

## SPECIAL COMMITTEE ON THE CIVIC CENTER

**October 19, 1999**

**5:00 PM**

Chairman Wihby called the meeting to order.

The Clerk called the roll.

**Present:** Aldermen Wihby, Cashin, Hirschmann (late), O'Neil

**Absent:** Aldermen Rivard

**Messrs:** S. Ashooh, Atty. Craig, Solicitor Clark

Chairman Wihby stated after the last meeting there was stuff that we asked Bill to supply and the City Solicitor and Finance.

Alderman O'Neil stated I think, Mr. Chairman, one of the things we asked for was some kind of timeline on some of these agreements and they thought they might be able to draw something up by this meeting.

Chairman Wihby asked, Bill, you were supposed to do that, right.

Atty. Craig answered my memory and maybe it is defective but we were supposed to give you a definite timeline as to when the drop-dead date was to start construction. Skip Ashooh has a letter from Peter Levy, which gives that which is January of 2000. In addition to that, my recollection again was that I was to give, at the request of Alderman Rivard, to the Committee a list of the documents necessary in order to induce the banks to step up with commitment letters. No the documents themselves. I may say that it is physically impossible right now to give you the documents because until we get the banks involved, we don't know what they are going to want. We can tell you what we think they want, but they would all have to be revised by the lenders themselves and the lender's lawyers so it would really be a waste of time and a waste of money, but if you really want to see what they look like or what we think they are going to look like, we can get those to you but not tonight unfortunately. I didn't think that was expected tonight.

Mr. Ashooh stated I have a letter and I believe you have a copy from Peter Levy. There was an error in the date so I have a corrected copy here. I would like to talk for just a second about where the January 18 date came from. Mr. Ashooh distributed copies to the rest of the Committee members. The drop-dead date that was requested and is referenced in this letter, January 18, 2000, first of all serves as a great Y2K test. No one's computer crashed in producing this, but the date is a date that was produced as a result of a meeting between the architectural team, the mechanical team, all of the engineers on staff, the construction management company and all of their staff, the program managers and representatives from Manchester Housing & Redevelopment. Through an exercise they went through of taking a look at the construction process itself and laying over all of the timelines, they backed up from a Fall 2000 opening to when was the date that they all felt comfortable they could start the process and have it completed and delivered to the City on time. That date is not our opinion, but the opinion of those who will design and construct the building and warranty that building to the City.

Alderman O'Neil stated that means that everything has to be a done deal in about a 10-week period.

Mr. Ashooh replied this date also, I think, has taken into account some of those things that this Committee has also taken into account. That is the site acquisition process and this Committee asked for and recommended to the full Board and the full Board scheduled a public hearing on November 22 and all of those dates do coincide or fit in with this time schedule for mid-January start of construction. I believe, and perhaps Atty. Craig could speak a little more to the site acquisition process, but I believe these dates all do work together.

Atty. Craig stated Mr. Ashooh is absolutely right. I was asked by the Committee to put a timeline together for acquisition by negotiation or eminent domain for this particular project. I did send a letter to you, Mr. Chairman, and I don't know if it has been distributed to the Committee. Unfortunately, I didn't bring my copy.

Chairman Wihby asked when you send me something, please send a copy to everyone else.

Atty. Craig answered I am sorry, I just didn't know the protocol.

Alderman O'Neil asked the public hearing is scheduled for November 22. That leaves about seven weeks, ballpark, after the public hearing. Is that a reasonable time to negotiate and go through an eminent domain process?

Atty. Craig answered it is. There is only one owner involved. We have been in constant contact with him. He will give us a deed tomorrow.

Chairman Wihby asked Atty. Craig to read the letter into the record.

Atty. Craig stated:

#### Procedure for Taking of Land for the Civic Center

1. The City may take land for public purpose and the procedure is the same as the layout of a highway.

In other words, if you want land for a highway, you have to give notice to the people affected, 30 days notice. You have to have a public hearing. You have to hear the public and the City officials to demonstrate the need for it. In this case, this outline indicates this requires a public hearing with 30 days advance notice to the land owners and other interested parties such as tenants, abutters, mortgagees and so forth. The statute specifically requires that the area in question, in this case the proposed civic center site, we have to give notice to the owners and tenants and then the lien holders. Those notices are by certified mail. They are going out tomorrow. They had the title dated today just to make sure we got the right people and no one switched borrowers or anything in the mean time. In addition to that, we got from the City Assessor's Office, a list of all of the abutters and although we are not required to notify the abutters, each abutter will also get a notice which will go out in tomorrow's mail inviting them to attend and saying in effect that they can express their opinion pro or con or just sit and listen to the testimony. I think it should be made clear to everyone that so far the City has not, in any way, voted to take this property either by acquisition or by negotiation. The Board will be asked sometime afterwards, after the public hearing presumably and when the funds are available and it meets all of the criteria that has been set forth as far as funding or what have you are concerned, will be asked for an affirmative vote to acquire the land either by negotiation or by condemnation and in this case I fully expect it will be by negotiation. That brings us to paragraph 2.

2. Once the public hearing is held and assuming the Board votes to acquire the land an offer is made on the appraisal and in this case the appraisal has been made.

Now that doesn't mean you have to vote on November 23 to take the land or not take the land. You can do it as some subsequent meeting and I would suggest that you do it only after you are satisfied that the money is available to do the deal and everything is in place to do the deal. If the offer is not accepted or a compromise is not reached within 10 days, then a Declaration of Taking is filed with the Board

of Tax & Land Appeals and within 4 days after filing a copy has to be recorded at the Registry of Deeds. When the Declaration of Taking is filed with the Board of Land & Tax Appeals, we also file the estimated value of the land and that means the appraised value. At that point, by statute, the City owns the land. At that point, the City is also entitled to possession as far as any tenants are concerned. Now again, we have been in constant contact with the owner. Jay Taylor has been in contact with the tenants and in this case we do not expect an adversarial proceeding, but this Committee asked for an outline and so far as this particular site was concerned and in so far as eminent domain proceedings would be involved and that is what we have given you. Finally, I said this is the procedure we expect to follow in this case since the land owner has already indicated that he is willing to sell the land for less than the appraised amount so as soon as the money is available and after we have filed a Declaration of Taking, he will give the City a Quit Claim Deed and a general release. In other words, after the Board gives us the go ahead, we can probably get title in two weeks or even less since the landowner is being extremely cooperative. As I said, I think the last time I was here, I have been doing this work since 1965 and I never found a land owner so cooperative so I feel that in less than 30 days after the money is available we will have title to the property and go full steam ahead as far as clearing the site and what have you. Basically, that is the outline. I would be glad to embellish or answer any questions.

Alderman O'Neil asked if for some reason everything doesn't get into place so that we are in the ground by January 18 and we don't meet that October 1 deadline, what does that do to the project.

Mr. Ashooh answered the process that we are using to construct this process is a construction manager at risk and depending on where the process goes, the construction manager is going to warranty to us a price and a time when that building will be delivered and if either one of those things are not met due to cost overruns or delays as a result of the construction process, then the construction manager is at risk on that, not the City. So, a judgment would be made depending on where we end up by the construction manager whether they can fulfill the delivery date for us.

Alderman O'Neil stated my question really doesn't have to do...I am sure the firm of Gilbain & Harvey can meet the deadline, but not for their reason. We are not ready. We do not have this project signed until January 30 and there is no way they are going to meet the October 1 deadline. What does that do to commitments that we have with Ogden, commitments with the AHL, etc.?

Mr. Ashooh answered if we can't move the project in a timely fashion, we run the risk of losing the business agreements that we have that are tied to a fall 2001 opening. The hockey team and those conditional approvals that we have based upon the City going forward with the building would be put at risk. Now what you are asking me to do though is make a judgment based on a degree of delay that we don't know yet.

Alderman O'Neil stated my concern is there is an awful lot of information that has to come before the Board of Aldermen in a 10-week period. I don't see this being approved in one night. I see it taking a number of weeks to be reviewed. Some hearings will have to be held by the Committee probably with questions being asked and information being needed. I think that is pretty aggressive to say that we are going to be in the ground today on January 18. What does that do to our agreement with the hockey team and with Ogden?

Mr. Ashooh answered I have the whole team working on producing those documents so that we can get them to this Committee in a timely fashion so that you can deal with them. Delays that come out of the process, as we have done for the entire two and a half years on this, we feel it is necessary to take the time to do it right. If there are questions on the documents, we will deal with them as they come up, but our first task is to get those business documents to this Committee as soon as we possibly can and that is what Atty. Craig and the City is trying to do right now.

Alderman O'Neil stated you still didn't answer my question. What happens if that building is not open on October 1, 2001?

Mr. Ashooh replied if we were to take instead of October 1, the following month...

Alderman O'Neil interjected November 1 or December 1, whatever.

Mr. Ashooh replied there I a certain amount of slack that takes place in a hockey season that allows you to still open the building on time and still meet the requirements of the AHL to have a team in play. The team could play on the road for a little while. It gives us some slack, but I think to assume that we have tremendous play in either the construction schedule or the political schedule is incorrect. In the judgment of the construction team, they have given us a date as to when they think they can start and finish according to the schedule we have given them. If the political process and the requirements of this project are not met, then the project doesn't go forward. I think it is up to this Committee to decide whether we meet the requirements in a timely fashion. If they are not met

and there is still a chance they should be met later, then I think we have to assess at that time what happens.

Chairman Wihby asked do you have anything else to talk about. News about Pepsi? Do you want to talk about that?

Mr. Ashooh answered I could give you a summary of it or answer questions.

Chairman Wihby asked for a brief summary.

Mr. Ashooh stated we notified this Committee via telephone as soon as we knew that we were going to have an announcement to make that we have received a signed memorandum of understanding with Pepsi-Cola to be our pouring rights sponsor for the Manchester Civic Center. The contract that Pepsi has signed with us specifies a \$2.15 million obligation to the civic center paid over 10 years and it includes a \$40,000/year annual marketing expense that would be put directly into marketing the building to not just pay debts or expenses but to promote events and attract people to come to make the building as successful as possible. In essence, we got what we were looking for in the naming rights deal, about \$175,000/year plus an additional \$40,000/year in marketing expenses to be put into this building to make the building successful. Pepsi has also agreed to put up a one time \$25,000 cash allotment to underwrite part or all of the costs of a grand opening gala in the building. As you know, when you open a building of this nature, usually the first night and the first month is a big thing and there are certain expenses and Pepsi has offered to underwrite some of those. That \$2.15 million into the building puts us at a point now where, in essence, we have contractually obligated income to this facility between the luxury suites, the club seats and the pouring rights. An amount equal to the debt service on the building at this time without selling a ticket or anything else so I think we are very happy to have Pepsi as partners in this building. It was the end of approximately a year of contact with several beverage companies and it culminated in what we think was a very healthy search for a true partner for the Manchester Civic Center and Pepsi is the one.

Chairman Wihby asked you know how they have the four corners like we were talking about like South Carolina did.

Mr. Ashooh asked in the seating bowl itself.

Chairman Wihby asked is that an option for another beverage company to decorate that corner or whatever.

Mr. Ashooh answered no. Pouring rights is generally an exclusive allocation of signage and promotion in the building to that particular pouring rights company for the products that they specify, i.e. soft drinks, ice tea and I think there is another category if someone can explain to me what an icetonic beverage is. It might be Gatorade or something like that I guess. It also includes certain signage in ice signage, and dasher board signage. Some of the Aldermen in this Committee took a trip down to Greenville, South Carolina and you saw that large hockey puck crashing through the outside of the building with the beverage company logo on it. It also includes, I believe at Pepsi's discretion, depending on the configuration of the building, their ability to have a super gala video board at one end of the arena, which would cost some additional monies because that would be an additional purchase that they would pay for or some other type of signage and that would be the interior coordinated signage in the building with the same sponsor at the same time.

Chairman Wihby asked so you can't have any advertising for another beverage company.

Mr. Ashooh answered not if they are competing beverages with those specifically included in the contract.

Chairman Wihby asked what if Coke wanted to pay for the scoreboard. Could they do that?

Mr. Ashooh answered that I am not sure of. I would have to see the actual contract. I just know that as far as certain beverages, Pepsi is the exclusive provider and pouring right sponsor for those beverages.

Chairman Wihby asked how are we doing with the naming rights.

Mr. Ashooh answered the naming rights right now are still under active consideration. I would tell you, Mr. Chairman, at this point that because we have had such great success with luxury suites, pouring rights and the club seats that naming rights is not essential to completing the package at this point. We have great confidence that we can proceed with those negotiations in order to get the best price for the City, not a price that we need today to complete the deal. Those are still very actively being pursued, but I think we have a stronger hand in those negotiations than a weaker one at this point.

Chairman Wihby asked do we still have a couple of different people bidding for the naming rights.

Mr. Ashooh answered yes.

Alderman Hirschmann stated well the Pepsi news seems to be the biggest news to date and you are to be commended for working hard on those negotiations. That is an exciting corporation to be involved with right here in town. What I was going to ask is now that Pepsi is secured for that 20%, can Steve Stern go out to the investment community and get the note secured.

Mr. Ashooh replied that is exactly the process that we are in now and part of the business documents that this Committee should expect. That is one of the last major elements of this package that we are trying to put together.

Alderman Hirschmann asked do you have a timeframe.

Mr. Ashooh answered the easiest thing to do is let me pass this over to the attorney. He talks about timeframes.

Atty. Craig stated you are talking or at least I am talking about a commitment from the banks and I don't have a timeframe for that. We are working diligently to try to get the banks interested. If I give you a timeframe, I am really just guessing.

Alderman Hirschmann stated so the answer is that Steve Stern is working on that piece right now thanks to Pepsi.

Atty. Craig replied he is working on it aggressively.

Alderman Hirschmann asked once that is in place, the insurance that we are looking for is going to be worked on or is it simultaneously being worked on right now.

Atty. Craig answered pretty much simultaneously. You get the commitment letters from the banks and a lot of other things are going to fall into place in a hurry.

Alderman Cashin stated maybe I missed something but Alderman Hirschmann just said that Pepsi secured the 20%. That isn't right.

Alderman Hirschmann replied what I said is they helped secure that 20% so that we can go out and get the investment banks to give us a loan now.

Chairman Wihby stated I know that the mall in Bedford was built by the Teamsters and I asked a couple of Union guys to go back and see if it was retirement money or something that they wanted to help finance instead of going to a bank to help finance the civic center with and they said they were going to go

back and look into it and see if there was something they could do to come up with that 20% and back that. Maybe something will open up with that.

Mr. Ashooh replied if I could add to that, we are not looking for a sweetheart deal. We are paying market rates for this money and we are looking for a business deal for the City. Certainly, I think we would be remiss if we didn't appeal for the support of the community. The business community stepped up and we are hoping that the financial community will as well.

Alderman Cashin stated Mr. Ashooh it appears from what I am reading here that in order to get into the ground on January 18, we have 12 weeks to put this whole package together and have a shovel in the ground and I am still waiting to hear about Ogden and the financial problems that they have and the bankruptcy they are involved in and we haven't heard anything about that yet. I am certainly not going to stick my neck out until I find out what that is all about.

Mr. Ashooh replied I understand. First of all, there is no bankruptcy that I am aware of with Ogden, but perhaps the City Solicitor can talk about the due diligence that the City is going through.

Alderman Cashin asked there is a bankruptcy involved here somewhere, isn't there.

Mr. Ashooh answered not with Ogden.

Solicitor Clark stated it is still in the preliminary stages. The court hasn't even certified the class at this point. The attorneys we have in Boston who are researching this, along with our financial advisors in New York have told us that this is just a run of the mill class action that happens every day. I get two or three notices a year on class action suits from different companies and it doesn't appear to affect the company at all at this point, but we will get back to the Committee with that.

Alderman O'Neil stated I guess this question would be for Jay because he submitted the letter. You have indicated that we are committed to almost \$1.5 million for Phase II. How can we control the balance of the money or are we committed to the \$1.1 million? Is that what is absolutely going to get spent? In my opinion, some of the balances here don't need to be spent at this point until we figure out if we have a project.

Mr. Taylor replied the amounts that were shown on that breakdown that you have there were through the end of September. The problem with that particular breakdown is that it is a moving target because even as we sit here there is money

being spent for legal fees and engineering fees and architectural fees for which we have not seen bills and I don't have a clue what those numbers are. I just know that there is money out there being spent and at some point...at the end of each month my plan is to give you a current accounting of what has been spent. That is the best I can do because we can't give you actual numbers until we get invoices. Suffice to say at least we know that the architects are continuing to work and I haven't seen a bill yet for the previous 30 days so I don't know what kind of money we are talking about. We know from what Atty. Craig has been saying that the attorneys continue to work, but I haven't seen those bills yet. My sense is that even though we have committed \$1.4 million or whatever it was there, my sense is that a substantial amount higher than that has already been spent and committed but we have just not been invoiced yet.

Alderman O'Neil asked so going forward, every particular line item here still will have...there is still work going on in every single line item here.

Mr. Taylor answered I would say in most of those. The only exception to that, I guess, would be the so-called Other category which is more of a contingency item. Mr. Ashooh just pointed out that some of the legal fees are not even paid until closing so those are going to be committed at the very end of the process.

Alderman O'Neil stated I guess my concern is we know that there is \$2.6 million so let's see how we can spend it. Nobody seems to know where the money is with this project.

Mr. Taylor replied I think the way to look at this is we said the Board of Mayor and Aldermen approved up to \$2.6 million to be spent to do this study. Now, I guess I could speak for everyone involved in this that if we don't need to spend the \$2.6 million then we are not going to spend the \$2.6 million, but at this moment I can't tell you and I don't think anybody else can exactly how much we are going to need. For example, if you went along and let's say you wanted to shut off the spending on this at the \$2 million level. Well you have spent \$2 million and you have nothing to show for it. I am not sure that is a good decision either. Is it better to go and spend what you need to spend to get all the answers and then decide whether you want to proceed with the project or not. I think that is the position we find ourselves in here. If we stop now, we don't have any answers and whatever we spent up to this point is basically worthless.

Alderman O'Neil stated so I guess your answer then is that we committed to \$2.6 million and probably to reach the decision point we are going to spend most of that \$2.6 million.

Mr. Taylor replied we are going to spend the lion's share of it. I am not going to say that we are going to spend it all because I am not sure that we will but a majority of it is probably going to need to be spent in order to find out whether this project should proceed. That is the best information I can tell you because I don't have a crystal ball either at this point.

Solicitor Clark stated you mentioned the insurance provision earlier. There is a meeting being held on Thursday of this week to select a national broker to make sure that we can wrap all of the insurance in one package to protect the City and a broker will be selected sometime on Thursday or shortly thereafter.

There being no further business to come before the Committee, on motion of Alderman Hirschmann, duly seconded by Alderman Cashin, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee