stated we are at fifteen (15) years as a prerequisite for these contracts at this stage because that is part of the bank-financing requirement. All of the contracts and all of the terms (the tenant leases in the building) have to match the length of the indebtedness that you are going to have on the facility. That fifteen (15) year private bank debt has to be matched by management contracts. We need to have the guarantee against operating deficits for as long as there is debt on the building. We have to have tenants in the building as long as there is debt on the building. This was Ogden's approach to us; a seven (7) year with a three (3) year renewal. We told Ogden it has to be fifteen (15) years. The most important thing is that it gives us a guarantee against operating deficits for fifteen (15) years.

Alderman O'Neil asked is there currently, in any discussions, any way for the City to get out of the deal. They can guarantee operating loss and do an awful job managing the building.

Mr. Ashooh replied for someone to come on for a fifteen (15) year obligation and put the assets of that corporation at risk for fifteen (15) years and then do a lousy job, they have to pay the operating deficit.

Alderman O'Neil asked what you are saying is when they sign the agreement; they are guaranteeing no operating deficit to the City for fifteen (15) years. Whether they are here or a subsidiary, there will be no operating deficit to the City of Manchester?

Mr. Ashooh replied the contract is with Ogden as long as that contract is enforced. They guarantee against operating deficits and that is what we are looking for.

Chairman Wihby stated to Alderman O'Neil that is one of the requirements that we make sure is going to happen when they come up with their operating deficit agreement that it is for as long as we want. If it is not, it is not a deal.

Alderman O'Neil asked with regard to item "A", if the pre-opening phase does not begin by April 1, 1998, are we following that timetable.

Mr. Ashooh replied at this time, we are not.

Alderman O'Neil stated that is why the whole game has changed and the reason I believe it might be in our best interest to go back out and take a look at the management companies again.

Chairman Wihby asked would Ogden entertain the same proposal and not be the managing company. If we are looking to do what Alderman O'Neil is asking for, are there any other companies that would manage the facility that Ogden would go along with and still give us the operating deficit contract.

Mr. Ashooh replied Volume Services no longer exists, they have been merged into another company so I am not sure what their posture is. SMG refused to provide a guarantee against operating deficits because it was against corporate policy. What we ended up with was a company that two (2) years ago stepped up to the plate and put their corporate assets on the line and is willing to give us a guarantee against operating deficits, that has not changed. The situation we are in today, I would not be surprised if we had a dozen companies who would be willing to bid on this because we have sold the luxury suites and the club seat sales are underway, the naming rights and pouring rights will probably be done. The hard work is done so all of the income streams are coming on. Why wouldn't everybody but Ogden want to re-bid this?

Chairman Wihby asked why would you not want to.

Mr. Ashooh replied we have already brought someone to the table who has stood by their promise and willing to make that promise to the City, no one else has. If you want to re-open this at this point, renegotiating this whole contract would probably take us another six (6) months or so and throw the schedule off even worse than where it is today. When you negotiate, you stand by it.

Alderman O'Neil asked but we do not, as of today, have an agreement with Ogden.

Mr. Ashooh replied we do not, as of today, have an agreement with Ogden.

Chairman Wihby asked if somebody came forward with another proposal, will you listen to them.

Mr. Ashooh replied we have never said no to anyone.

Chairman Wihby asked if anyone has come forward since then.

Mr. Ashooh replied in the negative.

Alderman O'Neil stated there were specific questions asked two (2) weeks ago and to date we have no responses.

Chairman Wihby stated the Clerk would complete the minutes of the August 25th meeting and all of the questions that were asked.

Alderman O'Neil stated I am disappointed with that and they still want us to follow along with the timetable of possibly approving or disapproving this around October 1st. There is a lot of work that needs to be done in that time period.

Chairman Wihby stated he assumed all questions would be answered at tonight's meeting.

Mr. Ashooh asked for a copy of the list to follow-up with everybody and make sure they get covered.

Alderman Cashin asked, Mr. Ashooh, my understanding is that we are going after a bank loan to finance this.

Mr. Ashooh replied in the affirmative.

Alderman Cashin asked who is going to underwrite the loan.

Mr. Ashooh replied the loan will be underwritten by Manchester Housing and Redevelopment Authority, but collateralized by a lease-hold mortgage on the business of the building not the asset. You are not going to mortgage the real estate but the business itself. The revenues that come into the building will be the collateral for that.

Alderman Cashin asked if it defaults, who will be responsible.

Mr. Ashooh replied it would be Ogden.

Alderman Cashin asked how Ogden could be responsible if the City is going to underwrite the bond issue, the loan.

Mr. Ashooh replied the Debt Service on the private side of the building, that loan is backed by a pledge of those revenues from the building. Those revenues will go to pay the loan on the bank.

Alderman Cashin asked if Ogden goes bankrupt, what happens.

Mr. Ashooh replied the bank would have the ability to come in and run the business until they recover their debt. The same way they would an apartment building where the landlord did a lousy job. Ogden is a substantial and financially secure large corporation whose assets are behind this.

Alderman Cashin stated that might or might not be. Ogden entered into a tentative agreement with the City of Manchester to participate in \$11 million dollars up front, now they are not doing it anymore. They have walked away from that.

Mr. Ashooh replied they did not walk away.

Alderman Cashin corrected a mutual understanding that did not work.

Mr. Ashooh stated it was not even mutual, we told them that we did not want the money.

Alderman Cashin stated we are going through a bank loan underwritten by Manchester Housing and Redevelopment Authority. What is the length of the loan?

Mr. Ashooh replied fifteen (15) years.

Alderman Hirschmann stated that he remembers the matrix because he served on the previous Board. Two (2) other Committee Members were not on the previous Board. This is dated 1997 and I do remember you coming to us and saying when and why Ogden was selected. We are going back over a long period of history when these people were not here. That is part of the gap problem but they do need to know this. It would be very helpful to have a flowchart of what has happened from day one with boxes saying, "this is the day the RFP's went out, these are the vendors, the date selected, the date Ogden was selected". Show in an historical fashion what has happened because some of the history is being forgotten. I have Ogden's brochure and I remember the presentation very well.

Mr. Ashooh stated we could endeavor to do that. The time line might start out nice and neat but it becomes much more like a family tree. After a couple of years, we have added a number of players and it might look a little disorganized at the end but I can try to do that if you would like.

Alderman Hirschmann stated I do not need it but some of the members need a history lesson on this.

Chairman Wihby asked are we still on track with seats.

Mr. Ashooh replied a mailing was sent out today on the Club Seats sales. There is nothing at this point that we can announce. I need names signed on the paper and then I can announce them.

Alderman O'Neil asked there was some discussion at the last meeting about October 1st, but we will not be ready. Are we on schedule?

Mr. Ashooh replied MDC is involved in trying to move on sales and marketing and tie up the contractually obligated streams of income (Naming Rights and Pouring Rights, etc.). Getting an agreement in principal and then hammering out the hard terms and getting them on paper is taking longer than expected. As of today, we have not taken a backwards step, we are just trying to button down the language and get everything written up so it can be signed and announced properly. Through this whole process, we have not hyped anything before it was done. We do not want to say next week this is going to happen, when it is done we can then bring it to you. We are little bit behind where we expected to be a couple of weeks ago, but we are in pretty good shape.

Alderman O'Neil asked if a meeting should be scheduled in two (2) weeks. With the election on September 21st, it will be better for Monday, September 27th. Responses to requested information from the August 25th meeting should be in within that time period and not handed to us that night. If Chairman Wihby asked a specific question, they should respond to the entire Board because most of them were here that night.

There being no further business to come before the Committee, on motion by Alderman O'Neil, duly seconded by Alderman Cashin, it is was voted to adjourn.

A True Record. Attest.

Clerk of Committee