

**SPECIAL COMMITTEE ON RIVERFRONT ACTIVITIES AND
BASEBALL**

July 9, 2007
Aldermen Lopez, Gatsas,
Smith, DeVries, Roy

3:00 PM
Aldermanic Chambers
City Hall (3rd Floor)

Chairman Lopez called the meeting to order.

The Clerk called the roll.

Present: Aldermen Lopez, Gatsas, Smith, DeVries, Roy

Messrs.: R. Miller, A. Solomon, R. Duval, J. Cook, T. Clark

3. Chairman Lopez advises the purpose of the meeting is to discuss recent communications received relating to a proposed development near the baseball stadium.

A handout was distributed to members.

Chairman Lopez stated we are going to try to get through this I don't want to say fast, but in a way that we are not going to look at the legality of a lot of things that we received from correspondence, that would be for our City Solicitor to look at as time goes on. But I want to thank everybody for being here at this last minute because tomorrow evening we have a Board of Mayor and Aldermen meeting and the committee will make some type of recommendation. Last time we were here we did not have the information that we received through the City Clerk which was the correspondence from the chairman and CEO Art Solomon, and more detail Attorney Robert Miller representing Fischer Cats with a lot of legal complaints. Letter from the Eastern League President and a letter that's included from former Mayor Baines. So to move this thing along, I think all the Committee members have read the letters and to save time I would like all of

those who are going to speak to get right to the point, I think we can follow you pretty good.

Chairman Lopez recognized Attorney Miller and Art Solomon to come forward and make comments in reference to the communications forwarded to the Committee.

Attorney Miller stated we would like to just briefly address the various contractual obligations that we believe are at issue before the Board in terms of the City's obligations with respect to the Fischer Cats, Eastern League and major league baseball that would be implicated by the proposed project. I am going to turn it over to Art Solomon to explain to you why these things are relevant.

Mr. Arthur Solomon addressed the Committee stating I appreciate the opportunity to address the Special Committee so that I can explain why the Fischer Cats are so strongly opposed to this proposed development. As my attorney said I will concentrate this afternoon really on how this proposed development if approved will violate the City of Manchester's pre-existing contractual agreements. First of all let me talk about the Red Sox territorial waver which was incorporated into two inter-related agreements. In March of 2003 there was a Red Sox Agreement that former Mayor Baines, with the support of his friend the Mayor of Boston negotiated with the Red Sox. As most of you know in major league baseball, each major league team has a geographic area and for any team to play in that area they need the major league team's approval. So on March 20, 2003 the Red Sox gave a territorial waver so that the Fischer Cats could come to Manchester, New Hampshire. And that was signed by Larry Letino, the CEO of the Red Sox, and Drew Weber. Equivocal condition required by the Red Sox was that they should have a retail presence of 2,500 square feet in the redevelopment area in close proximity to the stadium. In order to sell Red Sox merchandise and also sell tickets to events at Fenway Park. And if there was a failure to provide this retail store then the Red Sox could terminate the territorial waver. The City obviously is an important third party beneficiary because without the territorial waver there could not be a baseball team, there would not be a stadium which was the engine for development for the whole riverfront area development and there would not be a riverfront development area. Now related to this a few months later in November of 2003, there was an agreement signed by Frank Catapano on behalf of Manchester Down Visions and Drew Weber for 6-to-4-to-3 and as you know I succeeded through Weber as the controlling owner of Fischer Cats. The agreement specifically acknowledges the previous Red Sox agreement which I mentioned. And in the very first section, the section on the lease and I quote "the land developer whose merchants Downtown Vision agrees to offer to the Red Sox under its agreement with 6-to-4-to-3 the 2500 square feet of retail space on the terms set forth in that earlier agreement." And that agreement with the Red Sox

would last at that point until the year 2013 unless there was an extension, and I did get an extension when I acquired control of the Fischer Cats. So now that agreement goes through the year 2023. Furthermore it states that this 2500 retail space obligation continues even if the land developers interest is sold, transferred, or assigned. Let me tell you what's critical about this. What's critical about this is that there is no other location in close proximity to the stadium in the redevelopment area for this 2500 square foot store except for the 11,000 square feet parcel that we are talking about today. That this parcel at 2 Line Drive was the very parcel designated by Manchester Downtown Visions for retail use. That this Red Sox store obligation was not included in the sale of the two other parcels to Chinburg way behind the stadium and to the Rodells for the hotel, and this is the only parcel still owned by Manchester Downtown Visions which could fulfill the Red Sox obligation. The City negotiated the territorial waiver, the city has an enormous stake in not losing the baseball team if the Red Sox terminated the territorial waiver or required huge payment for it. That's the territorial waiver issue of which the city is a major third party beneficiary, in fact the former mayor negotiated it. Secondly, let me talk about the agreement with the Eastern League and Major League Baseball. This agreement as you know was negotiated between the Riverfront Development Committee, the Board of Mayor and Aldermen, and the President of the Eastern League, Joe McEcheren. I believe that President McEcheren's letter speaks for itself. So let me just highlight his major points. He made three very important points. One is if this proposed 36 unit residential development was permitted to be built in the only parcel designated and available for the Red Sox retail store it would violate the territorial waiver with the Red Sox. So he also representing the Eastern League and Major League Baseball says this would violate the Red Sox territorial agreement. Secondly he said because of the threat to the safety of fans walking to and from the stadium from all the additional cars that would be caused by this development, because of the threat to the health and welfare of the fans, the players, and the service providers from the environmental contaminants caused by the excavation below ground for a two story parking garage below ground, and the threat to the financial viability to the Fischer Cats, who already have as you know the most onerous lease in Double A baseball. That this proposed development is totally incompatible with the Eastern League's conditional approval that allowed the team to relocate from New Haven, Connecticut to Manchester, NH, and that the high standards of Class-A professional baseball would not be met and the relocation to Manchester would never have been approved if this were part of the initial development scheme. So he concludes if this proposed residential development is permitted it's the position of the Eastern League that the existing management and operations agreement with the Fischer Cats will be null and void and subject to re-negotiation and the League will not longer recognize the long term obligation of the team. He also indicates and as you know we were awarded the 2008 All Star Game for the Eastern League that the League would have no

other choice but to reconsider moving the all star game to another city. Something which obviously we don't want, the City shouldn't want. The third contract is the basic agreement between the City of Manchester and the Fischer Cats. The amended and restated management and operations agreement. Let me just highlight a few of the most relevant provisions. As you know the City granted to the manager, the Fischer Cats, considerable authority with respect to both the baseball franchise and the stadium, and it required the Fischer Cats to perform its obligations to the highest industry standard of care that a manager of a comparable sports team or entertainment ballpark would enjoy. The contract had a number of very specific requirements for the Fischer Cats to carry out their fiduciary responsibility. The manager shall manage and operate the franchise in the ballpark in a first class manner. The manager should promote and maintain a friendly family oriented environment. The manager should maximize the financial success of the ballpark. The manager should serve the public interest. The manager should maximize the revenue and minimize the expenses during each fiscal year. And the manager should protect the safety health and welfare of the fans. Well let me give you a number of specific examples of how this residential development if it were to go forward would undermine our agreement with the city, and would violate our agreement with the City. Let me be specific about this. The very fiduciary responsibilities and high standards which the city held and has held and will continue to hold the Fischer Cats to. First of all the applicants for this development have testified that their proposed development will be for young professional couples. That's their testimony. Well 36 units for this demographic group typically means an additional 72 automobiles, without counting any visitors, overnight guests or service providers. All of these additional vehicles created by both the change in use from retail to residential, along with the doubling of density which they have requested will pose significant safety problems for the more than 300,000 children, teenagers and adults walking to and from the stadium. And frankly we are on track for maybe 325,000 this year. Today we don't even allow any non-handicap vehicles to enter the Line Drive cul-de-sac when there are events at the stadium because of potential accidents. That's pedestrians walk on the street through the narrow passageway between South Commercial Street and the dead end cul-de-sac at Line Drive. All you've got to do is go to a ball game see an event there and see all the people walking down the street there because the passageway is so narrow and we only have a sidewalk on one side. Beside the threat to the thousands of fans walking to the stadium from the residents and their visitors, try to imagine a hook and ladder fire engine maneuvering in and out of the area on a game night if there is a fire in this residential project. So my first concern is the safety of the fans from this enormous increase in traffic. Secondly while this tiny parcel was designed for a low density retail use that could have been built out of concrete slab, the applicant on the other hand proposes to excavate a deep hole in order to create a two story below ground parking garage in a property designated as a hazardous waste site.

Right next to an open air baseball stadium full of 6,000 to 7,000 children and families. This is certainly not the type of friendly, family-oriented environment required in our agreement with the City. Third of all, how can we protect the health and welfare of the fans, the ball players, and the service providers when there are piles of sub-surface soil, potentially containing airborne contaminants like mill debris with anthrax or ash with elevated concentrations of lead and arsenic. Even if it's possible to mitigate some of this threat, does this really meet the high standards of care that our agreement requires? Is it really prudent to take the risk of airborne contaminants next to a stadium full of people? I don't think so. Fourth of all, the developer proposes to use every square inch of this 11,000 plus square foot parcel, and thus will need to request the use of City-owned streets for the construction cranes, the heavy equipment like cement mixing vehicles, you know, and building materials, and so forth. And frankly, the developer has no construction staging area whatsoever. Since neither of the two closest abutters, the Langers and the Fisher Cats, will allow any staging on their properties, all this equipment and cranes and steel beams and so forth will have to locate on City streets, blocking access to the Stadium and interfering with what was supposed to be a family-friendly, pedestrian environment. Number six: As the president of the Eastern League indicated, if this project goes forward, there's a high probability that the Fisher Cats and the City of Manchester will lose the Eastern League All-Star Game next year. And that's unfortunate because it showcases the City, it's a great opportunity for a business community and it's a great opportunity for the Fisher Cats. My last point has to do with the threat to the Fisher Cats' financial viability from this proposed development. I think a number of you are aware that before I acquired the Fisher Cats a year and a half ago, the team was hemorrhaging money. The team actually lost the year before I came here. The team lost \$1.2 million. That's what its operating loss was. And the team was on very uncertain financial ground. Since acquiring the team, and assuming responsibility for the stadium, we've made a number of significant improvements. In order to contribute to the community, to build a fan base, the Fisher Cats have revitalized the New Hampshire Baseball Dinner. We sponsored literacy programs in every single elementary and secondary school in the State. We've organized ethnic festivals at the ballpark. We started summer camps this summer. We started a concert series. We use the ballpark for all four divisions of the State to play their high school championships. We've created partnerships with 700 different non-profit groups around the State. Churches, Red Cross, American Legion, elementary and secondary schools, Boy Scouts, Girls Scouts, Cub Scouts, Little Leagues, Boys & Girls Clubs, and other non-profit groups – 700 of them. And we sponsored many community events at the stadium, from special cancer and heart and alzheimer disease and supporting the Children's Hospital at Dartmouth fund raisers to appreciation nights for the teachers, for the military, for the police, and so forth. And the fans and the business community have responded. And it has increased our attendance and it has increased our

advertising. But let me tell you, we still have not made a profit because we start off with our lease requirements and have to pay almost a million dollars a year to the City. So we still, with all this, still have not made a profit. So we are in a tenuous situation. And just when we're starting to heal the wounds that we inherited, this proposed development threatens our financial viability. And let me be specific again and tell you how it threatens us. This is not empty rhetoric. This is not a lot of hot air. I want to tell you how it threatens us. First of all, because the proposed development would double the allowed density on this tiny, land-locked parcel, next to our ticket windows and our front entrance to the ballpark, the heavy construction equipment, the cranes, the building materials that I mentioned, will have to be placed in the roadway during construction, which might go on for two different baseball seasons. It would block fans' safe access to buy tickets and come to the front entrance and enter the gates of the stadium. Secondly, the excavation, as I mentioned earlier, will create piles of potentially contaminated soil. No one is certain. You don't take risks with contaminated soils when there's no certainty. That proof should be on the applicant. And this may keep families away from the ballpark during the baseball seasons when they have to complete the construction. And after the project is completed, the increased traffic will make the area, already congested, even more congested and unattractive and it will make it less safe to walk to the ballpark. Proposed balconies and top floor viewing, the applicant has said, in testimony, before one of the regulatory bodies, that they intend to have viewing on the top floor there that might have as many as 200 people watching events at the stadium from this top floor. So it not only would allow the residents there but their guests, to watch the ballgames, listen to the concerts, and other events at the stadium without paying for tickets or buying food, beverages, or merchandise. We can't afford to lose another couple of hundred a game and take it out over an entire season, and you'll see how much money is involved. The overly-intense nature of the six-story development requires below-ground excavation for parking. And also, you know, I'm in the real estate business, so I know something about construction. They have to drive deep piles for footings that directly abut the stadium, causing potentially expensive intermediate and long-term structural damage to the stadium and retaining walls. We already have that problem in the outfield because of the Hilton Garden Hotel. We do not want to have that problem again, and this is even right close to the retaining wall there.

Chairman Lopez asked Mr. Solomon, how much more do you have?

Mr. Solomon responded I'm almost finished, sir. And it doesn't take much imagination to predict future conflict between these abutters and activities that we are allowed to have at the stadium. Fireworks exploding at ten, ten-thirty at night, big crowds, concerts, a lot of noise. And clearly, among the 36 households there we're going to have some people who are going to complain, who are going to

call the police. And, we're going to have to spend money defending our rights here, or people are going to ask us to curtail our activities, our revenue-raising activities, and we really can't afford that. So, what I have to conclude by saying is for the approximately \$35,000 to \$40,000 a year that this development will generate, to pay for the bonds. Let me underscore that. I've done an analysis; I'm happy to answer your questions about it. Maybe \$35,000 to \$40,000 a year, when there are much better uses for this site, which I'm not going to go into today. There are much better, more compatible uses. Why take the risk of violating all these contracts? Why put the fans' safety at risk? Why have the airborne contaminants in the area there? Why threaten the viability of the Fisher Cats? And all I'm asking is, I think when I came here...and I think that those who know me know I'm passionate about baseball, but I'm also passionate about the Fisher Cats' commitment to the community. And all I'm asking, because I kept my commitment in spades, is that the City keep its commitment as well. Thank you very much.

Chairman Lopez asked Attorney , is there anything you'd like to add to that without repeating anything Mr. Solomon said?

Attorney Miller responded, no, Mr. Chair. We've submitted some written materials, which I know you have. I have an extra copy for the Clerk. We rest on what's in those materials and Mr. Solomon's comments.

Chairman Lopez stated we'll give those to our City attorney to advise us later. Mr. Duval, do you want to say something? I don't want to spend too much time on any legality or anything else, but if you have a couple comments before I turn it over to the Committee to address any questions.

Mr. Robert Duval stated I'm an engineer representing the developer.

Chairman Lopez stated excuse me. The owners, I'm told, are here. So if they want to sit up here and answer, or make any comment for the record, so that the Committee can make a decision here.

Mr. Duval stated to my left is John Cook. He's the managing partner of the development. I really don't have a lot to say. This isn't a Planning Board meeting, although I was getting the impression I was at a Planing Board meeting, listening to Mr. Miller and Mr. Solomon. Those kind of issues can't be resolved in a fifteen minute meeting. Those are technical issues. And let me just say about that sort of thing, about airborne contaminants and piling and excavations and traffic. We have done a lot of studies. We've presented those studies to the appropriate boards. We've made representations to the Fisher Cats that we will make sure that we work as good neighbors and accommodate all of these

technical concerns. We will make sure that a staging plan acceptable to the Planning Board is presented and prepared. We will make sure that a traffic study that shows that these traffic issues are not a problem is prepared and submitted. And we will continue to work as good neighbors with the Stadium, because we recognize that construction in close proximity is an issue, and always will be an issue whether you're building next to City Hall, as was done across the Plaza here, or whether you're building next to a stadium. These are issues; they are solvable issues. The real question is...let's jump to the end of the day. Is it in the City's best interest to have a 36 unit development of high-end, high-quality residential development in that part of downtown or is it not? You've heard a lot of concern about the fact of having residential use there, but the issues about abutter complaints and all that sort of thing is really just as true about the Chinburg development which is about 100 feet away on the back side of the Stadium, as is true with this development. In fact, this development is a fraction of the size of the Chinburg development. The Chinburg development recently downsized. There's 144 units in the four-story buildings and 45 units in the townhouses. You know, what is that? Four or five times the size of this development in close proximity. And I should point out that it's a higher density if you look at the footprint of the buildings. It's a higher density than we're proposing in the front of the Stadium. This little building here: 11,000 footprint; five occupied floors; is smaller than a lot of the buildings in the City. Sure, it's on a zero lot line lot but that's because of the size of the lot the way it was drawn. And that lot was drawn that way, to squeeze into that location specifically to make sure there was revenue that was there to pay back the bond on the stadium. And this proposal, which we've conservatively estimated at \$10 million, may be closer to \$15 million in value before it's done, given the present tax rate, is going to generate hundreds of thousands of dollars of tax revenue to the City, to make up for any shortfall that there may be on paying the lease that Mr. Solomon's stadium is not making up in paying his lease payment on that stadium. That bond has to be covered to the tune of \$1.9 million a year. And the Fisher Cats are responsible for paying \$750,000 of that amount. The rest has to come from either development that has to be approved on that site, in a responsible, careful way or it gets paid by the taxpayers. And that's the simple truth of the matter. Is it a good idea to have high-end residential use in that location in the downtown core? Absolutely. The Hillier report says that. Every report that the City has commissioned in the last five years says having a mix of downtown income strata and high density downtown living is critical to the success of downtown and to the success of Manchester. That's what's being proposed here. So, the technical issues are the technical issues. The legal issues are the legal issues. There are forums for the deciding of those, and that's not this Committee and that's not this Board. You can't get into, with respect to your time, the kind of detail that has to be done. And I'm not going to try to get into the detail that has to be gone into to show that all of these issues are solvable, that we intend to work as good

neighbors with Mr. Solomon and with the City and with the boards to make sure that these issues are solved. That's the commitment of this development. If it means...and as the way things are going now, I don't think instruction is even going to start until the All-Star Game is over and done with...the way things are going in this approval process. If the project were to be approved and to start before the All-Star Game, we have committed to Mr. Solomon, on the record, that we will shut down for two weeks or four weeks, or whatever it takes to make sure that there is no construction ongoing during the All-Star Game. We'll shroud the area; we'll fence the area; we'll make sure that construction proceeds in a suitable and satisfactory manner to make sure there are no issues with construction. Now whether you're building a Yawkey Way-style retail center or whether you're building residential, you're still going to have these same construction issues and piles of dirt. It can be dealt with. It's the same issues that's happening that the Chinburg development has already had to deal with, and when they build the rest of their units, they're going to have to deal with those same clouds of dirt. It's the same issues that Mr. Solomon's team dealt with when they constructed his stadium. There was a health and safety plan in place and they followed it, for the most part, and everything went well, and there were no health issues associated with any workers or any abutters, or anybody else on the property because these are solvable issues. We just simply ask this Board to let the technical boards do its job and to show a level of support for the City, for what's going to happen in the long term. Not the temporary construction issues, not waiting around hoping somebody's going to develop something that's commercially unfeasible, and in the meantime the taxpayers foot the bill. But to allow a credible developer to come forward with a reasonable, appropriate, and in fact, desirable development, and go forward and help the City fulfill its obligations, make the Stadium a success by paying the bond for it and at the same time contribute to the well-being of downtown Manchester in a material way. And, the most important way has been identified by recent economic studies for this area.

Chairman Lopez stated thank you. Sir, would you like to say anything?

Mr. John Cook, managing partner for the developer, responded yes, I would, please. Thank you for inviting me here. And I do appreciate all that Mr. Solomon has done for the City, as you probably also appreciate it. We're not here, really, to try and disrupt his team or try to hurt his revenues, but I understand his point of view. But in the end, something needs to be built here, whether this particular proposal is going to go forward or not. I believe he's trying to stop it from getting to the proper Planning Board and Zoning Board by doing some of the things he's doing now. So I would just say if you just let us have a chance to at least defend ourselves, and again, this is not necessarily the right board to do that with. But we have, as you can see, Bob is a terrific partner in this with us. He's done a great job with the engineering. We have an architect. It's a top quality architect

and we have a very good environmental team. So all of these people and all of these plans we can put forward at the proper boards, if we're allowed to. I only want to help the City. I'm not here as the bad guy. I really want to try and do good for the City as well. And Art's done a tremendous job. There's no denying that. But for me, we're sort of going to rest on whatever you decide.

Chairman Lopez stated thank you very much. And as I said in the beginning, our role is not the legality of a lot of things. It's up to our City Solicitor and other people that are staff. I think as Aldermen we have a responsibility to indicate whether it's in the best interest of the City to move forward. And with that, I'll open it up to any questions from the Aldermen.

Alderman DeVries stated thank you, Mr. Chairman. Mr. Cook, maybe you can answer... You have a purchase and sales agreement in place on this property. With the current owner, who was a party to that Red Sox territorial agreement, has that been addressed within your purchase and sale, since that seems to be a key piece of what we're talking about here today, possibly violating that agreement?

Mr. Cook stated well I'm not a lawyer, so it's certainly something that we're willing to address with the right people. If there really, truly is an agreement, and I'm being told that there isn't, but if there is, then there's space that needs to be available for them, and I believe Mr. Catapano, who is in the audience actually had already approached the Red Sox with something similar to try and get that resolved. So it's not something that I'm against working with the Red Sox on. We just haven't had the opportunity to give them a call or try to get them to iron out whatever the issues are with that.

Alderman DeVries stated if I could follow up on that, because the agreement in place appears to have an ability for them to call in that contractual agreement with ten day notice. That doesn't give us a whole lot of time for you to work with some other board to sooth the feelings on the part of the Red Sox, should they decide to call that agreement in. And I think that's part of our concern today.

Mr. Duval stated a couple of points on that. First of all, our attorney, who couldn't be here, but who has asked me to point out, if the question did come up, that the retail space agreement is a contract between the parties. It's really an obligation that Drew undertook for the Fisher Cats and then he separately and privately contracted that obligation to Frank Catapano, who is here and can certainly speak to his understanding of that agreement. That's the legal status of that agreement. Secondly, it is understood, and was discussed during the course of the restaurant development. As you recall, when the restaurant development was approved by the boards in this City, there was no provision of space for the

Red Sox retail agreement. It apparently was not important at that time and in fact, Mr. Catapano wrote a certified to the Red Sox and met with the Red Sox to discuss that and point out that there would be no retail space available for the Red Sox at that time, a proposal to which they have not never responded to this date. And secondly, in discussing this with the team here, the development team, I mean, is fully committed to making sure that the interests of the Red Sox, if they in fact insist on having space in this development, are satisfied. We don't intend that to become an issue of default.

Alderman DeVries stated if I could just make one follow-up comment, if I might because I would agree that when we first saw this project that we all felt, or at least I know I felt, that this was more for the taxpayers of the City than we originally envisioned on this parcel. And that is a good thing. But if I'm asked to weigh whether losing our baseball team and losing the \$750,000 to \$1 million in that agreement to fill with the tax base, I don't know that that's as good for the taxpayers of the City, and I think that's why you're back in front of this board today, as opposed to the Planning Board where many of those other arguments would set.

Alderman Gatsas stated question of Mr. Clark...Tom, have you read this retail space agreement?

Mr. Tom Clark, City Solicitor, responded yes I have.

Alderman Gatsas asked can you give me your opinion as a solicitor what it says, please?

Mr. Clark responded could we save that for later. If you would like legal advice from me, I would like to do that in recess session.

Chairman Lopez stated if we want to meet with legal counsel, we'd have to go to recess because...That's why I don't want to get into too much legal aspects here. I think that our address is with all the documentation, is it in the best interest of the City to continue to move forward and voice a vote by the full Board of Mayor and Alderman as to their wishes, either for or against the project. I think that's what it boils down to because we do have invested rights in the Fisher Cats, which one Alderman has already indicated. So there's a lot of things at stake here for the beneficial of the City of Manchester so if the Committee desires to meet with legal counsel we'll take a recess but I don't think it's necessary.

Mr. Clark stated Mr. Chairman, it may be beneficial if we recess for five or ten minutes to discuss this for a few seconds.

Alderman Gatsas stated Mr. Chairman, I don't have a problem. I can read this agreement and I know what it says, and I certainly understand where the counselor is coming from and certainly my opinion has not changed since when we met a few months ago. There's no question that when this project first came to surface, I think my position was pretty clear that I didn't think we should go forward with it. However, once the shovels went in the ground, there's certainly nothing more that what we should do is protect the taxpayers of this City. I think it makes good sense that there should be something developed there, and I'm not too sure after reading this agreement what can go there. But I think for the best interest of the major tenant of a project that we own, I would think that at some point, when we talk about development, I guess I look at the foreclosures that are appearing in the paper, and I don't see that project that's at the southern end of the ballpark moving with radical excitement in sales. So I look and say I certainly don't want to put us in a situation that we have properties around us that are not moving. And I think it's very clear that the major tenant has concerns, and those concerns should be addressed by this board. And I don't think that my position has changed at all. I had those concerns when we met three months ago. My concerns are still there. And it doesn't matter what Joe McEacharn sends me for a letter from the Eastern League. I still have those concerns as the major tenant that we have in the City. So I guess my position hasn't changed, Mr. Chairman.

Alderman Smith stated I would still like to go into recess because I want to find out what violates the contract. I think it all bends down to any violations of the contract. And I don't know. I've got literature here from 2002, and I'd like to find out and address it personally with our Solicitor.

Chairman Lopez stated I say two Aldermen want to go and we can take a recess for five minutes and meet with legal counsel in the back room.

Chairman Lopez called the meeting back to order. Are there any follow-up questions from anybody?

Alderman Gatsas stated I make a motion that this Committee take a vote in sending a message to both the Planning Board and the Variance Board that we are not in favor of the project on Two Line Drive, whatever the address is.

The motion was duly seconded by Alderman DeVries.

Alderman O'Neil stated I just need to remind the Committee and the full Board. We have an obligation to Frank Catapano. Frank put together this great project in the City, and without his efforts we would not have a baseball stadium. Without his efforts we would not have a first class hotel. Without his efforts we wouldn't

have townhouses down there. There were four pieces to the puzzle and how we financed the stadium that we own, by the way, and how we financed the improvements to Gill Stadium. Lease from the Fisher Cats, new property taxes from the hotel, new property taxes from the Chinburg project, and always from day one was development on this site. Now it's changed several times, but it was always, from day one, there was going to be development on this triangle of land. And it shouldn't be a surprise to anyone that finally Mr. Cook and his team have brought a project forward. We actually had a restaurant approved by the Planning Board for that site. So it shouldn't be anyone's surprise that something needs to happen. I wish Mr. Solomon would just come right out and say I'm against the project, than go through all this other stuff. All these issues we deal with every day: construction equipment, excavation. The whole site was contaminated at one point and has been cleaned up. Traffic. There's going to be traffic issues no matter what goes on there. We talked about fire issues, the fire department being able to respond. That's an issue game day when they have to respond to the hotel, if there's an emergency, or to the Chinburg property in the back of the site. So, I wish he'd just come right out and say, I'm against the project, and not go through all this other stuff. But we have an obligation to Frank Catapano who delivered on everything he said he was going to. Everything. And we have an obligation to him to allow this development to move forward. Thank you.

Alderman Smith stated I was involved in the baseball program from day one. And there were certain issues that came up. If everybody remembers, the power plant...never materialized. Retail. I think it was something like 20,000 square feet of retail. We have these ups and downs. It did materialize. We had all kinds of things. We had to buy out from the Riverfront Foundation at the time. We had problems with Gill Stadium. We had problems with construction. These all happened. But in fairness to the baseball people, I'd have to vote for the baseball people at this time because from day one that has been the primary source of my concern. And because of the baseball stadium, the hotel was built and hopefully the Chinburg will finish his project. So at this time I have to agree with my colleagues Aldermen DeVries and Gatsas.

Alderman DeVries stated I'm thinking that our motion, in order to truly be beneficial for Zoning Board that we'll be taking this up tomorrow night that deals basically with five questions that they have to answer legally. And one of them is public interest and the other one that comes into play is diminishing the value of surrounding properties. I'm just thinking that we should expand on our motion to make sure that we have mentioned the items that come into play so that they know why this Board has taken the position it has. It's contrary to public interest because it would jeopardize the Fisher Cats' ability to perform their significant financial commitments under the contracts with the City, and could pose health and safety risks to the fans visiting.

Alderman Gatsas stated if you're asking me, Alderman, to amend my motion, I'm not going to amend it.

Alderman DeVries stated I guess I am asking for a friendly amendment which I think would help.

Alderman Gatsas stated I think we ought to just leave it as it is and send a very clear message, rather than try to adjudicate the Variance Board's decisions through this board.

Alderman DeVries stated let me follow up then with the City Clerk. Is there going to be any of the transcript or anything available for tomorrow night for the Zoning Board? Are they going to have any supporting documentation that comes from this board?

Deputy City Clerk Johnson asked the Zoning Board tomorrow night or the Board of Mayor and Aldermen?

Alderman DeVries responded I'm sorry. Wednesday night. I'm thinking this is a Tuesday. Yes, Zoning Board Wednesday night.

Chairman Lopez stated I believe that the correspondence that we receive...Attorney Miller, are you presenting something to the Zoning Board?

Alderman DeVries stated that's not coming from this board though.

Chairman Lopez stated not coming from this board, no.

Alderman DeVries stated that's why I'm thinking there should be more of a statement from this board, in due respect to my fellow Alderman.

Deputy City Clerk Johnson stated if I'm understanding the action of the Committee, it's going as a recommendation that the Board of Mayor and Aldermen come to that finding, and there would be something that would be delivered to the Zoning Board, and we could include minutes from the Committee itself. But my presumption is that the Mayor and/or the Chairman of the Board will be appearing and they will consult with the City attorney before presenting their...

Alderman DeVries asked and the final part was that the Mayor would be representing the City? Is that what I just heard?

Deputy City Clerk Johnson responded I can't speak for the Mayor but...

Chairman Lopez stated whatever the Board wishes, if it's the Mayor or the Chairman of the Board...

Deputy City Clerk Johnson stated I think that if the Board of Mayor and Alderman are requesting the Mayor and the Chairman of the Board, then they will.

Alderman DeVries stated then what I would do to ask a friendly amendment of Alderman 2 that he expand on his motion to include the Chairman of this Board...

Chairman Lopez stated may I interrupt you. I don't believe we should get into the aspects of the Zoning Board or the Planning Board for the reasons that we're not familiar with those particular aspects of it. You happen to be because you sit on the Planning Board, so I appreciate your knowledge. But I don't think our board, our Committee here, would want to make a recommendation other than either we're for the project or the Board of Mayor and Aldermen are against the project, without getting into the legality for either side to look at. I think the way I understand what's going to happen here, if the Board does approve it, the Mayor or myself will appear before both parties and indicate to them whatever that vote might be, either for the project or against the project. And I think the criteria that both bodies go through will be established by the attorneys in fighting for their case. So our role as Aldermen, I believe, at this stage of the game, is to give an opinion, if we vote in favor or against, to them, of our standing. So I think all those issues that you mentioned are going to come out in a process.

Alderman DeVries stated final comment: Though I respectfully disagree with some of the thought process and obviously think that Zoning Board would be served well by knowing the parameters of why we thought there were difficulties with the project, I don't disagree with the motion being made. So, leaving it at that and moving the meeting along.

Alderman O'Neil stated just a couple points: Without the hotel, there would be no baseball stadium. Without the Chinburg condo development, there would be no baseball stadium. Without development of this site, and I believe Mr. Catapano has lived up to his obligations to date regarding this piece of land... Without Mr. Catapano's commitment on this piece of property, until he found a suitable developer, there would be no baseball stadium. This was all part of the puzzle. We can't lose sight of that. And regarding diminishing value of the surrounding properties, I believe... Maybe Mr. Duval can correct me if I'm wrong... that Mr. Chinburg went on record in a letter in support of this project. Is that correct? And I believe you stated at one of the Board meetings, and I don't remember which one, that the Rodells have gone verbally in favor of this. Am I correct? There is

no letter from the Rodells. We talk about diminishing the value of the property, two of the three major abutters, the Rodells and Chinburg...We would be the third abutter as the owner of the stadium...are in favor of this project. They've either stated it in writing or verbally. So, but again, without the hotel, there would be no baseball stadium. Without the Chinburg condo development, there would be no baseball stadium. And without action on this property, whether Mr. Catapano's paying himself now or with future development, there would be no baseball stadium.

Alderman Roy stated there's not denying that this is a very complex deal, as we've talked about from the beginning. Alderman Gatsas mentioned the 200,000 square feet of retail space and the power plant that was originally talked about. I don't think anyone in this room...well, possibly, is more pro-development than I am. But I've spend more than one baseball game looking at that piece of property, seeing the illegal parking, seeing the dust bowl that's there, and wishing that it would be developed into something that would help that area. While I've got a great deal of respect for Frank and what he's brought to this table, and a great deal of respect for the engineer and the developers that are coming forward, the density to me is the problem. And the contractual obligation that, at least through the literature that I've read, that we have the potential of 2,500 square feet to the Red Sox. So as much as I'd like to say, let's go forward, I just wish for Frank and the City's sake, there could be a better fit. The Chinburg property, I think, was a square peg put into a round hole. We have land south of that. We have access that wasn't used. It fit at the time. And personally I think that was a bad decision. I think we should have come forward with more when we did this. Now that we've had two projects up and running, and people find the baseball and the community area productive, I think we have the time, either with Frank as a partner or, you know, just with City staff helping him out, that we can find the best fit for that raw piece of land. And as much as I'd love to see high-end residential, and in contrast to my colleague, I think it will be a benefit to the City, I just don't feel that that postage plant lot is the best place for it. So I will go with my colleagues Alderman Gatsas and Alderman DeVries and just ask that we find a better fitting establishment to go on that piece of land.

Alderman Gatsas stated roll call. I'm all set.

Chairman Lopez asked the motion is what, Carol?

Deputy City Clerk Johnson stated the motion is that the Committee is recommending to the Board that a message be sent to both the Planning Board and the Zoning Board that they are not in favor of the project at Two Line Drive.

Deputy City Clerk Johnson called the roll. The motion passed unanimously.

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

A True Record. Attest.

Clerk of Committee