

**SPECIAL COMMITTEE ON RIVERFRONT
ACTIVITIES AND BASEBALL**

March 14, 2008

1:30 P.M.

Chairman Lopez called the meeting to order.

The Clerk called the roll.

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

Messrs.: T. Arnold, T. Clark, D. Cornell, R. MacKenzie

Chairman Lopez addressed item 3 of the agenda:

3. Update on retail development in the Riverfront area.

Mr. Tom Arnold, Deputy City Solicitor, stated as the Committee is aware, this retail parcel is presently owned by Manchester Downtown Visions. There is presently a make whole agreement, as you are aware, covering that retail parcel. Back in March of 2005, Paul Blouin and South Bedford Street Holdings, which is Mr. Blouin's LLC, sued Kurt Sanborn and Manchester Downtown Visions. They essentially alleged that as part of the property transfer involving South Bedford Street and the small triangle of land across the then South Bedford Street, that Manchester Downtown Visions or Kurt Sanborn, who was principal of Manchester Downtown Visions, had represented that they would perform certain landscaping and get certain permits that would be required once Mr. Blouin got the property which was to be transferred to him and the new road was put in. That particular suit went to trial and in April of 2006. Mr. Blouin got a jury verdict in the amount of \$155,000. The City was not involved in the suit. We were not a party. A judgment was subsequently issued in the amount of \$179,595.81. That represents the judgment that was obtained, plus interest and costs. After South Bedford Street Holdings got their judgment, they essentially moved to put what we call a Trustee Attachment on the proceeds of the Letter of Credit that were being held pursuant to the make whole agreement being held by the City of Manchester. We got the Order of Notice on that around July 13, 2006. We subsequently went to a hearing on that. The City argued that the Letter of Credit proceeds were subject to the make whole agreement. The City had a security interest in them. The Court granted a Trustee Attachment on those funds, but

made the Trustee Attachment subordinate to the City's interest, meaning that under the make whole agreement the City could use the proceeds of the Letter of Credit for any proper purpose under the make whole agreement and that, if there were any funds remaining after the City had used those funds for any proper reason, the remainder would be trustee processed. In November of last year, the Court ordered what is called a Writ of Execution on Mr. Blouin's judgment. A Writ of Execution is merely the legal writ that is used to try to collect on a judgment. The Writ of Execution was sent by the sheriff to the City. We got it in January of this year. Approximately three weeks later, I responded to the sheriff and said that all the conditions for releasing the make whole agreement and hence the Letter of Credit had not been met and that the City still had an interest in the money and we were not going to turn it over at that point. In response, Mr. Blouin has filed a motion to compel the City to turn those funds over. That motion to compel is scheduled for a hearing on May 23rd of this year. Basically, the actions that have taken place are merely Mr. Blouin's and South Bedford Street Holdings' attempts to collect the judgment that it is owed by Manchester Downtown Visions and Mr. Sanborn. That's it, in a nutshell. I'll be glad to answer any questions, if you have any.

Chairman Lopez asked what's the balance in the Letter of Credit right now?

Mr. Arnold stated as of February 29th, the balance in the Letter of Credit was \$108,019.29.

Alderman Gatsas stated Mr. Arnold I think you sat right in this chamber when there was a pretty lengthy discussion about the sale of that property or the ability for somebody to put 32 units on it. Were you aware of any of this at that time?

Mr. Arnold responded yes, I was.

Alderman Gatsas asked is there a reason why the Board never knew about it?

Mr. Arnold responded as I said, Alderman, at that time, the suit did not involve the City and the funds were secured for all purposes that they were able to be used for under the make whole agreement.

Alderman Gatsas asked what was the date that the City's financial interest was at risk?

Mr. Arnold responded I'm not sure I understand the question.

Alderman Gatsas stated let's try it again. At what date do you think that the City's interest was at risk?

Mr. Arnold stated I don't think the City's interests were ever truly at risk, Alderman.

Alderman Gatsas asked if I ask that same question of another attorney, what do you think they'd give me for an answer?

Mr. Arnold stated I would presume the same answer. I can't speak for another attorney.

Alderman Gatsas stated so what you're saying is that the \$108,000 that's left in the Letter of Credit is not at risk.

Mr. Arnold stated the \$108,000 the City can continue to use for any purpose that is proper under the make whole agreement. Now, if you want an interpretation of how we think the make whole agreement may play out, I would suggest you recess to meet with counsel. But, as the Court ordered and the Court found, the money being held by the City was subject to a security interest in which the City had interests that were superior to any judgment that Mr. Blouin or South Bedford Street Holdings may have obtained.

Alderman Gatsas stated well, Mr. Arnold, I guess that's where you and I differ and we've differed in the past about the same things. I don't like walking down Elm Street and having somebody give me information that's pertinent to this Board when other people are aware of it and we as a Board aren't. We met on a subject matter two weeks ago and it was pretty clear there was concern with the Riverfront development and the taxes it would derive to make sure that the citizens didn't pay the bill. So, I guess my question is, if this started in...when was the first execution? Was it 2006?

Mr. Arnold responded the verdict was 2006.

Alderman Gatsas stated and they put the Letter of Credit subordinate. Is that correct?

Mr. Arnold responded yes.

Alderman Gatsas stated is there a reason why, from July of 2006 to March of 2008, nobody ever knew about anything that was happening down there?

Mr. Thomas Clark, City Solicitor, interjected Alderman, that's not true. Our office has advised, and the Finance Office has advised this Committee that Mr. Blouin was suing Downtown Visions and that a judgment had been issued. The

Mayor's office has been advised and in fact I think at that meeting...Tom Arnold wasn't at the meeting a couple of weeks ago where we met in recess to meet with legal counsel, and I believe it was discussed at that time, too.

Alderman Gatsas stated well, I guess I'll look at my colleagues on this Board. There are five of us, and I'm getting kind of that same stare that I give you. I don't think any of us here...and if Alderman Smith hasn't pulled it out of his packet yet, I would say, chances are, we weren't told about it.

Chairman Lopez stated let's put things in perspective. This is a completely private matter, is that correct?

Mr. Clark stated that is correct. The City is not a party and is not involved.

Chairman Lopez stated I guess the other question is on the \$108,000. Could we lose that at some judgment or court proceedings or anything like that?

Mr. Clark responded if you want to discuss that, we'll ask you to recess and meet with legal counsel.

On motion of Alderman M. Roy, duly seconded by Alderman DeVries, it was voted to recess the meeting.

Chairman Lopez called the meeting back to order.

Alderman Gatsas stated I would hope that the staff would keep us apprised on a regular basis and in writing, not verbally. Certainly I don't want to walk down Elm Street again and find out something from the public that I don't know. I think every one of us is elected to protect the interests of the City and it's very difficult for people to tell us that there are judgments running around since July of 2006. People can say that we've been told and maybe we were made aware that there was a lawsuit, but we've never been told about the pending circumstances that are there. So, I would hope that we get it in writing and I would suggest that we don't deliberate in executive or non-public session and have us told things that probably the public should know.

Chairman Lopez stated I don't quite understand what all that means other than our staff has done their job and informed us. Keep in mind that this is a private matter. If it's every private matter that you want to be informed of, Alderman, I'm sure that can be arranged. But, you hear something on the street, it might not be...

Alderman Gatsas interjected Mr. Chairman, with all due respect, why did we, as a Board, sit here and deliberate about a condominium project that didn't need our approval?

Alderman Lopez stated Alderman, I didn't interrupt you. Like I was saying, these are private matters. There are so many things that the City can't do. They're private. Just like you have private business. We don't have the right to interfere with your private business or even look into it. But, when we're talking about something that affects us and the courts say something else, we can't do anything. Is there any staff member who would like to add anything?

Alderman Gatsas stated I think it's very obvious. Why did we get involved in a private matter, as I said, when somebody came before us with a condominium project? Why would we have any say in that matter, under the variances?

Mr. Clark stated as you recall, and I think we can check the minutes, when they came before you with the condominium project originally, it was informational for the Committee to let you know what they were doing. There were no staff recommendations, and there was no vote to be taken by the Committee.

Alderman Gatsas stated it was a two-hour discussion about telling them to reduce the floor size, reduce the number of units...various discussions that lasted for at least two hours.

Mr. Clark stated it was a long Committee meeting and the Committee was advised that those duties belonged to the Planning Board and to the Zoning Board, but they were listening to your recommendations.

Alderman Gatsas stated I guess I would make a motion that staff would talk to Mr. Catapano, and certainly it would be in the best interests of the City that the City owns that land, and find out what he wants to sell it for. Because, obviously we know what the sheriff's sale is.

Mr. Clark stated if you would like someone to contact Mr. Catapano, we will.

Alderman DeVries stated Alderman, I'm not quite sure what you're proposing here. Are you anticipating that the City's going to buy the property back?

Alderman Gatsas stated it may be in the City's best interest to control that, rather than worry about somebody going down there when we've got a \$19 million investment behind it, buying it at a sheriff's sale, putting up a fence, and driving the tenant we have in there right out of his mind.

Mr. Clark asked to be perfectly clear, what is it you would like us to ask Mr. Catapano?

Alderman Gatsas moved to have the City Solicitor ask Mr. Catapano if the property is for sale and what he would entertain selling it for. The motion was duly seconded by Alderman M. Roy.

Chairman Lopez stated may I ask the maker of the motion, why wouldn't we just leave it on the market and let it be sold? People are interested in doing something down there and the Zoning Board and the Planning Board are the ones that are going to approve it. We're not going to approve what goes there. We have an input into what goes there. But the Zoning Board...

Alderman Gatsas interjected my concern certainly wouldn't be the tenant if they had an interest in buying it. If somebody went down there and decided to bid it up, just to control the piece in front of the ball park, to do whatever they wanted to do, to have that tenant have a problem, that would be a very big concern of mine. Because, let's remember, they're paying \$975,000 rent.

Chairman Lopez stated I understand. What's the value of that piece of property, David?

Mr. David Cornell, Chairman of the Board of Assessors, responded the retail site is currently assessed at \$173,200.

Alderman Gatsas stated and the sheriff's sale is for \$179,595.81. Or that's what the attachment is for.

Chairman Lopez stated well the motion is there. I don't see any value in doing it. But, the motion is there and has been seconded by Alderman M. Roy.

Deputy City Clerk Matt Normand stated the motion is to direct the City Solicitor's staff to ask Mr. Catapano if the property is for sale and what the price is.

Alderman DeVries stated I would like to ask our City Solicitor's office to advise us. You know as much or more than we know about this whole process. Do you believe contacting Mr. Catapano at this point in time is in the City's best interests?

Mr. Clark stated it's not going to hurt the City's interest. Let's put it that way. Mr. Catapano will tell me what he tells me and I'll get back and inform the Committee what he informs us.

Alderman DeVries asked do you believe it will, in any way, affect the sale of that property, be it by sheriff's auction or other?

Mr. Clark stated that I don't know. There is no way I could tell you that. I don't know who Mr. Catapano or Downtown Visions has been talking to about selling the property. I have heard as recently as the last meeting we had that there was some interest from some people in putting a restaurant there. I don't know what arrangements Mr. Catapano has made so I couldn't answer that question.

Alderman DeVries stated I have one additional question, Mr. Chairman. Is this a recommendation for the Board? I'd like that to be a recommendation to the Board.

Alderman Gatsas withdrew his motion to have the City Solicitor ask Mr. Catapano if the property is for sale and what he would entertain selling it for. Alderman M. Roy withdrew his second.

Alderman Smith stated I'm really concerned because I just found out about this today and the whole thing was the baseball stadium. This fellow that owns it can pick up, after a certain amount of time, and leave town. And I really think it's going to affect his property. We went through it when another developer wanted to put up the high rises and so forth. We have to protect our interests. The main thing is like a second cousin to Verizon. That brings in business to downtown. Economically speaking, it's a safeguard and we have to protect our interests, so I think that we have to have a final result. I'm just disappointed that I didn't find out because I think I knew there was a court case. I didn't know it was coming to a head like that and I would appreciate it, in my case, that I would get the information beforehand, rather than have it come up right now. Thank you very much.

Alderman Gatsas stated if Alderman DeVries...this Committee has always had the ability to move without the authority of the full Board, is that correct Mr. Chairman?

Chairman Lopez stated this Committee has the authority to do just about anything except change the agreement that the Board of Mayor and Aldermen has approved.

Alderman Gatsas stated so I'll reinstate my motion and look for a roll call vote on it.

Alderman M. Roy stated I seconded the motion because I wouldn't mind finding out or having more of an in-depth conversation with Mr. Catapano regarding

where he's at, what he's going forward with, and finding out some of the dates of things that have been talked about now publicly. This, like Alderman Smith, is the first I've heard in terms of a sheriff's sales and amounts of judgments. I would like to find out more information, but I don't want to get into a negotiation. I want information. I guess that was my understanding of Alderman Gatsas' request, that it was for information. I wouldn't mind, with respect to my other colleagues on this Board, the full Board, if this discussion came up Tuesday night and I support Alderman DeVries' request to go ahead and have it come up Tuesday night so we all move forward with equal information. With that said, if it can be a recommendation of the Board, I will second it. We have moved fairly autonomously on this Committee and it has hurt us at times. I don't think it's fair that we get penalized for moving autonomously and then come back with other Aldermen who don't sit on this Committee and aren't available at 1:30 on a Friday afternoon for a quick meeting that we're going to be judged again on Tuesday night. So I'd prefer that we share information with the full Board, possibly a report of this Committee and possibly a full vote on that motion. So, if it does go to the full Board, I will second it.

Chairman Lopez asked what are we sharing?

Alderman M. Roy responded the request that this Committee is making, as well as some of the information I believe we have requested as far as dates.

Chairman Lopez asked just to ask the question?

Alderman M. Roy responded it brings the full Board, including our CIP Chairman, onto the right page. If we're going to ask the question, what's for sale, we should have the people who are going to be voting on whether it's going to be purchased in the conversation.

Deputy City Clerk Normand stated if the Committee so desires, you can direct staff to ask the question and we can report out that you've directed staff to do that, if you'd like, but that doesn't hold up Attorney Clark from proceeding on his end between now and then.

Alderman M. Roy stated I would support that as well, as a very good suggestion, Deputy Clerk.

Chairman Lopez stated the only thing is, going to the full Board to ask the question...it could be done by a telephone call and get back. I don't know what we're going to do Tuesday night. Mr. MacKenzie, do you have any suggestions?

Mr. Robert MacKenzie, Director of Planning & Community Development, responded not really, Mr. Chairman. I do think there's interest in informing the rest of the Board and I think that's very useful so that there aren't any concerns later from other Board members. It does appear to be leading toward the path that might acquire property and of course ultimately CIP and perhaps even the Mayor's budget would have to reflect that. So, I think the rest of the Board should be aware of what's going on.

Alderman DeVries stated I guess the other thought that I have is, I've heard this time and time again from staff and fellow Board members that when an individual is trying to do business and may be involved in trying to make a deal, close a purchase and sales agreement, or whatever might be happening on that property, when that goes public, they lose some of their negotiations. So, I just can't see that we're going to get a whole lot of useful information out of it between now and next Tuesday, especially if there's some deal-making going on. What are we expecting to hear back? I'm not interested in getting into a negotiation or initiating that just yet. That should be decided at the full Board level, if we even think we're going down that path. Whatever we are trying to report out and solicit for information, we can start our discussion.

Chairman Lopez stated so we report out to the full Board. We give the authority to go to Catapano and ask him, do you want to sell the land and how much do you want for it? We'd like the first option or something like that. Is that what you're talking about? I just want to make sure.

Alderman DeVries stated not at all. I'd like to take this discussion to the full Board, period. I'm not trying to frame the discussion. I'm not going to...

Chairman Lopez interjected I think, Alderman, to have a discussion at the full Board...

Alderman DeVries interjected I am not looking to contact that property owner with what would be an appearance that we are willing buyers because I don't think we, as a Board, have...

Chairman Lopez interjected well, that's my point. That's what I don't understand. I want to make a motion very clear that we're going to go to the full Board and we're going to do what? We're going to ask the full Board to go out and ask the question if he wants to sell the property to the City? Well, you've already given your hand up. I mean, that doesn't make sense. If you want to do it, we've always instructed staff to go check it out and come back.

Alderman Smith stated thank you very much, Mr. Chairman. I don't think a letter or anything would do any good at next Tuesday's meeting, but I would like to have the City Solicitor get in direct communication with Frank Catapano and find out where we stand and where he stands and see if something can be worked out. We can expound on this for days. We're not going to get any answers. Go right directly to the person who owns the land right now and find out what his thoughts are and where he's going. He tried to sell the land two years ago, and because of the variances that were stipulated on the TF Moran project, it went down to defeat. But I really think that it's a matter of communication and we should do it right now. I don't think bringing anything up at the Board would do any good. If you want to send out a form letter just informing them, that's good enough. But, I don't want to debate this again at the Board of Mayor and Aldermen meeting when most of the participants on the Board do not know or do not understand what is going on. Thank you.

Chairman Lopez requested that Deputy City Clerk Normand read the motion again.

Deputy City Clerk Normand stated the motion we had for discussion was the staff to ask Mr. Catapano if the property is for sale and what is the asking price.

Chairman Lopez asked is that your motion?

Alderman Gatsas responded yes, that was my original motion.

Alderman M. Roy stated just to clarify, your Honor, I believe that this would be sending the wrong message that we're a willing buyer without informing or bringing the whole Board together to get to that point. And I don't believe that's something that this Committee should do.

Alderman Gatsas stated well, with all due respect to my colleagues, we have a tenant in a \$19 million project that the taxpayers are at risk for. Now, whether the tenant or whoever is out there negotiating...I'd hate to think that somebody else negotiates a deal and puts our tenant at risk. If we don't think we should be protecting the tenant and the City on a \$19 million deal, then asking the question about what the price is... maybe he comes back with a price and we say yes, we'll take it, at the full Board meeting on Tuesday.

Chairman Lopez stated I agree with Alderman Smith. Do we have to go through this whole process when we have the authority to ask that question? Because, we're not taking any particular action.

Alderman Gatsas stated I don't disagree with you, Mr. Chairman. That was my motion.

Chairman Lopez stated we want to discuss this, I mean. That's what I want to make sure, when we go to the full Board. I agree with Alderman Smith. We're going to hash this whole thing out. It's a private deal. All you're going to do is ask the man a question. If he says no, that's the end of it. If you come back and say, the City Solicitor or somebody's going to tell us what the answer is, the full Board is not going to be able to do anything. It's a private deal.

Alderman M. Roy stated Mr. Chairman, unfortunately, I disagree with you on that. As soon as we ask the question and as soon as the Solicitor gets an answer and as soon as he relays it to any Board member of this Committee or the full Board, that becomes a public number. And I don't believe that, right now, we should be in that position of funneling out that number if there is not a consensus within our full Board to put the money where our mouth is. That's where I have the dilemma of saying, I want to protect the tenant. I'll do just about anything to protect one of the very fine assets of this City, but I don't want to start a right-to-know issue on value or acceptance of value of that property.

Chairman Lopez stated I think we all want to protect our tenant. There's no question. Fourteen Aldermen and the Mayor and everybody else wants to protect our tenant. But, if this is going to be a free-for-all at the full Board, I don't want to play a part in it for the simple reason that we're not going to accomplish anything. If we want to ask the question, let's ask the question. I don't know what debate we're going to have at the Board, and people are going to make motions and do things that might not even make sense in the best interest of the City. That's what I'm afraid of.

Chairman Lopez called for a vote on the motion but was advised that the motion had not been seconded and therefore could not be voted on.

Alderman Smith asked Tom, how fast can you act in getting in direct communication with Frank Catapano? How long would it take?

Mr. Clark responded that's a good question. I have his phone number but whether he answers the phone...I don't know if he's around.

Alderman Smith stated I have his address but I don't know if he's still at the same address.

Mr. Clark stated he hasn't moved. I just don't if he's in the office or at home or on vacation. I can call him; that's all I can say.

Alderman Smith stated well, I'm saying this is of immediate concern. We're going through a new budget cycle coming up, as you well know, and I think that the furthest from my mind right now is down with the proposal. If you remember it correctly, it's our own fault because we leased the land. We leased it in five parts; this is the problem. When they had the power plant, when they had the hotel, they had the land development. I really think that we have to get in touch with Frank and see what direction he's going in because he tried to sell it before and we'll find out what the situation is. We're in a dilemma right now and I can't foresee...as you well know I was all for Gill Stadium and the development of a baseball park down there. But the other part, the retail stores and everything else fell apart. The poor developer that's building the townhouses...with the market, he's in trouble. So, we've got to try and save this. I mean, I think if we lose baseball, the whole thing is gone.

Mr. Clark stated I can call him this afternoon, Alderman, and talk to him. I'll try to, and if he's there, I'll talk to him.

Alderman Smith stated I would certainly appreciate it, and in all fairness, could you get in touch with Chairman Lopez to let him know what you think and he can let us know, and then the full Board, what is transpiring.

Mr. Clark stated I certainly will.

Chairman Lopez just as a clarification, if we were to buy the land, it has nothing to do with the budget. We can use the one-time account for that. That's what it's for, economic development. So, don't get hung up on the budget, that this has to do with the budget.

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

A True Record. Attest.

Clerk of Committee