

**SPECIAL COMMITTEE ON THE CIVIC CENTER
(Continuation of 9/22/99 meeting)**

October 5, 1999

5:00 PM

Chairman Wihby called the meeting back to order.

The Clerk called the roll.

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

Chairman Wihby addressed item 3 of the agenda:

Further reports on agreements.

Chairman Wihby stated last time we met, we were waiting to get some documents. We received the documents and now we will have a chance to be reviewing them.

Finance Director, Kevin Clougherty stated at the last meeting we were asked to get the Memorandums of Understanding out to the Board. We got them on Friday and pulled the copies together and sent them out through the courier on Friday and everybody should have had them over the weekend. The documents are the signed copies of the Memorandum of Understanding between Ogden Entertainment and the City of Manchester and the one between Ogden Entertainment and the hockey group. The agreements are the outline of the business deal. As I mentioned at the last meeting, they are the business points that had to be negotiated before you can get the contracts. Now what has to happen is that you have the business deal and agreed on the discussion points. You have to put the contracts in place and that is the next step and that is what is happening now. My understanding is that the Memorandums meet all of the requirements of the referendum and the Board criteria and that they provide layers of protection that the City can look to, to make sure that the project is going to deliver what the voters had required.

Attorney William Craig stated the next step is to have a binding contract as far as Ogden is concerned and the City and the other one is Ogden has to have a contract with the hockey club. I talked today with the lawyer who is representing Ogden and the City's interest concerning the hockey club. He feels that he can get a draft of that document out within two (2) working days. His concern is that Ogden is very precise and they will want to review it for business details as opposed to legal

details. That will take a week. The hockey league lawyer is experienced in doing these documents and he is certain that the turn-around will be fast there. As far as the M.O.U., I talked to that lawyer today and he is very familiar with what we are trying to do and he feels, in a very short time, he can get us a draft so that we can start working and get that nailed down so that they will be in contractual form, contracts legally binding rather than just Memorandums of Understanding. Two (2) of the very basic documents can be prepared in reasonably short order.

Mr. Clougherty stated one of the reasons that Attorney Craig can make that statement is because there has been so much time spent getting the MOU's details worked out in terms of the business arrangement. That is what is taking time to get us to this point but we should be able to move faster from this point forward having spent that time and encourage the team and Ogden to spend that time to get down to significant details on their MOU's. In addition to the Memorandums, we are in the process of a number of things going on at the same time. One of the questions last week involved the bank financing and what happens with respect to that. Now that you have the MOU's you can make them available to the banks and they can start to perform their due diligence to take a look at how they would like to approach and what things they might require to provide for the 20% (\$11,000,000) in private financing. But that had to wait until you could get these documents in place to provide them some type of a definitive starting point and that process has begun. The other point that has to start at this time now that we have these in place, is the bond insurance. As we have been going along, we have been asking our financial advisor to reassure the City that insurance is available for similar types of projects and can be done. You have a copy of a letter from Richard Tortora who is with Evensen Dodge, the City's financial advisors. He is stating that he has contacted all of the bond insurance companies and they have provided us with examples of what they would consider similar types of projects so that the City can be reassured that we should be able to get some insurance for this project and to move forward with it because they are interested.

Chairman Wihby asked this would be for the Rooms & Meals guarantee.

Mr. Clougherty responded in the affirmative and stated there was a question as to whether the MOU's could be signed by the parties that had signed them. I have corporate certificates that have been provided by Ogden that in fact say the people who signed the contracts are the people that can bind the company. The most important and pressing piece that we are working on now in addition to all of the contractual things is that even if you get all of the parties to agree in the form of an M.O.U. in a contract that they will perform certain duties, you want to make sure that they are going to be financially viable to provide those services. There are different levels of due diligence that different parties have to go through in order to come back to the Board at some point in the future and provide the certainty

that these things can be done. There has already been some due diligence that had to be done by the league. The league has to make sure that the hockey team can perform and is financially viable and they have a responsibility to do that. The banks are going to have to do a similar review of the companies and make sure that they feel comfortable, not only that they have the expertise to carry out the business plan, but that they feel that the project is something viable and the companies involved have the necessary financial security to carry out the deal. They are going to be doing their due diligence on those pieces as well. At the time you will have some increase from the insurance companies that are going to be back in the bonds that are going to want to do some due diligence on the parties including the City and the revenue from the Meals & Rooms Tax. Finally, the City has to do its due diligence on the parties involved. We are doing that, we have initiated our research to make sure that at the time that this project comes to the Board, we will be able to show you the backup supporting our recommendation on these companies. What we have done is we have tried to let the sequence of reviews go in order so that people do not come and say the City has already done their due diligence so that relinquishes our responsibility to have to follow through and do theirs. We have been doing our required due diligence in preparation for reporting to the Board but also reserving that we want to make sure that when we talk about this, it is at a time that everybody else has done theirs as well so we can benefit from theirs. We are currently taking a look at and providing and arranging for us to be able to look at the books for Baldwin Enterprises, to be able to review all of those contracts and take a hard look at where they are and what their financial position is currently and how that might be changing. We want to make sure that we time that so that it is done within the next several weeks so that it is the most current information and we do not rely on things that are two (2) weeks old because things can change in a couple of weeks. We have on-going due diligence proceedings; we are working with our bond counsel, our financial advisors. We are taking a look at information provided by various investment houses that specialize in these areas and provide reports and research and we are going about that as the Board would expect us to do in a prudent and thorough manner. In addition to what is in the MOU's, the City is also looking at additional protections beyond the layers that are included in the Memorandums of Understanding to see if there is anything out there that we might further investigate or have as an insurance policy that would benefit the City. We want to make sure nothing is left unturned in that area. Harry Ntapalis (Risk Manager) and Tom Clark (City Solicitor) have been working with the City's consultant in that regard, to make sure that we are looking at everything possible to bring to the table for the Board to consider.

City Solicitor Tom Clark stated we have our insurance consultants, *J.H. Albert* out of Boston, Massachusetts working with Harry Ntapalis and with the parties involved to try and develop an overall insurance program for this project including

business interruption, wrap-around construction insurance, to give the most protection possible to the City. Our consultant has advised us that it is not something you go and buy off a shelf, so he is tailor-making the specifications and bringing them to the industry to get quotes and will get back to us with the available insurance on it and we will bring it back to the Committee.

Chairman Wihby asked how long that would take.

Attorney Clark responded that is on-going now and we expect that it will be done within the next week or two (2).

Mr. Clougherty stated in addition to those types of financial things that the City side is working on, there is the continued marketing of the suites and the club seats and there is some exploration by the architects and others to see if there is the possibility of doing additional suites to see if that makes sense and get some additional revenue from that. I expect that will be coming back shortly. There are also a number of rights agreements (naming rights, pouring rights) that are at different stages of completion. The pouring rights have been agreed to terms, but it is not in the form of a contract. They are working on the contract and they will be releasing that. At least one or the other naming rights deals is in that same stage. The naming rights term gets thrown around a lot; you have originally when Hunter Interest first gave their report and you asked the Finance Department to do a spreadsheet we put in naming rights and that was mainly the name on the building. We have since come to understand that is probably the last thing you want to sell. You want to make sure you do that after all the other things are in place because otherwise you are selling it at a discount. Although there has been interest expressed in the form of that naming right, that has not been the main focus of the naming rights activities. What has been happening is that we have been able to open up another layer of naming rights within the building, interior naming rights that would equal as much if not more than the amount that we had originally anticipated for the outside of the building.

Chairman Wihby asked is that the same as in South Carolina with Pepsi.

Mr. Clougherty replied in the affirmative and stated that gives a broader support base and it also provides for a stronger financial plan. If you were to take a look at the \$11,000,000 that has to be raised privately, what contractually obligated income that you are going to need from things like naming and pouring rights is about \$2,500,000 a year. In order to get your financing before the banks are going to feel comfortable, they are going to want to see roughly \$1,500,000 of that in place. As of today, we have \$1,300,000 contracted and there is another \$280,000 that is committed but in the stages of review. Even in that area, there has been progress made in terms of getting what is necessary in order to be able to get that

information to the bank so that they can consider how they want to do the financing for that piece of the pie. One other question we had with respect to the expenditures for the project so far (\$2.6 million budget); with the City if you get your bills in by the 25th of the month we pay them on the 15th so as of the 25th of last month, a couple of weeks ago, we have about \$1,400,000 that were paid. We have another up to about \$2.1 million in encumbrances that we have and we know are coming through contracts. Jay Taylor, Director of Manchester Economic Development Office, is putting together a spreadsheet that listing out all of those items and you should have that in the next day or so. Those were the two (2) target numbers that we thought were important to get to you tonight. Other than that, we do not have a lot of a formal presentation. We were going to sit back and see if there were any questions of the Board and address any issues you might have or take suggestions that you have and go forward.

Alderman O'Neil asked at some point we have to draw a line in the sand and ask when are these things going to be done for us to review. Are you in a position tonight to make a recommendation on some dates or for the next meeting.

Mr. Clougherty replied if the Committee was to ask us to come up with a schedule and give you a date and timetable, we would do that.

Alderman O'Neil asked that would be contracts, leases, any of these financial reports, background reports, etc.

Mr. Clougherty replied what you could do is make a list of the documents, categorize them by what you need for the financing, closing, what you need at the different dates in order to meet that 2001 schedule that we have all been working towards and back into it and set some deadlines.

Attorney Craig stated what you really need is a list of the documents together with a timetable that is necessary in order to get a bank commitment for that private funding. Once we get the bank commitment for the private funding, we already have the public funding and then we can go into the ground and start construction.

Alderman O'Neil asked how long would that take to put together.

Attorney Craig replied it should take two (2) weeks at the most.

Chairman Wihby stated that the Committee wants that.

Alderman O'Neil stated when we get all of this information, there needs to be a special meeting of the Board. Present it to everybody and then take it up in the future.

Chairman Wihby asked are you saying the records or more than that.

Alderman O'Neil asked should we wait until all documents are in.

Attorney Craig replied that he was talking about a list, not the actual documents themselves.

Chairman Wihby stated once it comes in, the full Board would have to go over it.

Alderman O'Neil asked are we still continuing to check out the financial status of Ogden with their upcoming changes and when will a report on that be ready.

Attorney Clark replied my office is looking into the class action suit and the financial status of Ogden. We have been working with the Finance Department and the City's consultants Evensen Dodge and Ropes & Gray (tax consultants). It is a fairly recent class action and we want to make sure that we have all of the information about it before we come back to the Committee. I should have a report for you within a couple of weeks.

Alderman O'Neil asked is there any background information on the hockey ownership.

Mr. Clougherty replied we are trying to schedule a meeting with their financial people to go over their books and records with experts we feel are necessary to give us the best possible analysis of where they are. We are scheduling those sessions so we can get the information we needed. In the meantime, we are looking at other sources of data and research as well.

Chairman Wihby asked if that would be available in two (2) weeks.

Mr. Clougherty replied we are pushing to have the information in two (2) weeks but we want to make sure when we do our due diligence and we have gone through all of this work that the banks and other parties are doing theirs as well. I would expect to have it in two (2) weeks or at least give you the status as to where we are. This is something that is on going and it is not something that we are, in two (2) weeks, going to come in and draw a line. Right up until the end and beyond, we are going to be putting in place mechanisms and reports to be able to keep on top of this. It is not something where we need a deadline, it will be on going.

Alderman O'Neil asked specifically, up until this point the longest that an NHL franchise has been in a community is seven (7) years but yet we are entering into a fifteen (15) year agreement.

Mr. Clougherty replied the fifteen (15) year arrangement was something that the Board and the City felt was necessary in order to preserve what we are trying to do under this deal. The fifteen (15) year is a unique arrangement but the team has agreed to that.

Alderman O'Neil asked has the league agreed.

Mr. Clougherty replied in the affirmative. You have the M.O.U. and you take these agreements and put them in the form of contracts. They have agreed to the fifteen (15) year and the first item in that Memorandum of Understanding "The term of this agreement will be from the date of the first home game held in the arena in Manchester which is anticipated September of 2001 and ending in the fifteenth season thereafter."

Chairman Wihby asked if all of the MOU's were put together just the way they are, does this guarantee all of the requirements that we had set forth as far as the deficit. Are there things missing in here that we still need to talk to them about.

Attorney Craig replied there is not anything missing that you want to talk about. Those two (2) documents encompass the requirements set forth by the Board. The next step is to get a bank to say, "Okay, here is the \$10 million based on the contracts that flow from the two (2) MOU's".

Chairman Wihby asked but every thing that we were looking for is in these things.

Attorney Craig replied in the affirmative.

Alderman Rivard asked there has been a lot of discussion about the finances, the team, the design, and now we have the MOU's...where are we with the property. We are designing a building that hopefully is going on that piece of property. The property has not been purchased. Some of the site work has not been completed because of various reasons, I have been told. Is it ready to be purchased or isn't it.

Attorney Craig replied as soon as you get the money, we are ready to purchase it.

Alderman Rivard asked all of the site work has been done, all of the environmental testing.

Attorney Craig replied in the affirmative and stated to the extent we can do it so far. The extent we need to do it in order to know whether or not that project should be built on that site. The answer is it has been done.

Alderman Rivard asked the building that is being designed can be constructed on that site.

Attorney Craig replied in the affirmative.

Alderman Rivard asked and the City of Manchester is prepared to buy it and is there going to be a time line. Are you going to put on the document when we are going to buy the property.

Attorney Craig replied in the affirmative.

Alderman Rivard stated I have asked questions unofficially and nobody seems to know where we are.

Attorney Craig stated first of all, before you can go and buy that property, you have to have a public hearing. You have to give thirty (30) days notice. Assuming you are comfortable at the end of that public hearing and you are willing to vote to go forward then immediately thereafter we can start the acquisition process. We have been in touch with the owner, he is one person who speaks for the partnership, we are in constant contact with him and he is very cooperative. I am going to call him tomorrow morning and give him an update on where we stand with the hockey league and an update on this meeting. I have been in the eminent domain business since 1965 and he has been the most cooperative person I have seen in all of those years.

Alderman Rivard asked are we taking it by eminent domain.

Attorney Craig replied the process is set forth by statute; you appraise the property and that has been done and once you vote to acquire it, then you send out a notice of offer to purchase, then you negotiate.

Alderman Rivard asked for an explanation of "you vote to acquire it".

Attorney Craig replied we cannot ourselves go out and acquire the property without an affirmative vote of the Board of Mayor and Aldermen.

Alderman Rivard asked but we have not done that yet. We selected a site and the Board voted on that. Do we have to do it again.

Attorney Craig replied you have not voted to go out and acquire it. In order to vote to acquire, you have to follow certain specific statutory requirements. You have to have a public hearing, you have to give thirty (30) days notice of that public hearing, and then you have to follow the eminent domain taking law. It first says you notify the owners "this is what we offer you" based on an appraisal that we already have. If we can, we will acquire it by negotiation. We are confident, after talking with the owner numerous times, that we can acquire it by negotiation. We will, however, go through a friendly eminent domain process, to clear the title. For instance, Lake Avenue was widened a few years ago and there is no evidence that it was accepted as a public street and we want to clean up the loose ends so that we can get a good clean title policy.

Alderman Rivard asked this would take some time, it will not happen for a few months. If we are going to have to vote on it, have a public hearing and then buy it, it is going to be next year before this happens. Is it reasonable to assume that.

Attorney Craig replied I hope it is not reasonable, but I cannot say it is impossible.

Alderman Rivard asked for an example of how quick it can be done.

Attorney Craig replied assume we get the letter from the bank that they will put up the \$10 million...

Alderman Rivard asked give me an example of how many weeks for the vote, thirty (30) days for the public hearing. Go over how it will work before we can buy it, how soon can we buy it if everything works well.

Attorney Craig replied probably two (2) months of this process. When I mentioned before that we ought to have a list of documents prepared, in order for the City to be able to go in and acquire the land that will be on that list and then we will give you a more precise time line. You can see it in print what the process consists of.

Alderman Rivard thanked Attorney Craig.

Alderman O'Neil stated a follow-up to Alderman Rivard's question, if it could take two (2) months clean to get this property, I do not see how this can ever meet the time line of September of 2001. That is more a construction question.

Attorney Craig replied it is partly construction and partly the financing because the league has to get in there and Mr. Stern is aware of these problems and he is still confident that we can meet it after talking with the architect. That is all I can say it is secondhand and you can take it for what it is worth.

Alderman O'Neil stated at some point there has to be an absolute drop-dead date from a construction standpoint for this to open September of 2001 without the cost going through the roof.

Mr. Clougherty stated my understanding from the architects and the construction manager is that if this process proceeds and you are within your 120 days which puts you sometime in January, they can still meet that timetable.

Alderman O'Neil stated and that is going to be aggressive if there are no glitches in one document.

Alderman Hirschmann asked would we meet with Mr. Baldwin's group soon, wasn't that discussed at the last meeting.

Mr. Clougherty replied as part of the schedule, referencing Alderman O'Neil's question, we will lay that out and we will also factor in a meeting.

Chairman Wihby asked Skip Ashooh if Mr. Baldwin is planning on meeting.

Mr. Ashooh replied we are still in the process of getting everyone scheduled. There is a group of about 8 people and we are trying to reconcile everyone's schedules and find out when they will be available. As soon as we know availability, we will communicate that to you, Mr. Chairman, to set up a date.

Alderman Hirschmann asked was Attorney Craig involved with any of the negotiating of contracts between Ogden and the Baldwin Group.

Attorney Craig replied we did review them but we were not involved with the negotiations.

Alderman Hirschmann stated nobody on this end requested it, but if you wanted to change anything that did not get covered or did not get thought of. There is no mention of the caliber of payroll or team or play. They could go out and get thirty (30) high school students if they wanted to...that is not going to happen. They talk about practice and ice time and a lot of other things. There is also listed the revenues that the team is going to get to acquire a good team. There is no mention of the team.

Mr. Clougherty stated that is covered as part of the AHL; they want a certain level of quality that they are aspiring to. I do not know that for certain but I can find out.

Alderman Hirschmann stated that is important, can we see the AHL benchmarks for acquiring a franchise. I am sure there has to be so many assets, so much money in the bank...I am sure this is a reputable person. There has been some things said in the press that probably should not have been said that this man's reputation is on the line, he wants to come to Manchester. Let's get those benchmarks of the AHL and show that this group's meeting it and show what kind of a quality team we are going to have.

Mr. Clougherty stated rather than give you the wrong answer tonight, I will research it and get it back to you.

Mr. Hirschmann stated that would be important for everyone to see and I am glad you gave us the Evensen Dodge "Availability of Municipal Bond Insurance" because certain parties have said that we could not insure this project. Evensen Dodge from New York who is our agent is saying that he can do this project. I was told that everything was happening concurrently and they could not give us a flowchart. It is good to see that we are going to get a flowchart, thank you.

Chairman Wihby asked what would we see in the next week or two (2).

Mr. Clougherty stated I will let Attorney Craig speak to what will happen with the contracts because there will be things on parallel tracks.

Attorney Craig replied first of all for the Committee, I intend to see that there is prepared a list of documents that are necessary in order to induce a bank to come up with the \$10 million dollars. I will give you an update from the attorneys that are negotiating the contracts between Ogden and the City. The lawyer that is negotiating the contract between Ogden and the hockey league to see what progress has been made. I will tell them, before the week is out, that time is of the essence. That is what the Committee expects from me at the next meeting.

Mr. Clougherty stated I am going to push the investment banking people to get the banking side done so we can move ahead on that point. We are also going to continue with our due diligence with respect to the corporations. We are going to work with Jay Taylor of Manchester Economic Development Office to get you the budget spreadsheet so that is updated and out as soon as possible.

Attorney Craig stated we are also going to give you an outline as to the acquisition procedures that Alderman Rivard mentioned.

Chairman Wihby asked City Solicitor Tom Clark to look into the background of the Ogden suit.

Attorney Clark replied in the affirmative and stated that we will continue to work with our insurance consultants to make sure that we are properly insured on the project. I will continue to work with Attorney William Craig on the agreements.

Alderman O'Neil asked Attorney Craig if he included in his list of things, for Yarger Decker, the construction manager for a drop-dead date in order to meet the September 2001.

Attorney Craig replied in the affirmative.

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

A True Record. Attest.

Clerk of Committee