

**SPECIAL COMMITTEE ON THE CIVIC CENTER
(Continuation of December 6, 1999 Meeting)**

December 21, 1999

5:30 PM

Chairman Wihby called the meeting back to order.

The Clerk called the roll.

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

Messrs: K. Clougherty, Atty. Craig, Solicitor Clark

Chairman Wihby addressed Item 3 of the agenda:

Continuing discussions relative to the proposed Manchester Civic Center.

Mr. Clougherty stated two meetings ago we provided the Committee with a list of documents that we said we felt were important to get to the Board for their review as part of this deal. At the last meeting we gave you a series of documents and tonight we are presenting you with the final installment of the documents. What you have tonight is the Management Agreement between Ogden and the City and there is an executive summary that explains that. You have the hockey lease and summary. You are also presented with the parking analysis that was done by Desman Associates and that has some bearing on the Management Agreement. You have a summary of the bank term sheet that we received from five local banks and you have a commitment for bond insurance from ACA to insure the tax-exempt bonds. You have a letter from a financial advisor indicating the credit rating and we have included at the end the executive summaries that we owed you on some of the documents that we have already provided. At this point, we have provided you with the documents that we felt were important for the agreement. We are trying to make sure that we adhere to all of the criteria and requirements. I would be happy to answer any questions on the documents.

Chairman Wihby asked about the sheet that was provided at the last meeting with the parameters on it. It is entitled "Requisite for Final Approval". No property taxes used to construct or operate the facility. Tell us about the guarantee that you have.

Mr. Clougherty answered that requirement has been met. The Management Agreement that you have in front of you, Atty. Craig has said right along, does not require the City to make any investment of property taxes on this project. That is reflected in all of the documents.

Atty. Craig stated there is no guarantee, Mr. Chairman. Every single document, however, that is relevant to this indicates that the title stays in the City as soon as it is taken and continues on forever. The most anybody gets is a lease or a sub-lease. The title always remains with the City. The financing agreement, the sub-lease, the agreement with Ogden, as well as the trust indenture and the bank understanding show that no property taxes are going to be used with respect to this endeavor in any way.

Chairman Wihby asked and we own the building.

Atty. Craig answered the City will own the building at all times.

Chairman Wihby stated the Rooms & Meals tax exempt insured bonds shall not exceed \$50 million, so we are still under that amount and the if the Rooms & Meals money stopped you have insurance to cover that.

Mr. Clougherty replied right. Included in your package tonight is bond insurance from ACA.

Chairman Wihby asked so if for any reason it stops. If the Legislature decides that they want to stop it, it is covered?

Atty. Craig answered yes.

Chairman Wihby asked and that is on an ongoing basis.

Atty. Craig answered each year the Board must appropriate the money.

Chairman Wihby stated Ogden will guarantee the City against any operating deficits and prohibit any general fund appropriations.

Mr. Clougherty replied that is in the Management Agreement.

Chairman Wihby asked there is not going to be any way that we are going to have any operating deficits.

Mr. Clougherty answered if there are operating deficits, it is not a recourse to the City.

Chairman Wihby asked and that is spelled out in there very carefully and the attorneys have looked at that.

Atty. Craig answered yes.

Chairman Wihby asked what about the insurance commitment on the tax-exempt bonds.

Mr. Clougherty answered you have that.

Alderman Rivard asked could you explain how that works. It says on principal and interest. Is it a one-time payment? Is it a yearly payment? How does that work?

Mr. Clougherty answered the insurance is with ACA and we just got the terms on it this afternoon. They will guarantee the payment of principal and interest. What they want the City to do and we had talked about this before, is use instead of a bond reserve to get assurity as a first line against any type of shortfall in the money coming from the Rooms & Meals and then they are the back-up against that. You would pay that one time at the closing of the deal. It is about 150 basis points. We had included roughly 150 in the budget for the project.

Alderman Rivard replied I don't understand the financial terms you have given me. They are going to insure the payment over the life of the bond. If the Claremont issue takes all of the money away from the Rooms & Meals and we don't have that \$1 million to \$2 million coming in over the next 20 or 30 years, this insurance is going to cover the payment?

Mr. Clougherty responded right.

Alderman Rivard asked is it a one-time premium or is it an annual premium.

Mr. Clougherty answered it is a one time premium that we are going to pay up front.

Alderman Rivard asked what is it costing us for that insurance.

Mr. Clougherty answered \$1.7 million roughly. It is 150 basis points of the deal.

Alderman Rivard asked that is the premium.

Mr. Clougherty answered correct.

Alderman Cashin asked you said \$1.7 million.

Mr. Clougherty answered right and that covers you against the risk over the life of the debt.

Alderman O'Neil stated I want to go to a line in the Citizen's Bank letter. It says, "additionally they have determined (talking about the lenders) that prior to the issuance of a final commitment letter, further analysis, due diligence and related effort will have to be undertaken by the lenders." Yet, we are being asked to vote on this tonight.

Mr. Clougherty replied no. We are bringing you the documents tonight that you had asked us to provide and we are telling you where you are with respect to the criteria. Also, with respect to the due diligence, I may be getting ahead but we have been using Price, Waterhouse & Cooper to do some of the due diligence for us and I have just been handed a letter that we have received from the person doing that that gives us an update on where we are with respect to that and I will make that available to the Board also.

Chairman Wihby asked so the only thing that we had asked you to come back and provide today was the bank commitment letter. Is that the only thing missing?

Mr. Clougherty answered you have the term sheet that the bank has provided, which says that if you meet these terms that is what they would be looking for is a condition of providing it as a loan. Now we can meet the conditions that they have put out. The terms aren't something that we don't feel the City would be able to meet, but we don't have that firm commitment from the banks saying you have the \$11 million.

Chairman Wihby asked but all of the other things we do have in this packet and Solicitor Clark you have looked at all of this and all of the parameters we set are met except for that actual bank statement.

Solicitor Clark answered these documents meet all of the parameters except for the 20% private financing guarantee. As we spelled out before, the bank had given us the term letter. They are terms that we believe we can meet, however, the term letter is not a good faith letter. It is just a term letter saying that they are interested and they don't guarantee that they are going to give us the money at this point.

Alderman O'Neil asked at 5:45 PM on 12/21, do we have the private financing.

Solicitor Clark answered no.

Alderman O'Neil asked so the private financing is not guaranteed.

Solicitor Clark answered no.

Chairman Wihby stated if the private financing isn't guaranteed then we wouldn't move forward, but we could pass this tonight subject to your review to make sure that all of the parameters are met. Is that a possibility?

Solicitor replied it is a possibility. The way the Cooperation Agreement is spelled out, the Housing Authority cannot spend any money in acquisition of the property or demolition or tenant relocation until Kevin and I certify that the private financing is in place and I can't certify to that.

Mr. Clougherty stated we would have to agree on that together.

Atty. Craig stated the Authority's position is the same.

Alderman Hirschmann asked could you state it in an orderly fashion so that the viewers at home and everyone knows what we do have. Could you tell them that we have the insurance letter, the \$50 million, etc. It is just the 20% private investment that we are talking about. Could you go through it just to make sure that everyone knows we have everything.

Mr. Clougherty stated the requisites for final approval are:

- 1) No property taxes will be used to construct or operate the facility. As Atty. Craig mentioned, that is already in the documents and that would be a requisite.
- 2) The City will own the building. That is in the documents.
- 3) The City will contribute a maximum of 80% of capital costs from Rooms & Meals tax money. They are tax exempt bonds and they will be insured. That is in place.
- 4) Rooms & Meals tax exempt insurance. That is kind of the same thing on the \$50 million. Again, we are under the \$50 million cap and we have the insurance.
- 5) Debt service will be structured to provide coverage ratio. That has to happen. Again, that is a product of when we close on the deal and the interest rates, but that has to be met and at this time we think that we can do that.
- 6) Private business will invest a minimum of 20% of the total project. We have, from the banks, a letter outlining what they would need in order to give us that, but we don't have the commitment.
- 7) Ogden will guarantee the City against operating deficits and prohibit general fund appropriations. That is in the documents and they have agreed to that.
- 8) Construction risk will be assumed by a construction manager. Peter Levy is here and I think he has a handle on that. I would rather let him speak to that.
- 9) The City and Ogden will share excess facility cash flow. That is in the documents.
- 10) The project financing and operations will be non-recourse to the taxpayer. Again, that is the way this is structured and that would have to be a requisite at the closing or the process wouldn't go forward.
- 11) An insurance commitment on tax exempt bonds you have in front of you tonight.
- 12) Underwriting commitment on private financing. You don't have a firm commitment, but you have the outline of what would be necessary to do that.

I will let Peter talk about the construction risk and the guaranteed maximum price.

Mr. Levy stated we do have a guaranteed maximum price from the construction manager. We still have some loose items that are minor items in finalizing the contract and the documents, but in essence it has come in within the budget that was allocated and Gil Baine is willing to sign the GMP.

Alderman O'Neil stated we had talked about some conditions about using local residents. Is that in the contract?

Atty. Craig replied absolutely.

Alderman O'Neil asked the contractor understands that.

Atty. Craig answered yes, as well as change orders. The wording in the Cooperation Agreement that is proposed contains the requirement that the wording of those two requirements in the construction contract are subject to the approval of this Committee. Once you read it, you will not be surprised at the wording.

Alderman Hirschmann stated I guess we are down to the 20% private financing. The lenders on record here at Citizens Bank, Centrix Bank & Trust, Bank of NH, Fleet Bank and Key Bank, five local banks. Represented on record is Suesan M. Maciolek of Citizen's Bank. From what I just read it says that if after reviewing this term sheet the MHRA, being you Atty. Craig, concludes that the terms and conditions set forth in Exhibit A, which is this document, are acceptable that you are to sign off on this indicating to them that we have accepted these terms. Could we do that today?

Atty. Craig replied it is a little late. The Authority has already agreed to accept it so long as it is satisfactory to the City. If it is not satisfactory to the City, then the Authority won't sign it.

Alderman Hirschmann asked but you do agree that this is acceptable.

Mr. Clougherty stated the terms that are in the bank term sheet are mirrors of what is in the Management Agreement and we feel that they can be met and still stay within the parameters that the Board has given us to work with.

Alderman Hirschmann asked so we will be giving them indication say tomorrow, we will be endorsing this agreement and giving them their fee.

Atty. Craig answered if you folks want us to keep going, that is what we will do.

Alderman Hirschmann stated this is the only piece that is left and we have to give them indication. We have to file an application so that is all that is left.

Atty. Craig replied that is correct.

Alderman Hirschmann moved to accept the terms presented and send everything to the full Board. Alderman Rivard duly seconded the motion.

Alderman O'Neil stated I thought the agreement we had would be that we would have everything in place before we would refer it to the full Board. We do not have everything in place.

Alderman Hirschmann stated it is incumbent upon us to tell MHRA to pursue this \$11 million. They have what they could give us. Now we have to tell them that these terms are acceptable and we want this \$11 million loan. Am I wrong?

Solicitor Clark replied as I understand it and Atty. Craig could probably explain it a little bit better than I could, but the bank won't go any further until we do pay the fee.

Alderman Hirschmann asked the \$25,000 application fee.

Solicitor Clark answered yes, the \$25,000 fee to defray the cost of part of their due diligence.

Alderman Hirschmann asked but we have all of their terms and conditions.

Solicitor Clark answered we have all of the terms and conditions that mirror the Agreement, however, that is not a guarantee that if we give them the \$25,000 application fee that they are going to give us the loan.

Alderman Cashin asked so there is still no guarantee of the loan.

Solicitor Clark answered there is still no guarantee of a loan at this point.

Alderman Cashin stated we said that the package would be completed before we approve it and it is not complete. I don't know what the problem is here.

Chairman Wihby stated we have a motion to send this to the full Board.

Alderman Hirschmann stated it further states in this term offer sheet that once he files tomorrow with the \$25,000 that they have 21 days to do the real due diligence on that money and get back to us. They are going to have a window of 21 days no matter what to give us that 20% guarantee.

Alderman Cashin asked do you agree that this Committee said that we wanted the package intact.

Alderman Hirschmann answered we have it intact.

Alderman Cashin stated you don't have it intact. You don't have the private funding as of tonight.

Alderman Hirschmann replied you have an offer from a bank, Sir.

Alderman Cashin stated the City Solicitor says that you don't have private funding.

Alderman Hirschmann replied we don't have a guarantee from the bank.

Alderman Cashin responded then you don't have it.

Chairman Wihby asked, Atty. Craig, if we don't take an action on this letter does that mean that the project is dead. Do we have to take an action to go further?

Atty. Craig answered we need this private funding and this is the only source so if you don't respond affirmatively they don't go into Step #2, which is doing their thing.

Alderman Hirschmann moved to recommend to the full Board that we authorize \$25,000 to go ahead and pursue the bank financing. Alderman Rivard duly seconded the motion.

Alderman O'Neil stated I don't remember ever being told that we would need to approve a term sheet before we got the private financing. This is news to me.

Atty. Craig replied I don't think we are asking you to approve the term sheet. We are just saying that what you got from the banks is not a lock up on the private financing.

Alderman Hirschmann stated we do agree that we want to apply for the money, correct.

Alderman Cashin replied we have already applied for the money.

Alderman Hirschmann responded no we haven't.

Atty. Craig stated I guess the fair way to say it is it is a two-step process. We have taken one step in the application and now the critical step is the second one, but there is no guarantee that we will get beyond the second step.

Alderman O'Neil stated I don't ever remember any discussion about a two-step process. I remember the discussion that as part of this deal you were coming back with private financing.

Atty. Craig replied and we haven't gotten it.

Alderman Cashin asked, Atty. Craig, didn't we mutually agree that we would have the package completed prior to making any decisions.

Atty. Craig answered I don't know about making any decisions, but before we went out and spent any serious money on that land or spent any money acquiring that land we were going to have the package completed.

Alderman Cashin asked and we don't have the package completed as of tonight.

Atty. Craig answered that is correct.

Chairman Wihby stated I guess I am kind of confused. If we don't pass this tonight then we are never going to have the package completed.

Atty. Craig replied that is also correct.

Chairman Wihby stated so we have two motions.

Alderman O'Neil asked wouldn't the motion be appropriate to approve the application and that is the only thing we need to do tonight.

Chairman Wihby answered that is one of the motions.

Alderman O'Neil stated we don't need to approve everything else. We just need to approve that, correct.

Chairman Wihby stated the only motion we have on the floor is to approve this agreement and send it to the full Board so that we will spend the \$25,000 so that they can start the process. That is the motion on the floor. The second motion on the floor is to bring the discussion up to the full Board and let them know what is going on. Is that what the other motion was?

Alderman Hirschmann replied correct.

Chairman Wihby asked are you sending this up to the full Board and letting them decide this tonight.

Alderman Hirschmann stated we asked the civic center team to bring us all of the documents and once we got the documents we would refer them to the full Board. That is one motion. The second motion is to authorize the MHRA to proceed with the \$25,000 loan application for the \$11 million, which they should have already had the authority to do and should already have been done in my opinion.

Chairman Wihby stated I think everyone understand the first motion, but on the second one are you saying that this Committee is recommending approval of the civic center or are you asking to bring it up to the full Board and let a vote happen tonight or let the full Board decide.

Alderman Hirschmann replied we said that we would refer these documents to the full Board for review. Now whatever happens at the full Board happens.

Alderman Cashin asked you are not here to ask us to fund \$25,000 tonight are you. You have that in your budget.

Atty. Craig answered the basic question right now is we are almost there. Do you want us to keep going or not? We have no guarantee that we are going to get the 20%, but we have an indication. We have everything else, but that is all that we can present to you tonight.

Chairman Wihby stated I asked three times and I thought I had the same answer three times, if we don't approve the application fee the project stops here so you are looking for us to approve the application fee so that you can take the next step.

Solicitor Clark replied I think it is just the way you are saying it. Alderman Cashin is correct. The staff does have the authority to go ahead and pay the \$25,000. We just received this term sheet today and that is why it hasn't been paid yet. I think that what is being told to you is that is the piece that is now missing. There is not guarantee that we have the commitment. If you want us to go forward, we can go forward and still follow the same process we have been doing which is going back to the bank and paying the fee through the Housing Authority and asking them to do their due diligence and come back in 21 days. If you tell us that you are not going to go forward then we won't go any further.

Alderman O'Neil stated if that is all they are looking for, that is different than referring everything to the full Board. To be honest with you, I thought that this was all part of the process and you would have been doing it. I don't know why it is here. I don't know why we are taking any action on anything tonight to be honest with you.

Solicitor Clark stated as we explained to you before, the staff is not asking for a vote. We are telling you where we stand. The documents have been presented to us and we wanted to get them to you with the summaries. We expected the term

sheet to be a little stronger than it is. We thought that it was going to be a commitment. We also just received it.

Alderman Cashin asked so no action is necessary.

Chairman Wihby stated we have two motions. One is on the application. Do you want to withdraw that since we don't have to vote on that or do you want to take a vote on that?

Alderman Hirschmann replied I think that as a Board we should accept the terms. They gave us a term sheet. Are we going to rely on them to accept the term sheet or are we going to show that we accept the term sheet. I will move that we accept the terms and refer everything to the full Board.

Chairman Wihby stated we have a motion to accept the terms and refer everything to the full Board.

Alderman Cashin asked what terms are we accepting. All of the sudden we are being asked to accept terms after two years when we have had nothing to do with this. You guys have been handling everything. You came here and we don't have a full package tonight and that is the question. Is the package complete or isn't it? It is not and that is the bottom line. It has nothing to do with \$25,000 or anything else or terms.

Chairman Wihby asked the Clerk to read the motion.

Deputy Clerk Johnson answered, as the Clerk understands it, the latest motion on the floor is to accept the terms presented and refer everything to the full Board.

Alderman O'Neil asked weren't we going to receive the information and then the Committee was going to review it and there had been some informal discussion about a meeting next week after the Committee spent a week reviewing it.

Chairman Wihby answered my understanding is that we are having the presentation done tonight and if the Board wants to vote tonight they can or they can vote to meet on December 28. As of yesterday, none of this stuff was here. They must have got it all in tonight.

Alderman Cashin asked how can we read all of this tonight. Who wants to vote for this tonight? Who is pushing for the vote tonight?

Chairman Wihby answered it is up to the Board to decide. What I am hearing is that the full Board will have a presentation tonight. We were going to do that on 12/28.

Alderman Cashin asked what has happened that we are not doing it on 12/28.

Chairman Wihby answered we have a motion to do it tonight and if the information is not in then we do it on 12/28. We have a motion on the floor and we have a Committee report on the civic center somewhere on our agenda and at that point the three of them will get up there and make the presentation on what we have and what we don't have and it is up to the full Board to decide what they want to do from there.

Chairman Wihby called for a vote. The motion carried with Alderman O'Neil and Cashin voting in opposition and Chairman Wihby breaking the tie.

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