

SPECIAL COMMITTEE ON THE CIVIC CENTER

January 14, 2003

Chairman Wihby called the meeting to order.

The Clerk called the roll.

Present: Aldermen Wihby, Guinta, Sysyn, Garrity, O'Neil

Messrs: T. Clark, K. Clougherty, S. Ashooh, T. Bechert

Chairman Wihby stated I am going to take Item 4 first:

Copy of a communication from Kevin Clougherty, Finance Officer, relative to the Verizon Wireless Arena Parking Reserve Fund.

Communication from Alderman Thibault relative to his proposal that a \$1.00 surcharge be added to all civic center events.

Chairman Wihby called Kevin Clougherty forward and stated basically your letter is addressing Alderman Thibault's concern about the \$1 surcharge, which is Item 3. We will actually take Items 3 and 4 together. Can you talk about the letter we got?

Mr. Clougherty stated I will speak to both. One was, the question was about the parking reserve fund. Alderman Lopez had asked about it. I gave him a letter along with a copy of the relevant section out of the management agreement. If you look at that agreement it says that there is going to be a parking reserve fund but it had to be funded from specific sources only. It couldn't be funded from general revenues of the building or from proceeds from bonds. It had to be funded just with excess naming rights dollars or money from the capital campaign. Now that we have closed out the project and that project is completed, we are in a situation where the reserve fund really can't be funded by any of those sources. I think that is kind of a dead issue at this point. The other item with respect to the surcharge is could the surcharge somehow be used for that and the answer to that is also no because the management contract dictates what specific funds only can be used to fund the reserve. The surcharge letter...I have a copy of something here I would like to hand out if I could. It is a copy of a letter that I requested awhile ago from Bond Council that lays out some of the issues that we have talked about several times with the Committee. I think it is important...if you can just take a look at the sections...I don't know how the copying came out but I tried to

underline the relevant sections of the letter. I want to make sure that everyone can read the underlined sections in paragraph three. The Federal tax code provides that if such revenues are received by the City the MHRA bond would become taxable. Basically what it is is you built a building and dedicated the revenues to that and in order to preserve your taxable status as a bond you have to allow the building to operate as somewhat of a not for profit with the building revenues flowing through or cascading through the different pockets that we set-up in the management agreement. If you were to try and take out of that building big sums of revenue, you would violate the covenants of the tax-exempt requirement of the bond issue and we would suffer some taxable consequences on that. I think there is some misperception that this building can be a cash cow and generate a lot of money. That is not what the Board asked us to structure and that is not what you have. The benefit that you get is from the people and the value of the buildings around it and the assessed valuation that will come from that. It is not from direct payments from the arena. You are allowed to receive some small amounts in that regard but they are limited. If you put in a surcharge and thought that you could just take that money and collect it out of the cascade of funds, the banks, the IRS and other are going to tell you that you cannot do that. That is what Bond Counsel is telling you here. You have to follow the dictates of the contractual arrangements that you entered into at the time.

Chairman Wihby asked Solicitor Clark to come forward. Alderman Thibault has talked to you about this issue and you have seen what Kevin handed out. Do you feel the same way?

Solicitor Clark answered I have read the letter from Rick Manley and I agree with his conclusions. When you set this up as a tax exempt project you have to follow certain mandates and if a surcharge is applied you just can't take the revenues out, you have to follow the cascade of funds that was developed with the project.

Chairman Wihby asked so as far as what Alderman Thibault is asking us to do it is in both of your opinions that we can't do it anyway.

Solicitor Clark replied well there is a management agreement. You can't do it unilaterally. You have to have the approval of SMG to put a surcharge on. Even if they did agree to put a surcharge on, the revenue doesn't come directly back to the City. It has to flow through the process.

Mr. Clougherty stated remember the cascade of funds is that it goes through CIP and all of those other various levels to make sure that the building has a certain amount of reserves to operate in difficult times. That was part of the planning process and it is all predicated on the assumption that the Board didn't want to suffer down the road any operating liability. We built in these things and our

agreement with the manager is predicated on the fact that they won't come back to the City for dollars. If you start trying to extract those dollars you violated those agreements and you start to suffer the taxable penalties for that. We would not recommend that you go down that path. I think we have been consistent on that when we have talked to the Board and to the Committees over time.

Alderman O'Neil stated in my opinion the real issue here is that at some point and we could probably try to dig out every document that was available at the time but there was some discussion from the Board and possibly even a vote about this additional surcharge. For some reason, that was never carried out in negotiations and as we were in the approval process it just got missed and I don't know why but I will say that I appreciate the time the staff has put into this. It is what it is. We must keep in mind that SMG inherited a contract. There are probably some things that Tim wishes were not in there that are that he has to live with. It is what it is. We can't do anything about it. There seems to have been at one point a little breakdown in communication between the Board and staff many years ago. I can't prove that. There is some documentation that might support that but we are kind of beating a dead horse with this thing. The one thing and Tim and I have talked about this, if there is a way and I don't know how we could do it but that we could help with some of the support services like when we get a lot of snow having Frank's department do some clean-up around the arena. I hear comments about some lack of police. You used to see a police officer regularly at Chestnut and Lake and Merrimack and Elm and the public noticed that but the bottom line is there is no money to pay for them now. I wish we could somehow come up with a way to pay for some of the little additional things that we were able to do early on but because of our operating budget constraints we are not able to perform anymore. I would ask staff to maybe work with Tim to see if there is. I am not sure there is any way to do it other than we just step up to the plate and find some money to do it. I do hear comments from people that they miss some of those little things that were done early on outside the curb line of the arena. I am not sure it is SMG's responsibility. I think it is the City's responsibility so I just want to say that.

Alderman Shea stated at one time the MTA was providing transportation. I know it has nothing to do with this particular point here but is that still being provided, Mr. Chairman?

Chairman Wihby replied yes.

Alderman O'Neil stated yes but I think that has even been scaled back. Right off the bat there were some great things going on in supporting the arena and I think because of operating problems the City has had to cut back on those. Again, I

wish we could find some way of doing those little things that made a difference that we used to hear positive comments about.

Alderman Lopez stated finally after about six months we get the document in front of the Committee and I think that is all we were asking for instead of verbal communication because verbal communication sometimes gets misunderstood. In reference to the \$1 surcharge and what has been said the documentation is there and I won't repeat it. In reference to Item 4, to me it is an entirely different issue – the parking reserve fund. Even though it wasn't done the Chamber of Commerce and the Manchester Development Corporation was responsible to insure that this was done. Now I think that we have to have some type of negotiation to make sure that we get that \$250,000 because that was the agreement and in my opinion for whatever it is worth I think it has to be done in future years to make sure that we get that \$250,000 that they allocated and said they would do in their legal contract. Now if Tom Clark says that they are not legally bound and the Finance Officer is saying now that the civic center is built the money was supposed to be there, somebody didn't do their job. What are we going to do about it?

Solicitor Clark stated the contract states that there will be a parking reserve fund and that it will be funded through certain sources. If there are no sources there then you don't fund it. It is not required under the contract to be funded to 100%. It was required to be funded up to \$250,000 if there were revenues. There were three sources outlined in the contract – excess naming rights, advertising and the capital campaign. As I understand it, the capital campaign...I don't know where that stands and we would have to ask the Chamber but if they do conduct a capital campaign and make money on it this is where it goes.

Alderman Lopez asked aren't they supposed to though.

Solicitor Clark answered they stated they would. There is no contract with them that they have to do it. This contract here with SMG that sets up a parking reserve fund says that if they do do it that is where the money goes and that is how it would be funded if we were going to fund it.

Alderman Lopez stated I surely don't read the contract that way but I will take what you are saying. I think Skip Ashooh was raising his hand back there and maybe he would like to comment since he was a key player in bringing this to our attention when we signed the contract.

Mr. Skip Ashooh stated first of all the reference to the Chamber of Commerce is incorrect. There was no one ever present from the Chamber of Commerce to sign that document. It was put in in error and that we can get in writing from those who drafted the document. MDC was charged with running the capital campaign

and I was going to be in charge of that capital campaign. The capital campaign was conceived and inserted into the document as a mechanism by which we could raise additional money to fill a funding gap if we ran short on construction budget. As you are probably aware, we finished the building thanks to the good work of a lot of people on time and significantly under budget, therefore, a capital campaign wasn't needed to fill any gaps. Since there was no capital campaign, there were no excess funds to go to the parking reserve. That was all part of the construction project. The capital campaign was conceived just to fill a gap in case we needed more money. If you recall, there was no way to go back to the City for additional funds if the building ran over. That is why the capital campaign was put in place. If we did raise money and we didn't need it then it would have been funneled through the parking reserve, you are absolutely correct.

Alderman Lopez stated I just don't completely understand the Finance Officer's response about the parking reserve fund and now we are talking about capital and if the capital campaign was done we were going to get a parking reserve fund. I read it plain and clear from the document that the Alderman from Ward 2, Alderman Gatsas, initialed at the 11th hour and in reference to the parking reserve fund it was supposed to be established and I don't remember anything in there about capital campaigns or any of that stuff. There was \$250,000 that was supposed to be there when the civic center opened and it wasn't there. Now we are throwing words back and forth but with all due respect it is a parking reserve fund of \$250,000 and that is what the Finance Officer has indicated in the letter. I am getting mixed vibes here.

Mr. Clougherty stated I think what Skip is saying is accurate. At the time there were going to be different sources of funds for this project and there was a capital campaign...if you read all of the documents together and these documents are four volumes high, one of the alternatives was to have a capital campaign to provide dollars to do the building. As Skip said the resources we had were sufficient to cover the cost of the building and that wasn't needed. Because they didn't do the campaign in general, there was no money to put in this reserve fund. As I wrote to you, the reserve fund can only be funded from certain particular items that were addressed. If this document said that there was going to be a parking reserve and it was going to be funded from revenues of the building or it was going to be funded from the proceeds of the bond or it was going to be funded from something else than certainly that would have been done off the bat but that is not what it says. It says that it will be funded only if there were certain things conducted – the proceeds of the capital campaign. That wasn't conducted so that is not there. It was going to come from advertising from promotional revenues earned at the arena. Again, the City opted to do its own parking and not have the manager do that so that is not there either. None of those alternatives that before the building got built and before the building got operational that were envisioned as

possibilities came to reality. Consequently, you have a reserve fund but nothing in it.

Alderman DeVries stated I am not quite sure at who wants to take a crack at answering my question but has there been a response from SMG referencing the lack of City services or the services that had to be withdrawn as Alderman O'Neil and others have mentioned that initially were there to assist moving crowds in and out of the arena for their large events. Obviously with the withdrawal of some of those services it could impact their attendance long-range at the civic center. Has SMG offered any way to assist the City? Have they had any creative solutions that we have not heard?

Mr. Clougherty replied they have not voiced a problem to us.

Chairman Wihby stated they have not voiced a problem.

Alderman DeVries stated so they don't appear to believe that we are impacting...obviously by numbers we are not but they are not concerned so...

Chairman Wihby interjected I don't think Alderman O'Neil was saying there was an impact. I think he was saying that the little things we were doing people appreciated. It wasn't necessarily stuff that we had to do.

Alderman DeVries replied I think it was more of what we were alluding to that in the big picture the lack of the presence of police and other niceties could potentially hurt the civic center. That is the only reason that I would see...

Alderman O'Neil interjected there were some little extra things that we were doing. There is still a police presence there. We are still removing snow. There is still a shuttle service. It is just that we were able to do little extra things. The departments were able to absorb some of those in their budgets a little bit and those were the things...there is no problem with what is going on now. It is just that I have had people comment to me about the little things that we were able to do in the springtime right until the end of the fiscal year in June.

Mr. Ashooh stated if you don't mind I have one suggestion and this is something that bothers me and maybe it should be referred to Traffic but we need to change the signs that say \$5 free shuttle. People still can't figure out what that is. I know it was well intentioned to inform people about the free shuttle to the arena but it says \$5 and I don't think anyone has figured that out yet.

Alderman O'Neil asked can Tom Clark and Kevin Clougherty try to put everything we have talked about tonight on one page for the Alderman to understand in clear,

simple to the point language – maybe five or six bullet points on why we can't do this. It might make it easier in explaining it.

On motion of Alderman Guinta, duly seconded by Alderman Sysyn, it was voted to deny the proposal that a \$1.00 surcharge be added to all civic center events.

On motion of Alderman Guinta, duly seconded by Alderman Sysyn, it was voted to receive and file the communication from Kevin Clougherty relative to the Verizon Wireless Arena Parking Reserve Fund.

Chairman Ashooh recognized Mr. Tim Bechert.

Mr. Bechert stated just to update you personally...we haven't received the final report yet but our annual audit is completed and the auditors are preparing the final documents and I thought it would be appropriate to share, specifically with this committee, the results of that audit which will, in fact, result in a check being issued to the City in the amount of \$401,091 of which \$175,000 is dedicated by contract to the capital improvement fund for the building and then another check in the amount of \$226,091 will be given to the City. That is one note.

Chairman Wihby stated that is a good note. We want to thank you for that. You have done a great job.

Mr. Bechert replied thank you very much. We thank you for your continued support.

Chairman Wihby asked that was \$401,091.

Mr. Bechert answered yes.

Alderman O'Neil asked on that balance do you know or maybe Kevin can answer this, does that have to go anywhere special.

Mr. Clougherty stated if the Committee will recall as part of the corrective process for the tax rate setting we adopted three ordinances. One was to set-up a special revenue fund for unexpected windfalls to be used for capital purposes and that is where that money will go.

Chairman Wihby responded so the \$175,000 goes to a regular capital fund for the civic center and the other \$275,000 goes to a capital fund for anything in the City.

Mr. Clougherty replied right and I can get you the breakdown of that fund and what it can be used for.

Chairman Wihby stated even though we can only use it for a certain purpose we probably would have been using it anyway so it definitely is a plus for the City even though it is in a separate account.

Alderman O'Neil asked you can't use it for any operating expenses at all.

Mr. Clougherty answered no. Certainly the Board could vote to do that but that is not the intent of it. I will get you the actual breakdown.

Chairman Wihby asked is that the new ordinance that I said we have to make sure we don't take the money out of.

Mr. Clougherty answered right.

Chairman Wihby replied we will see how that ends up.

Mr. Bechert stated on an industry note it was announced a couple of weeks ago that in relation to the success of the building our ranking by one of the industry publications, Billboard Magazine, Pollstar Magazine, which is the dominant publication in our industry, has given their annual arena rankings and it is with great pleasure that I can announce to you tonight that we have placed fourth in the world in ticket sales for arenas 15,000 and less. In addition to that, our overall world ranking for all size venues is 23 in the world. One more star added to that, we have been the recipient of a 2002 concert and industry award which has nominated us as the best new concert venue in the world. It is with great pleasure that I accepted that nomination. It thrills me to death and it excites me that the industry as well as the patrons have taken notice of what we have done here in Manchester. Quite frankly, Manchester should be incredibly proud of this building and what it has been able to accomplish and the future is very, very bright.

Chairman Wihby stated I was in Las Vegas for New Year's and I was watching Herman's Hermits and he got on stage and actually said we have been playing everywhere, we played in Manchester, NH. I was the only one who clapped in the arena but if felt good that he said that.

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

A True Record. Attest.

Clerk of Committee