

SPECIAL COMMITTEE ON THE CIVIC CENTER

May 23, 2000

6:30 PM

Chairman Wihby called the meeting to order.

The Clerk called the roll.

Present: Aldermen Wihby, Pariseau, Cashin, O'Neil

Absent: Alderman Hirschmann

Messrs: J. Taylor, Atty. W. Craig, P. Levey

Communication from Alderman O'Neil reminding all parties involved with the Civic Center project that the BMA represents the owners of the project and should not be informed of problems with the project through the newspaper or calls from citizens; and that if lack of notification continues he will lead an effort to remove those individuals involved from the project.

Alderman O'Neil stated I do not appreciate getting a phone call and then reading about it in the newspaper the next day. We did get a letter from Mark Taylor on May 12th that explained we were in a transition period. But, Mr. Levey, we have to know everything that is going on good and bad. If we do not, I assure you that I will lead the charge and that is not a threat. We have to know what is going on. When people are calling me up it is pretty embarrassing.

On motion of Alderman O'Neil, duly seconded by Alderman Cashin it was voted to receive and file.

Communication from Alderman Vaillancourt relative to a request for a breakdown of civic center legal expenses from the law firm of Craig, Wenners & Craig.

On motion of Alderman Pariseau, duly seconded by Alderman Cashin it was voted to receive and file.

Communication from the Economic Development Director regarding the

parking formula that will be used in calculating the share of civic center parking revenue that Ogden Entertainment will receive.

Alderman O'Neil stated I appreciate the breakdown. Jay, do they have any responsibility if we need to expand parking in the area. They are getting the majority of the revenues. We are not able to take those revenues and put them into creating new parking. Do they have responsibility to contribute with us on any new parking.

Mr. Taylor replied in the negative and stated by the same token they do not get any share of revenue from any new parking.

Alderman O'Neil asked if we were to build a lot or a garage or a deck over and above what exists today, they do not get any of that revenue.

Mr. Taylor replied we are only required to pay based on the turnstile count on an event basis. For example, we could build a new garage and make it not available for event parking in which case they get nothing and we would get anything that came out of it. I am not sure where you are going with this but it sounds like you are asking if we build a new parking facility is Ogden on the hook to help us pay for it.

Alderman O'Neil stated based on the fact that they are receiving the majority of the revenues on event night.

Mr. Taylor replied the answer is under the existing agreement, as far as I know, no they are not obligated to help pay for a new facility.

Alderman Wihby asked are we obligated to let them have some of that.

Mr. Taylor replied in the negative and stated we have already provided the number of spaces within the required distance that they are required for the agreement so we do not necessarily have to give them anymore.

Alderman O'Neil asked we build across the street a 400-car parking garage. We do not have an obligation to provide any revenues to them in that garage.

Mr. Taylor replied we have an overall obligation to satisfy the total number...

Alderman O'Neil asked this formula is based on existing parking as it is today. We build a 400-car garage do we have an obligation...does the formula kick in with that new garage.

Mr. Taylor replied it would if we use it for event parking but keep in mind they are capped at 2,000 cars. Their revenue is capped at 2,000 cars so to the extent that new facility would be over and above that they would not get any piece of that anyway.

Alderman Cashin asked right now you have already laid out where the parking is for the events...you have an adequate number of parking.

Mr. Taylor replied in the affirmative.

Alderman Cashin asked if we build a parking garage over and above what that number is, during an event that revenue goes to the City of Manchester is that right.

Mr. Taylor replied in the affirmative and stated we are obligated under the existing agreement to pay for up to 2,000 cars per event. If there are 3,000 cars parked in the city and city facilities we still only pay them based on the 2,000 cars. We have more than 2,000 now so I am making the assumption if we built another garage and it was so successful that it required additional parking that we would not have to pay above the 2,000 cars because that is what the agreement says.

Alderman Cashin stated so our commitment for 2,000 cars and anything above that goes to the City of Manchester.

Mr. Taylor replied in the affirmative.

Alderman O'Neil stated it looks like things are moving forward with regards to a parking garage in the south section of the Riverfront area. That is over and above the 2,000 spaces. If there is a hockey game or concert on a night any revenue from that garage on event night is 100% the City of Manchester.

Mr. Taylor replied that garage was not included in the original deal as my understanding. We could exempt it because we are providing 2,000 spaces in other facilities. That is my opinion.

Alderman O'Neil asked Tom do you agree with Jay on that or do you need to get back to us on that one.

Mr. Clark replied I will take another look at it but as I understand it the attendance at the event of the Civic Center will be based on ...it assumes three people per car and is capped at 2,000 cars. They cannot receive any more revenues than that based upon that formula. If there is another event going on someplace else and we fill another garage over and above the 2,000 that revenue does not go to Ogden.

Alderman O'Neil asked even if they were utilizing a new parking facility that was not included in the agreement.

Mr. Clark stated it does not matter where you park.

Alderman O'Neil stated it is capped. If we have less for some reason, we tear down the Canal Street garage. That number of 2,000 spaces no matter where they are stays is that correct.

Mr. Taylor replied that is in the contract.

Alderman O'Neil asked if we did have an additional facility, any revenues are our revenues.

Mr. Clark replied as long as it is over the set formula.

Alderman Wihby asked if in fact you lost a couple of garages of 200 spaces and you no longer had 200 spaces and that made you fall below the amount of cars that they told you which would be 1,800 instead of 2,000 and those 200 parked in the new garage, you are still paying for those 200 with the turnstile count. If we could say to them we are not going to let you park in these 200 spaces and go further and walk further.

Mr. Clark replied if we build a new garage there is no requirement that we open it up for the Civic Center.

Mr. Taylor stated you could control it by what you charge. For example, you built a new garage you could charge \$6.00 where every place else is \$3.00 and fewer people are going to park there because they do not want to pay the extra money. But the point is we control the garages, we own them, we can set the rates. They have no control over the rates.

Alderman Vaillancourt asked first of all, we keep referring to Ogden Entertainment is it accurate to continue to refer to Ogden Entertainment or should we now be referring to the new company.

Mr. Taylor replied the new entity is Eramark Corporation but I do not believe that actual transaction has taken place yet.

Alderman Vaillancourt asked do you have any idea when it might be taking place.

Mr. Taylor replied in the negative.

Alderman Vaillancourt asked is that the same Eramark that the University of New Hampshire has just released because of failure to perform properly at UNH.

Mr. Taylor replied I have no idea.

Alderman Vaillancourt asked might you want to find that out.

Alderman Pariseau asked why.

Alderman Vaillancourt replied because it is relevant if they are not performing properly at one of the arenas within fifty miles of here would that not be relevant information to the Board and to the citizens of Manchester to know about.

Alderman Pariseau asked who says that they are not performing adequately.

Alderman Vaillancourt replied if UNH has released them we should know why don't you think.

Mr. Taylor stated keep in mind when we did all the due diligence it was on Ogden and not Eramark. This has been a relatively recent event. As far as I know, the transaction has not closed so I cannot answer your question.

Alderman Vaillancourt stated I am not asking you to answer it I am saying don't you think we should get an answer and apparently there is some reluctance to even getting the answer.

Alderman O'Neil stated not to debate my colleague from Ward 8 but I thought the company that did the Whittemore Center was Global Services not Eramark. Secondly, from reading sports pages over the years, Eramark is at Fenway Park and based on what I have read they are supposed to be a pretty solid company.

Alderman Vaillancourt stated if you want I will do the research and provide it to the Board as usual.

On motion of Alderman O'Neil, duly seconded by Alderman Pariseau it was voted to receive and file.

Communication from the Economic Development Director submitting a Spreadsheet showing expenses paid through February 29, 2000 in connection with the approved Phase II Civic Center budget.

On motion of Alderman Pariseau, duly seconded by Alderman Cashin it was voted to receive and file.

Communication from Attorney Daniel Sklar in response to a request for clarification of a statement he made that appeared in the Sunday edition of *The Union Leader* on March 26, 2000.

Alderman O'Neil stated if I understand his response to us, he did indicate if we had entered into a project labor agreement, as long as the price did not change, that was not a problem for the banks. We were kind of led the night we talked about it that it would be a problem and it is too bad we could not get this communication earlier.

On motion of Alderman O'Neil, duly seconded by Alderman Pariseau it was voted to receive and file.

Copy of a communication from Attorney Arthur Greene on behalf of Staples the Office Superstore, Inc. to Attorney Vincent Wenners relative to the City's proposed taking of the fee and leasehold interests at 589 Elm Street.

Alderman Pariseau asked was it rumor or actual fact that the City did in fact reimburse Staples \$250,000.

Atty. Craig replied that statement is totally incorrect. The only one that has been paid has been the owner of the property. The Board of Tax and Land Appeals, which they have the right to do under the Statute which we anticipated they probably would do, ordered the City to deposit the sum of \$250,000 with the Board of Tax and Land Appeals to be used to pay in case there was any claims from anyone else (Staples for instance, Dollar, Auto Parts or anyone else). So far there has been no claim made and there is not one dollar been paid to Staples or any other tenant.

Alderman Wihby asked is it \$285,000 from the purchase price to the owner or is it an additional \$285,000.

Atty. Craig replied it is an additional \$250,000.

Alderman Pariseau asked Mr. Craig why would Staples do anything anyhow. They sat here one evening and said that they were moving anyway even before the City acquired the land.

Atty. Craig replied I just do not know. Our appraiser, as you know, said that their compensible interest was zero and so far they have not shown us any appraisal and we just do not know what their claim is based on even if they have one. As we read the lease, we do not think they have a compensible interest. But they have their own lawyers, matter of fact they have three law firms and they read it differently.

Alderman Wihby asked if we were to pay the \$250,000 could we then go after the owner.

Atty. Craig replied in the negative and stated because our appraiser said that the owner's interest was worth \$4,775,000 and that Staples interest as well as the other tenants was zero so we accepted that appraisal. It was a bonafied appraisal made by a competent appraiser.

Alderman Wihby asked could we go after the appraiser.

Atty. Craig replied in the negative.

Alderman Vaillancourt stated I did speak with the Staples lawyers. This did not come as a result of the generosity of the City to put this \$250,000 away. The Board of Tax adjudicated this and Land Appeals and it was not for everybody it was strictly for Staples. The reason Staples brought the suit is because they claimed and they proved before the Board of Land Appeals that they have a legitimate charge for up to that amount. It is still in the litigation process but you will find that the City of Manchester is going to be paying that entire portion. The reason Staples claimed that they have a greater right to this is because they had improvements to that property. They claimed they had \$250,000 of improvements inside that building. They proved that they had a legitimate right to request this amount and they may not be the only ones there could be others. This entire thing went before the Board of Tax and Land Appeals and the City of Manchester lost and that is why we were forced to put the \$250,000 up and there are documents that spell that out.

Atty. Craig stated all I can say is that I was there and that is not the case. The City did not lose and that money is there. There is a possibility that we may have to pay some of the tenants. We anticipated that beforehand and there is always that possibility but as far as I am concerned the possibility is rather slim. For instance, Staples could not now go up there and say we want some of that money, they could not do it.

Alderman Wihby asked we do not have to act on this, there is nothing that we are waiting for until we get communication from them.

Atty. Craig replied in the affirmative and stated subsequent to that letter we had the hearing before the Board of Tax and Land Appeals and their decision is what counts not what is contained in the letter.

On motion of Alderman Pariseau, duly seconded by Alderman Cashin it was voted to receive and file.

Communication from John Cook requesting to meet with the Board to present his findings on research he recently completed dealing with social, non-economic aspects of two stadiums located in the City of Lowell, MA, and their impact on the youth in that community.

Alderman Wihby asked has anybody talked to him at all. Should we send this to somebody with the Civic Center and have them see what he is talking about.

Alderman Pariseau stated I would send it to maybe the Office of Youth Services.

On motion of Alderman Pariseau, duly seconded by Alderman Cashin it was voted to send the communication to Youth Services and have them contact Mr. Cook.

Alderman O'Neil stated I do not understand why Youth Services.

Alderman Pariseau replied he did a study relative to having an ice arena in Lowell and the effect it would have on the youth of that community. I think maybe Regis Lemaire ought to discuss it with him.

Alderman O'Neil stated we got the letter of May 12th from Mark Taylor. Mr. Levey, who do you work for technically. I know you work for Shear Development but who on the City side is your contact person. I thought Shear had the agreement with the Housing Authority and I was interested to read the agreement is directly with the City.

Mr. Levey replied the contacts I have been making today are through the Board and weekly updates and Alderman Wihby and the Mayor is whom I have been in contact with.

Alderman O'Neil stated your main contacts are the Office of the Mayor and Alderman Wihby as Chairman of the Committee.

Mr. Levey replied in the affirmative.

Alderman O'Neil stated I thought they were working for the Housing Authority. Mr. Taylor's letter clarified that. Can we have some report from you in the immediate timetable on the contaminant problem down on the site.

Mr. Levey replied in the affirmative.

Alderman O'Neil stated I had asked Ken Edwards for that and he said he would get something out but he never did and now I understand that I should not have been calling Ken. It would be important to get to the entire Board of the status and when you hope it would be cleared up.

Mr. Levey stated I would have that to you by next Wednesday.

Alderman O'Neil stated that is fine. Mr. Levey I do not think there is going to be anything as too much information coming to us. Just to go back to the point so that we are not getting phone calls from others or reading it in the newspaper. We would really appreciate your keeping the peace in a lot of areas if you can communicate with us.

Alderman Wihby stated you could give an update as of today. My understanding is that there is nothing there that you were not expecting.

Mr. Levey stated there is nothing that we did not anticipate. The report has been filed with DES on the management of the soils that are contaminated. There is one hot spot. There are some tanks we have found. Some of them we knew about beforehand. We have also found out that we are qualified for some State assistance on the removal of those tanks. The testing of the soil continues on a daily basis. Right now I am anticipating the cost probably not to exceed \$150,000 to remediate it.

Alderman O'Neil asked that would come out of contingency or was that budgeted.

Mr. Levey replied it would come out of contingency.

Alderman Wihby asked it was budgeted in contingency to assume some of that.

Mr. Levey replied in the contingency we have included monies for most of the facets. Most of the money in the contingency is for the early on on the project where you have most of your problems below grade and your foundations. So I had anticipated that, actually I had a little bit more.

Alderman O'Neil asked Mr. Levey the Housing Authority was good at providing us a weekly report. It got less and less information as time went on but would it cause hardship to you to ask you for a weekly summary of activities.

Mr. Levey replied I have been doing that and I turned it into the Clerk's office today for distribution. I did one last week also and that one I do not think made it in time for distribution.

Alderman O'Neil asked so your intent is to attempt to get to the Board.

Alderman Pariseau stated Mr. Chairman I just want to commend the people involved in the agreement between the contractor and representatives of organized labor and Mr. Bill Craig. I would like this administrative procedure that we received dated May 18, 2000 made part of the Committee's records.

Alderman Wihby stated my understanding was everybody agreed to this. This was worked out between Gilbane and the unions and everybody is happy with this.

Alderman O'Neil stated Tom I am not cutting you out of it but the communication came from Bill Craig.

Atty. Craig stated it was worked out by Gilbane and by representatives of the union labor and there were others involved too but that is the bottom line. It is more of a clarification of process and put some teeth into it. If all else fails, it comes back to this Committee so that it does not detract from the responsibilities or powers of this Committee. You still have final supervision and final say.

Alderman O'Neil stated a couple of points in here it talks about reports and I am just wondering if we could get copies of those. I am on the second page. "In addition, the plan will address the format and content of monthly labor reports that will be submitted..." I do not know who they are going to.

Atty. Craig stated I think they are going to Mr. Levey.

Alderman O'Neil stated at some point could we get a copy of those. Down the compliance monitoring "a summary report of all affirmative action activities and results will be included in Gilbane/Harvey's monthly report to the Manchester Housing and Redevelopment Authority" again could that go to the Board of Mayor and Aldermen. Any reports will be helpful in the process.

Atty. Craig stated at this point you from now on it is a construction matter and that is the goal we had all hoped for to get rid of the lawyers. Those reports, I am anticipating would go to Mr. Levey.

Alderman O'Neil asked so on both of those, Mr. Levey, there is no problem forwarding them at some point to the Board of Mayor and Aldermen. Thank you.

Alderman Wihby asked does anybody have anything else.

Alderman O'Neil stated I want to commend everybody for attempting to reach an agreement on this. It is certainly a step forward and I appreciate it.

Alderman Wihby asked Peter everything you send to the Aldermen make sure you send to the City Clerk's Office.

City Clerk Bernier stated for the record so we can place it in a folder.

Alderman Wihby asked have we heard anything on naming the team. No one is saying anything.

Alderman Vaillancourt asked I just want it made clear that we keep hearing these statements that everything is right on schedule. I presume meaning that everything is right on schedule so that we are open by the November 2001 deadline so that we do not forfeit one million dollars to the hockey team owner. Is this Board to be assured that by saying everything is right on schedule we are not to have around the clock building being done at midnight when we come to be doing this next April and May. Is that assurance being made to this Board or are we going to be told later that only to maintain our schedule are we going to have to have building in the middle of the night there.

Alderman Pariseau stated that question is inappropriate.

Alderman Vaillancourt stated I do not believe it is inappropriate at all or I would not have asked it. It is very appropriate to the people who live in that area.

Mr. Levey replied we are on schedule.

Alderman Vaillancourt asked and the second part of the question is can we expect the assurance that there will not be building at 10:00, 11:00 or 12:00 at night next spring.

Alderman Wihby replied I do not know that anybody could assure you that but I am sure if that came about that point would come back to this Committee.

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

A True Record. Attest.

Clerk of Committee