

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES  
AND BASEBALL  
(Continuation of September 12, 2005 meeting.)**

**September 19, 2005  
Aldermen Lopez, Gatsas  
Guinta, DeVries, Smith**

**5:15 PM  
Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)**

Chairman Lopez called the meeting back to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, DeVries, Smith

Absent: Alderman Guinta

Messrs.: T. Clark, K. Clougherty

Chairman Lopez advised that the purpose of the meeting is to receive clarification from Finance and the City Solicitor relative to whether Drew Weber is still responsible for the personal guarantee stipulated in Section 8.1 of the original contract with 6 to 4 to 3 LLC.

Thomas Clark, Solicitor, stated questions came up about the personal guarantee but the issue on the table before the Committee is the transfer approval. After the last meeting as I advised you at that meeting whether or not there is a personal guarantee continued or not the City had an obligation under the contracts to approve the transfer. Based on that we hadn't done a whole lot of research on what the actual transfer was because it didn't matter in the City's position. The Aldermen have asked the question and we have gone back and looked at it. I know the Finance Department, the Deputy Finance Officer has had conversations with both the league and Andrea Batchelder. We have met and discussed it and now have a better understanding of what the transfer was. It was a full transfer. All rights and interest of 6 to 4 to 3 were transferred to NH Triple Play. Under those understandings, there is no more personal guarantee.

Chairman Lopez stated let's take the first issue of transferring the team, which is the original question. Do I have a motion to agree to transfer the team? Can we get the right language for the motion?

Solicitor Clark stated I think I gave it to the Committee last time but what you would be doing would be approving the request for transfer as stipulated under

Article 13 of the amended and restated management and operations agreement on the condition that the parties meet all of the obligations set forth by the league.

Alderman DeVries moved to approve the transfer of the NH Fisher Cats to NH Triple Play, LLC as stipulated under Article 13 of the amended and restated management and operations agreement on the condition that the parties meet all of the obligations set forth by the league. Alderman Smith duly seconded the motion.

Alderman Gatsas asked Tom can you just clarify very clearly and succinctly about this letter of guarantee. Are you saying that the letter of guarantee that was provided by Drew Weber is no longer in place?

Solicitor Clark answered once the transfer is consummated it is no longer in place. That is correct.

Alderman Gatsas asked is that different than what we understood that we heard at the last meeting.

Solicitor Clark answered at the last meeting I told you that I thought in my opinion the letter of credit may continue because I didn't believe it was a full transfer. As I advised you when I first made my statement tonight, we hadn't done a whole lot of due diligence on that because it didn't have an effect on the approval. The City is obligated to approve the transfer but the question came up and we went back and looked at it and in my opinion it does disappear.

Alderman Gatsas asked what is the opinion of Ropes & Gray.

Solicitor Clark answered I haven't talked to Ropes & Gray.

Alderman Gatsas asked don't you think it would be appropriate that Ropes & Gray would be involved in this conversation whereas there is an omissions insurance that could be at risk.

Solicitor Clark responded I know that was raised at the last meeting. After a review of the transaction with the Finance Department and the discussions they had with the league we saw no reason to call Ropes & Gray because there is no more personal guarantee.

Alderman Gatsas asked can we get that in writing from Ropes & Gray. If that is their interpretation of what they told us as a Board again we paid them an awful lot of money for legal fees for an interpretation of the agreement. I would have thought that there would have been some clarification and my understanding was

the only way that the personal guarantee would be gone would be if the league came in and took over the project.

Solicitor Clark replied that is not what the contract says. The contract says upon a transfer, a future transfer, you do not have the personal guarantee.

Alderman Gatsas asked a transfer by the league – if the league came in and took it over my understanding was that to make the ability of that team to be sold to the next individual that we as a City would have waived the personal guarantee. That was my understanding.

Solicitor Clark answered that is not what the contract says.

Alderman Gatsas stated I think it is very important that we get a clarification from Ropes & Gray and they come down here and identify it because that is what I believe we were told by Ropes & Gray.

Solicitor Clark responded this contract was presented to the Board when it was approved. Each Board member had it and the league was here at the meeting and it hasn't changed since then.

Chairman Lopez stated that is the reason I had the City Clerk go back to the minutes of 8/27/2003, which were distributed tonight. I cannot see anything in there regarding some of the questions about the personal guarantee as far as once he sold the team, which the attorney has already indicated. There are two separate issues. I would like to have the motion that is on the floor voted on and if there are other questions regarding the personal guarantee, that has no bearing on the obligation that we have, the legal obligation we have to approve this transfer.

Alderman DeVries stated I would like to ask for clarification of the statement that there is no longer a minority owner and that it has been a 100% transfer.

Solicitor Clark responded the rights and duties of 6 to 4 to 3, all of their rights and duties under the agreement and all of their rights and duties with the league and the team are fully transferred from 6 to 4 to 3 to the new entity. There wasn't a transfer of only a certain portion. It was a 100% transfer. This was required, apparently, under the IRS rules.

Alderman DeVries asked could you explain for me your understanding of the remaining protections that we have in place either through the major league or how do you feel the City is still protected in this.

Solicitor Clark answered Finance may be able to help on some of this but there are still letters of credit in existence. The team has a letter of credit up. There are the make whole agreements on the real estate taxes when the project is up and running and the league in the event of a faltering of the franchise has the right to come in and take over and find a new owner.

Alderman DeVries stated you are asking us tonight to authorize a transfer, which was the process being that the league authorizes...

Solicitor Clark interjected I am not asking you to authorize the transfer. I am telling you that you have a contractual obligation.

Alderman DeVries responded that is exactly what I was going to ask you to clarify. The fact that this is not a choice that we have but an obligation.

Solicitor Clark replied correct.

Alderman DeVries asked can you explain why that is an obligation.

Solicitor Clark answered it is in the contract that the City signed that was presented to the full Board of Mayor and Aldermen and approved that upon a transfer if the league approves then the City will approve.

Alderman Smith stated so you are asking for transfer approval and what we are doing is going from 6 to 4 to 3 to NH Triple Play. In other words, we have a new owner but still the letters of credit will be intact and we will be sort of financially stable in our contract?

Solicitor Clark responded at this point all letters of credit are intact but your obligations...your contracts that you have with the parties provide for the release of those letters of credit as certain milestones are met. The team's letter of credit remains in place. The Chinburg letter of credit they have requested and maybe the Finance Officer can explain it to you but they have requested a reduction in their letter of credit based upon the contract. That is being reviewed by the Building Department to make sure they have met the milestones. I am not sure if they have or haven't. The hotel has requested a release of their portion of the letter of credit based upon the contract that says that it be released upon 60% completion. 60% completion is defined in the contract as the walls being up and the roof plank being on.

Alderman Smith stated I read the contract and that is what was in the language – when 60% was done they would be relieved of their obligations.

Solicitor Clark responded the letter of credit. There is still the make whole agreement that is in place that requires them to make up the taxes if they don't meet the threshold.

Alderman Gatsas stated the answer that you gave Alderman Smith was a different answer than what you gave me about the letter of credit. The transfer of the ball team, the letter of credit that Drew has in place with us right now, once this approval goes through what happens to that letter?

Solicitor Clark replied it stays in place. That is not the personal guarantee.

Kevin Clougherty, Finance Director, stated he becomes the grantor under the contract and we would keep his letter of credit.

Alderman Gatsas asked so the letter of credit stays in place. How much has been drawn down on that letter of credit?

Solicitor Clark answered to my knowledge nothing.

Alderman Gatsas asked have the overages been paid and brought up-to-date on the completion of the ballpark.

Frank Thomas, Public Works Director, stated we still have a balance under the monies that we are holding, the \$29 million+. We are getting close. As soon as Payton finishes some of the outside landscaping we will be releasing the \$950,000 in retainage. There is still an outstanding change order that is being discussed between Drew Weber, the team and Payton Construction. We haven't seen that but we know it is under active negotiations.

Alderman Gatsas asked how does that affect this transfer.

Mr. Thomas answered I don't see where it does because it is still Drew Weber and the team's obligation by contract with Payton Construction to reach an equitable settlement on the outstanding change order. As I mentioned, it is being negotiated. It is Drew Weber's obligation. Once that has been settled, we will get a copy of it along with lien waivers.

Alderman Gatsas asked so that means the letter of credit is not going to be drawn again for that piece of undisclosed or uncompleted project.

Mr. Thomas answered no because we anticipate that the team will resolve that and pay it off. Now if by chance they don't, we always have the option to seek relief through that letter of credit.

Mr. Clougherty stated the team, since midway through this project, has recognized that that is their responsibility and has stepped up and covered all of those and I believe this is the only one that is remaining. So there is a precedent there that they have been doing that, Alderman. Quite frankly, we would not want to use the letter of credit to resolve that issue. That is between the contractors and Drew's side. That is not an issue that the City needs to get involved in, I believe, and we would rather keep our letter of credit for other issues should they come up.

Alderman Gatsas asked the letters of credit on the draw down of the 60% completion, I assume the 60% level is not on the full line of credit but on the remaining balance because my understanding is that some of that line of credit was already used to pay taxes.

Mr. Clougherty answered right. Are you talking about the Chinburg property? There are two requests there. There is one from the hotel and one from Chinburg. Chinburg has used a portion of the letter of credit to make the payments because of the timing of his financing and when the tax bills were due the first cycle.

Chairman Lopez stated that is part of the 60% though.

Mr. Clougherty responded right. It is 60% of the project as I understand it.

Alderman Gatsas asked but is it 60% of the remaining balance of the letter of credit or the full line of letter of credit.

Mr. Clougherty answered my understanding is it is the full line.

Alderman Gatsas stated well you can't give them 60% of something that has already been drawn down on.

Solicitor Clark stated I don't have the language here in front of me but on the Roedel one it is the full letter of credit.

Alderman Gatsas replied right because he has not drawn down on it.

Solicitor Clark stated on the Chinburg parcel, the letter of credit is broken into two pieces. One for the townhouses and one for the towers. This has nothing to do with...there is a piece that stays in place for the towers.

Alderman Gatsas responded let me try to make this a little simpler. There is a \$1 million line of credit. Let's just use a round number and say \$100,000 was drawn off of that for taxes. The 60% level, whatever it may be, is not on the

\$900,000...it should be on the \$900,000 and not the \$1 million because we don't have the full \$1 million as a line of credit. It should only be 60% of the balance that is left, not what the assumption is of what the gross amount was.

Mr. Clougherty stated I think the point he is making is it has to be prorated first of all between the two pieces of the project and how that is divided out and then it will be applied on that balance.

Alderman Gatsas asked and I assume the drawn down on taxes is going to be proportionately distributed.

Mr. Clougherty answered right.

Alderman Gatsas stated and then from there the 60% would be done on the balance and not the gross. You can't give them 60% on something they have already paid down.

Mr. Clougherty replied again you would give them a reduction.

Alderman Gatsas asked how.

Mr. Clougherty stated you would look at the total amount of the line of credit.

Alderman Gatsas responded you can't. It is not there anymore. You are giving them 60% of something that has already been used at 100%.

Mr. Clougherty replied right but if you were to take the balance on the side of the condominiums and prorate what is left after the payment of taxes that is affecting the amount of the letter of credit but it doesn't affect the amount of the project.

Alderman Gatsas stated it is going to affect it proportionately.

Mr. Clougherty responded I don't think so.

Alderman Gatsas stated if each one was worth \$500,000 if they paid \$100,000 towards taxes you would reduce each side by \$50,000 and then you would go 60% on the \$450,000 rather than \$500,000.

Mr. Clougherty responded you do the calculations on the...as far as the collection there is no discussion of net calculations. This is what he gave us. He gave us this amount. Now he may have chosen to use some of that and that is fine and that will reduce the letter of credit.

Alderman Gatsas stated I have an objection to that.

Chairman Lopez stated I think Alderman Gatsas has a point and we should look at it very seriously.

Mr. Clougherty stated we follow the contract and whatever the contract requires that is what we will release.

Chairman Lopez stated I think it is a valid point because he did call down on the letter of credit and you can't expect to give him another 60%...

Mr. Clougherty interjected you can't expect to have value for it twice by drawing down and then getting a reimbursement for 60% of the project. I think that is what Alderman Gatsas is saying. What I am saying is and I think we are saying the same thing. I agree with that. You would have to look at it in terms of how much the project was originally and what was the 60% and what was taken.

Chairman Lopez called for a vote on the motion to approve the transfer of the NH Fisher Cats to NH Triple Play, LLC as stipulated under Article 13 of the Amended and Restated Management and Operations Agreement on the condition that the parties meet all of the obligations set forth by the league. There being none opposed, the motion carried.

Chairman Lopez stated now regarding the question about the 60%, the information Kevin has given us about the Building Department, the letter of credit. The Building Department is going to give you a compliance before you do anything.

Alderman Gatsas asked is this coming back to this Committee for a vote. I would request that it does before there is a disbursement so that we see it.

Solicitor Clark responded the contract says that we will do it.

Alderman Gatsas replied I didn't say you wouldn't do it. I think this Committee should look at it before you do it to make sure that we are all under the understanding of what is there.

Solicitor Clark stated this Committee doesn't have the authority to change the contract. The contract requires that it be released within five days.

Chairman Lopez responded I think what Alderman Gatsas is saying is the question remains about the 60%. Is it a whole or is going to be partial because taxes were paid out of the letter of credit?

Solicitor Clark replied we will follow the contract that the Board approved.

Alderman Gatsas moved that there be no disbursement of funds until this Committee sees it.

Alderman DeVries stated I just heard you indicate that the contract calls for disbursement within five days.

Solicitor Clark responded yes it does.

Alderman DeVries asked can you explain the timeline. When did the request come in and when is the five days up?

Mr. Clougherty stated I have a copy of the letters. They came in at different times.

Alderman Gatsas stated it looks like five days is gone.

Alderman DeVries stated September 8 is one of them.

Mr. Clougherty stated we have a period of time to agree or disagree that the improvements have been made and during that period we have the chance to go back so we are in that timeframe.

Alderman Gatsas asked where does it say that in the contract, Kevin. Can you show it to me? I am sure that the City Solicitor will find it.

Mr. Clougherty answered there is a two step procedure that we follow.

Solicitor Clark stated it says that within five days we will visit the site to confirm whether or not they have met their 60%.

Alderman DeVries asked could you read that again please.

Solicitor Clark answered it says within five business days of receiving notice we shall visit the premises to verify that they have met 60%.

Alderman DeVries asked and that has occurred. The Assessors or somebody has signed off on that?

Solicitor Clark answered as I understand it on the townhouse portion, the Building Department has gone down and reviewed it. They don't believe he has met the 60% definition yet and Mr. Chinburg has been referred to meet with the Building Department to discuss what needs to be done.

Alderman DeVries asked so that is currently being disputed whether or not he has met the threshold so he will need to re-request once that dispute is...because September 8 was the original request and if it is being disputed I would imagine you would have a new timeline.

Solicitor Clark answered he will have to meet with a City representative to determine how to meet the threshold.

Mr. Clougherty stated once it has been determined that he has met that then I think the clock starts running on the five days.

Solicitor Clark responded no the five days is to review it, not to pay it out.

Alderman DeVries asked so if it is five days to review it, does it stipulate how long we have to make a disbursement.

Solicitor Clark answered no it doesn't.

Alderman DeVries stated so I think it is a fair question that Alderman Gatsas has raised that the Board have the ability to see which way you have ruled on the draw down that has already been made and how you are making that disbursement.

Chairman Lopez stated I agree. I think it is a valid question. We should know the answer. I think it is important. Now if you need...if there is a time element we could recess this meeting.

Solicitor Clark stated no there is no need to recess this meeting.

Alderman Gatsas moved to recess the meeting until we have the document in front of us.

Solicitor Clark stated the Chairman has asked us to come back and I think we have both said we would.

Alderman Gatsas stated but we need to have the notification and that would put you in jeopardy of when Mr. Chinburg needs his check.

Solicitor Clark responded what I am trying to say Alderman is it doesn't make any difference whether you recess or adjourn because you can't call it back to order until you publicly notice it again anyway.

Alderman Smith stated, Tom, it was just brought to my attention that Chinburg Builders and the Roedels. You didn't receive this until September 20. Is that going to be the effective date --five days from 9/20 or what is the situation?

Solicitor Clark responded the one from the Roedels we received on 9/20. It was delivered to the Building Department on Monday. I think they have already gone down or if they haven't they will do that this week.

Alderman DeVries stated I don't think the release on the hotel property is in question tonight. It is only the Chinburg property that has been drawn down against already. So you are not holding...I didn't think the motion was addressing all of the disbursements. I thought it was just on the drawn down authority.

Mr. Clougherty stated we don't mind coming back and giving it to you. My understanding is that we are under a time constraint. If we aren't under a time constraint we will come back and give you the information.

Chairman Lopez stated we will let you go do your thing and then you can notify me and we will call a meeting to make sure that the questions are taken care of.

Alderman Gatsas asked just for clarification, the Chinburg letter is based 100% on the letter of credit.

Mr. Clougherty responded I know it is.

Alderman Gatsas stated that is why my question is if that is what you are doing and we are agreeing to that and that is what he has requested then that letter needs to be corrected saying that the draw down is on the balance.

There being no further business, on motion of Alderman DeVries, duly seconded by Alderman Smith it was voted to adjourn.

A True Record. Attest.

Clerk of Committee