

## **SPECIAL COMMITTEE ON THE CIVIC CENTER**

**June 18, 2001**

**5:30 PM**

Chairman Wihby called the meeting to order.

The Clerk called the roll.

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

Messrs: P. Levy, Lt. Tracy, J. Taylor, S. Ashooh, T. Arnold

Chairman Wihby addressed Item 3 of the agenda:

Review of Change Orders 30, 32, 33 and 34.

Mr. Levy stated Change Orders 30, 32, 33 and 34 are ones that I have executed, which is within my authority. The first one, Change Order 30 is a credit from the GMP for the OCIP program. Change Order 32 is an add, which come out of the contingency. This is increasing the light fixtures in the sports lighting package to meet the necessary foot-candles, repair the concrete pilaster with some additional horizontal support to protect from additional movement and modify two interview rooms into one room as requested by us at SMG. Change Order 33 is an add of \$18,521. This cost comes out of the contingency. This covers the additional hand sinks requested by the Health Department in the commissary and concession areas. We have also added some additional seats in three locations which did not have seats before which will produce additional revenues. Change Order 32 if an add of \$20,221 and this cost comes out of contingency. This covers the cost for providing power to the retractable seating and power for the directional signage in the concourses. This also provides a credit for a different texture on the ceiling tile in the concourses and suites. Are there any questions?

Alderman Pariseau asked Change Order 32, why do we have to pay for repairs to a concrete pilaster if you are still building the thing. Why are we paying for something that is already broken?

Mr. Levy answered this is an issue where we are not sure what caused the cracking of the pilaster. It happened during the winter. We don't know if it was an unusual movement due to the temperature of the building because the inside was not heated yet totally and it was cold outside. We are not sure what created the crack

in the pilaster but to be on the safe side they added the additional horizontal support.

Alderman Pariseau asked what is a pilaster.

Mr. Levy answered it is a column that is basically made out of poured concrete and the structural steel column sits on top of it and on one side of it is where it pulled away from the foundation wall.

Alderman Pariseau asked shouldn't we have asked the engineers or whoever is involved in this construction to find out if it was the weather or if it was poor workmanship or whatever before we spend this money.

Mr. Levy answered as I said we are not exactly sure what created it. It could have been during the erection. It could have been the cold weather. It is very hard to pinpoint what really caused it and this is more of a safety factor than anything adding that additional steel.

Alderman Pariseau asked on Change Order 33 it appears that we are passing the buck saying we added the three sinks because of the Health Department. Why wasn't this thought out before the Health Department came in and made their inspection? Isn't it passing the buck?

Mr. Levy replied no. The Health Department had conducted a preliminary review. Once the drawings were completed a set of drawings was again sent over to the Health Department and upon further review they requested that these additional hand sinks be added.

Alderman Pariseau asked for \$18,000.

Mr. Levy answered well there were also the additional seats in there.

Alderman Pariseau stated but I think your support just showed the \$18,000 for sinks. They didn't mention anything about the extra seats. In talking about the extra seats, how does that increase the total capacity of civic center?

Mr. Levy replied let me back up to the sinks. The sink add was \$6,879 and that is basically for the additional plumbing, additional drains and additional sinks. The additional seats at the three locations were \$11,642. The bulk of this really was a railing. We already own the seats in the GMP but we didn't own the railings that would have to go in front of the seats. This added 36 seats to the total account so we felt it was beneficial to add these.

Alderman Hirschmann asked on Change Order 32, if we approve this \$12,000 which you are asking us to what kind of guarantee do we get out of the work. Engineers are saying to add this steel. Is it guaranteed by Gilbane because at this point there is no guarantee from them?

Mr. Levy answered the guarantee as you say...it was originally designed by the architect and structural engineer. Again, we are not sure what caused the problem but the structural engineer added this additional steel to be on the safe side to prevent any further movement whether it was from the cold weather or some unusual movement.

Alderman Hirschmann stated so it sounds like the structural engineer is going to be on the line for this. Six months from now if that thing moves it is a big problem.

Mr. Levy replied then it would be a problem, right.

Alderman Hirschmann asked is he sending us a letter saying if you add this \$12,000 this is going to correct the problem.

Mr. Levy answered in a round about way what he sent is the design to correct it, which is his stamp of approval that this is what is required.

Alderman Hirschmann asked does it have a seal on it.

Mr. Levy answered I would assume...everything he does in the drawing is stamped and sealed.

Alderman Hirschmann stated I didn't make too much of a problem out of this \$12,000 but Alderman Pariseau is right. How come Gilbane didn't meet us halfway and how come they didn't cover half of that if it is questionable whether it was our fault or their fault?

Mr. Levy replied again Gilbane doesn't have any responsibility to it without...it if was faulty construction that would be a different story but we don't believe it was faulty construction.

Alderman O'Neil stated when I am looking at the change orders at the bottom there are three sections – architect, contractor and owner. Why are some of them signed off by three people and some only by two?

Mr. Levy answered in Change Order 33 the engineer was not involved in this one.

Alderman O'Neil stated I have Change Order 30 in my hand.

Mr. Levy replied okay on Change Order 30 the architect was not involved in that.

Alderman O'Neil stated the only reason I ask that is because there is a line up above it that says not valid until signed by architect and owner.

Mr. Levy replied right.

Alderman O'Neil stated but yet it is not signed by the architect.

Mr. Levy replied he is not involved in the OCIP and I did not write on there "does not apply" on the Change Order.

On motion of Alderman O'Neil, duly seconded by Alderman Pariseau, it was voted to approve Change Orders 30, 32, 33 and 34.

Chairman Wihby addressed Item 4 of the agenda:

Review of Change Orders 31 and 35 for authorization to execute for incorporation into Contract Documents.

Mr. Levy stated Change Order 31 the greatest share of that was the importing of the back fill for the site. We took a very conservative approach. We hauled off as much of the material as we were allowed to haul off knowing that it is less expensive to bring in import fill than to take it to a treatment facility. Of the \$124,000 I believe \$84,000 was for importing fill back to the site, clean fill. The others were the main and upper concourse handrails needed to be modified to satisfy and OSHA requirement. This was a toe kick that was not there. Although it is not required by code, OSHA does require a toe kick. The fear is again that something will get kicked over the edge and land on somebody. It was a liability issue. The balance of these are coordination issues from the drawings between the architecturals, the structurals, the mechanicals and the electrical.

Alderman O'Neil moved to approve Change Orders 31 and 35. Alderman Cashin duly seconded the motion.

Alderman Hirschmann asked did he cover Change Order 35.

Mr. Levy answered no. Change Order 35 is a long, hard negotiation with the electrical contractor. What this change order does not reflect are the credits that we have already taken so it looks worse than it is. We have already taken I think close to \$100,000 in credits from the electrical contractor so the net added is not

\$226,000, it is around \$126,000. Again, this was the difference from when the drawings were issued for bids through the 100% drawings. These are the items that were either missed or were not shown on electrical but shown somewhere else or you needed a hook-up for something that they didn't pick up so it was a coordinating issue. This again is what happens when you go with the early drawings.

Alderman Hirschmann asked how come on this one pound of paper that you sent me over the weekend there is nothing backing up the electrical at all.

Mr. Levy answered it is very thick that is why I didn't send it.

Alderman Hirschmann stated you sent me change orders on \$200 worth of sheetrock and \$100 worth of this but on \$226,000 I got nothing. I want to ask you some questions. How many other vendors...this is \$226,000 for electrical. Is plumbing coming back with a number? Is HVAC coming back?

Mr. Levy replied no. This is the last of the 100% drawing coordination issue.

Alderman Hirschmann asked why are they the only ones. Why are they getting an extra \$250,000? I don't get it.

Mr. Levy answered the plumbing has gotten adds and HVAS has gotten adds previously.

Alderman Hirschmann stated you are blaming this on drawings that weren't 100%. If drawings weren't 100% then there should be a plumber coming back saying there was a pipe missed and there should be an HVAC guy coming back. There should be all kinds of people coming back. How come the electrical is such a mess? \$250,000 is a lot of money.

Mr. Levy replied the electrical isn't really any worse than any of the others were. We already paid the HVAC and the plumbing.

Alderman Hirschmann stated the plumbers didn't come back.

Mr. Levy replied yes they did.

Alderman Hirschmann asked for how much.

Mr. Levy answered it was \$100,000 for Denron, which was the plumbing contractor and I think the HVAC was \$400,000 to \$500,000.

Alderman Hirschmann stated I have been happy through this whole process until I saw this change order. Seeing this change order really kind of disappointed me. Gilbane makes a profit on all of this. Gilbane gets, out of the \$226,000, they get \$20,000 for overhead, \$4,950 for a fee and another \$2,000 to cover a bond. We kicked in what \$100,000 for heat over there? You said this was a negotiation. How did we negotiate? Is this a good deal?

Mr. Levy responded this started out a whole lot more.

Alderman Hirschmann asked what was the beginning cost. There was a proposal for \$500,000 and you got it down to \$250,000?

Mr. Levy answered if I recall it started at \$286,000.

Alderman Hirschmann asked did that \$286,000 include their fees or was that just electrical.

Mr. Levy answered that was just the electrical. We are down to \$226,950 including the fees.

Alderman Hirschmann asked is this final electrical price. Are there going to be other fees for electrical? Is this it?

Mr. Levy answered right now we have very little outstanding. If there are some issues that crop up in the field during construction where something doesn't work the way it was anticipated it was going to work but nothing of this magnitude. We have now finished all of the so-called big hit change orders.

Alderman O'Neil stated I just want to make sure I understand this correctly. If we weren't trying to hit a target date for the hockey team of mid November this project probably would have been pushed out a little bit longer, correct?

Mr. Levy replied yes.

Alderman O'Neil stated in all fairness to the contractors who bid this work, most of them were looking at incomplete prints.

Mr. Levy replied that is correct.

Alderman O'Neil stated we have had changes on the pre-cast for the seating. I am just guessing the design probably would have been pushed out another six months and maybe the construction time frame.

Mr. Levy replied correct. It would have been pushed out longer and the construction would have been pushed out longer.

Alderman O'Neil stated so they would have had a final set of prints to actually bid on.

Alderman Hirschmann stated and maybe another vendor would have won the bid.

Alderman O'Neil stated they all took the same chance right. Every contractor who bid their bid with the same set of prints.

Alderman Hirschmann replied but one guy gets to come back to the table and ask for \$250,000. I don't think it is right.

Alderman O'Neil asked were there changes in most trades. I can remember you coming back for pre-cast changes...

Mr. Levy interjected there were pre-cast, structural, a lot of structural changes. As I indicated the plumber came back. The HVAC came back. Most of your major trades have come back for coordination issues.

Alderman Hirschmann asked how come there wasn't a change a week being brought to us or a change a month. How come it is a lumpsum at the end?

Mr. Levy answered again that was a timing issue. They kept...there was one issue. I think this one we started dealing with, if I am not mistaken, back in March. We have gone back and forth and we have accepted a great deal of it obviously but there was a great deal that was not accepted that we didn't feel was correct in their request that should have been included. The drawings indicated it should have been included. It should have been in the scope of work. It took a long time to put it together otherwise it would have been here a lot sooner.

Alderman Hirschmann asked is this their final allocation.

Mr. Levy answered yes with the exception of some small items, whether it is a scope change if you need an outlet here or there or if they run into a problem in the field where something doesn't fit where it was anticipated it was going to fit and it has to be relocated or something like that. That is the end of the major change orders.

Chairman Wihby called for a vote on the motion to approve the change orders. The motion carried with Alderman Hirschmann being duly recorded in opposition.

Chairman Wihby stated I notice that there is a thing under Change Order 35 but it is not listed so we will go to 4A before we go to Item 5 on relocation costs. Do you need a vote on that?

Mr. Levy answered yes I do. It didn't get on the agenda but if you will go to the last page under Change Order 35 it says the review and approval of relocation expenses for Gulf South Medical Supply and Sports Fans Haven/Collector's Heaven. Under the cooperation agreement between the City of Manchester and the Manchester Housing and Redevelopment Authority it is required that the relocation payments require approval by the municipality.

Alderman Pariseau asked what is Staples waiting for.

Mr. Levy answered we are not sure. They do have a case. A hearing is pending up in Concord on their tenant improvement. They started responding to the relocation and now have stopped responding. We are not sure why. We are guessing that they are waiting to hear on the outcome of the hearing.

Alderman Pariseau asked can we give Staples and the other two names tenants a date certain that if we don't hear from them by July 30.

Mr. Levy answered I think with Staples yes we can but the other two have been given the dates and they have gone beyond those dates so we have taken the position they have none coming.

Alderman Pariseau asked even if they were to send in a request tomorrow you would not recommend that they be reimbursed.

Mr. Levy answered no.

Chairman Wihby asked when is the Staples date. Are you going to send them a date?

Mr. Levy answered we have not sent Staples a date.

Chairman Wihby asked are you going to.

Mr. Levy answered if that is what you want.

Alderman Lopez asked can one of you explain to me because I think I remember some conversation somewhere along the line that we are not obligated to pay relocation and that is why Staples went to court and now we are going to authorize two people to be paid. Isn't that jumping the gun?

Mr. Levy answered the issue in Concord with Staples is not relocation or the actual reimbursement for relocation. It was reimbursement for the tenant improvement that they claim they made on the property and that is what that hearing was scheduled for. The attorneys now are in the process of taking depositions and once the depositions are in they will proceed with the hearing, which I assume should be fairly quickly now.

Alderman Lopez asked are we obligated to pay relocation pay to any of these people.

Mr. Levy answered no.

Alderman Lopez asked then why are we.

Mr. Levy answered because it is fair and it is reasonable. We did have \$150,000 in the budget to pay for relocations and that is why we are recommending it.

Chairman Wihby asked does the case have anything to do with...Alderman Pariseau might be making a motion at the end of this to set a date with Staples. Does the court date have anything to do with why we shouldn't be doing that?

Mr. Levy answered I can check that with the attorney who is handling the hearing. Right now the attorney for Staples has called the Housing Authority attorney and has requested to settle. The Housing Authority attorney said there is no much to settle because our appraiser says it is worth nothing. I think that is about the time that they had stopped communicating with the Housing Authority. That may be a good question to ask of the Housing Authority attorney.

Chairman Wihby asked so should we wait until the next meeting and you can come back with an answer on that.

Mr. Levy answered yes.

Alderman Pariseau asked in the meantime would it be appropriate if we set a policy that the City not include Staples as a vendor for office equipment and supplies. Two can play that game. If they are giving the City a hard time why should we patronize them?

Mr. Levy stated prior to making that motion, this also got left out of the handout. This was a letter that was written by Michael and Karen Grady to the Board of Mayor and Aldermen regarding relocation of their family business.

Chairman Wihby asked is this a third one.

Mr. Levy answered no this is part of it that got left out of the package.

Chairman Wihby stated it says they are looking for \$13,239 and that is what we gave them. What else are they looking for?

Mr. Levy answered they are actually asking for close to \$54,000.

On motion of Alderman O'Neil, duly seconded by Alderman Cashin, it was voted to approve the relocation expenses for Gulf South Medical Supply and Sports Fan Haven/Collector's Heaven.

Alderman Pariseau moved to receive and file the letter from Michael and Karen Grady. Alderman O'Neil duly seconded the motion.

Chairman Wihby called for a vote. There being none opposed, the motion carried.

Chairman Wihby asked when is our next meeting. I thought it was going to over at the Civic Center?

Mr. Levy answered we can't. It is a public meeting and we have to allow the public into the building. We can do a tour.

Chairman Wihby asked can we do it before the next meeting. We could start the meeting at 6:30 PM or something and go over at 5 PM or 5:30 PM. How long is it going to take to walk through?

Mr. Levy answered about a half an hour.

Chairman Wihby addressed Item 5 of the agenda:

Communication from the Chief of Police regarding the use of Parking Control Officers during civic center event and non-event nights.

Lt. Tracy stated I believe you have a letter from Chief Driscoll in your agenda packet.

Alderman O'Neil stated I happened to see the posting for the part-time positions. What is going to happen if you don't...the rate of pay wasn't exactly every high so what is going to happen if you are not able to fill those part-time positions? Is there a contingency plan?

Lt. Tracy replied yes. We would enforce it with overtime initially and then probably look to either...

Chairman Wihby interjected we already technically passed the Chief's letter. We passed the \$67,000 in the budget and counted the revenue already. What are you looking for us to do?

Lt. Tracy replied I think I am just here to answer any questions you may have.

Chairman Wihby asked so the plan is the same that we had adopted in the budget.

Lt. Tracy answered yes, Sir.

Alderman Pariseau asked what is the difference between a parking control officer and going with an auxiliary police officer.

Lt. Tracy answered we currently don't have any auxiliary police officers.

Alderman Pariseau replied but when the Chief was here during the budget presentation I asked if instead of using full-time police officers if he could go the auxiliary route.

Lt. Tracy asked did he answer. I don't know because I wasn't here.

Alderman Pariseau answered he said they were talking about it.

Lt. Tracy stated to the best of my knowledge when we became accredited there were some issues with the part-time police officers and now accreditation standards have allowed some avenues for accredited departments to have auxiliary police or whatever you want to call them so that is being explored as we speak but I don't know where it stands.

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

6. Use of the Middle Street Parking Lot during Civic Center Events.  
(Tabled 05/07/01)

This item remained on the table.

7. Use of So. Commercial Street/Rubenstein Lots during Civic Center Events.  
(Tabled 05/07/01 pending Solicitor's report.)

This item remained on the table.

Deputy Solicitor Arnold stated Mr. Clark has a meeting set-up for Wednesday to deal with various parties on the Rubenstein and the Riverfront parking lot. I imagine he will be reporting back to you after that meeting.

Alderman Pariseau asked is that with the Singer Park people.

Deputy Solicitor Arnold answered they are included, yes.

Alderman Pariseau asked how about the civic center.

Deputy Solicitor Arnold answered I believe they are included, yes. I know that Jay Taylor is going to be at the meeting.

Alderman O'Neil stated there seems to be a lot of confusion about what has been approved to date for parking and I believe the Traffic Director has a list of that. I think it is important that we understand what the various committees have been doing because I don't think it is clear to all of the Aldermen and if it is not clear to us I am sure it is not clear to the public. He assured me that he is going to get that out to all Aldermen. We are not going to talk about it tonight because I gave Alderman Pariseau my word. Another thing I wanted to bring up is a letter that I got from a Randy Huff that owns Rachel's Corner Coffee. Who is responsible for setting up the perimeter and have they discussed it with any of the business people? Is it going to come back to this Committee before anything final is done?

Deputy Clerk Normand stated I believe that Jay Taylor is going to put a package together with some stuff that we have researched and get it to the Aldermen later this week or early next week and then set-up a meeting to discuss those issues.

Chairman Wihby stated I know that Bob MacKenzie wants to come in and go over the whole plan and show us what they had been doing with Planning.

Alderman O'Neil asked so before there is any final recommendation it is going to come back to this Committee.

Deputy Clerk Normand answered right it will come here first.

Alderman O'Neil stated if you read this letter it is already a done deal but that is not true.

Deputy Clerk Normand replied no; nothing has been discussed at this point.

Alderman Levasseur stated we have a little bit of a problem with these vendors because in the contract that we signed with SMG there is a 1,000 foot ordinance where vendors cannot be within 1,000 feet. We are sitting here and obviously since I am downtown I am getting inundated with all of these calls. I met with Mr. Huff personally and a bunch of people have been calling me. Dick Anagnost bought a building across the street and he can't put a hot dog stand or a sausage cart in front of his building because that is in the contract. I don't know where we stand legally on that but if the contract takes precedence we are not going to be able to do much. I would have to abstain from that obviously because it is in my ward and I am in the food industry.

Chairman Wihby stated it has to be 1,000 feet. Mr. Arnold, is a contract a contract so it has to be 1,000 feet?

Deputy Solicitor answered it if weren't 1,000 feet you would be in breach of the contract and it would have some relatively serious consequences I would think.

Alderman Levasseur stated there is also another ordinance in effect that contradicts the contract that was made with SMG. The contract specifically states that if you want to put something in front of a building as long as you have permission from the owner of that property then you are allowed to. In other words, let's say Dick Anagnost is within the 200 feet zone and he owns the building. If he wants to put something in front of his place he can because he is the owner of the property. So within that 1,000 feet we have a competing contract term and we also have a competing ordinance term.

Alderman Hirschmann stated it is an overlay and you can't do it.

Alderman Levasseur replied I understand that the contract is probably going to take precedence over the ordinance but I think we are also going to have to work within the ordinance.

Mr. Taylor stated I think we are getting confused on terms here. I believe the contract with SMG simply says that we are not allowed to have street vendors on the civic center site, but what Alderman Levasseur I believe is referring to with the 1,000 feet is the current City ordinance, which deals with peddlers. There is already a City ordinance that says there is a 1,000 foot restriction around public assembly facilities, which is what I believe he is referring to. That has nothing to do with the civic center per say other than the fact that it is a public assembly facility.

Alderman Levasseur asked so the contract itself doesn't specifically state 1,000 feet it just says within the perimeter, which means along Lake Avenue over to Auburn and just that little corner area so what we would have to do in order to protect the people who own their own properties is to change the ordinance from 1,000 feet and I don't know if that is what you want to do. There has been a lot of people calling me on this issue that would like...especially this guy Mr. Huff. He pays a rent inside the Center of NH and he wants to just bring his hot dog cart right onto the street but he can't do that so this is going to be something that we are going to have to determine as a group.

Chairman Wihby stated I think the Administration Committee is dealing with that.

Mr. Ashooh stated regarding contracted vendors Tom mentioned the fact that it could have consequences if you impact the civic center's ability to control vendors. It is not necessarily a dollar thing. There is a real concern for vendors to sell bootleg merchandise and I know in conversations we had with the City Clerk's Office that touring shows when they come to cities there is a large black market of pirate CD's and T-shirts and things like that. Those are revenue items within the civic center that are important for the promoters to make a profit on their building and if you have vendors outside selling illegal merchandise, those shows will not come back to town. In discussions with the City Clerk and the Police Department, there is a need to be able to control vendors and monitor what they are doing so that they are not breaking the law and not jeopardizing our ability to book acts in the civic center. That is kind of an overlay as well. The 1,000 foot barrier is around municipal buildings. No vendors without City permission within 1,000 feet of a building. The contract gives SMG full control of all concessions from the curb cut in so anything from the curb on the civic center site in but then there is a concern on policing vendors in town who may violate the law by selling bootleg merchandise.

Chairman Wihby stated that has to go to Administration. Has anybody been doing anything with that?

Mr. Ashooh replied I think Matt has been doing some research on it.

Deputy Clerk Normand stated we have a package and because it affected the civic center in talking to Jay he thought that maybe you guys would want to look at some of those issues first and then it will go to the appropriate committees.

Alderman Levasseur asked have you checked around with the other civic centers.

Deputy Clerk Normand answered I have.

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There being no further business, on motion of Alderman Pariseau, duly seconded by Alderman O'Neil, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee