

***PLEASE NOTE: Since the Glendale City Council does not take formal action at the Workshops, Workshop minutes are not approved by the City Council.**



**MINUTES OF THE
GLENDALE CITY COUNCIL SPECIAL WORKSHOP SESSION
Council Chambers
5850 West Glendale Avenue
June 28, 2013
1:30 p.m.**

PRESENT: Mayor Jerry P. Weiers, Vice Mayor Yvonne J. Knaack and Councilmembers Norma S. Alvarez, Ian Hugh, Manuel D. Martinez, Gary D. Sherwood, and Samuel U. Chavira.

ALSO PRESENT: Richard Bowers, Acting City Manager (appeared telephonically); Horatio Skeete, Assistant City Manager; Nick DiPiazza, Acting City Attorney; and Pamela Hanna, City Clerk

CALL TO ORDER

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

1. DISCUSSION OF STATUS OF NEGOTIATIONS AND REVIEW THE DRAFT PROPOSED ARENA MANAGEMENT AGREEMENT WITH RSE

Mr. Skeete and Mr. DiPiazza introduced this item. Mr. DiPiazza went over how the proposal would be laid out. He first discussed the timeline of the proposal itself, how it was received and the events that have transpired since then, including the meetings and discussions that were held.

Mr. DiPiazza next spoke about the deal points in broad terms. This is a lease agreement with two parties, Ice Arizona Manager Company LLC and Ice Arizona Hockey Company LLC. In part one of the agreement, the city is proposing to enter into a lease agreement with these two companies. These companies will lease the arena and will pay rent of \$500,000 per year for the term of 15 years. The second part of the agreement is a professional management services agreement, and these companies will manage the arena. The cost to the city for this contract is \$15 million per year for the term of 15 years.

Mr. DiPiazza said there are provisions in the agreement that allow RSE to withdraw from the agreement after 5 years if they experience losses of over \$50 million. Additional outs for the city are included as well. RSE also creates revenue streams for the city to help defray the arena

management fees. Some of those revenue streams discussed were a hockey game surcharge, non-hockey surcharges, team rent and parking revenues. The estimated net revenue stream is \$2.3 million.

Vice Mayor Knaack said the figures being presented by Ms. Schurhammer are not the same. Mr. Skeete said Mr. DiPiazza's figures were from earlier numbers, but the most current numbers will be presented. Additional discussion was held regarding various changes in the numbers.

Mr. DiPiazza next spoke about the details of the contract and introduced Mr. Gary Birnbaum, the city's outside counsel, with the law firm of Dickinson and Wright.

Mr. Birnbaum went over various items that Mr. DiPiazza had already discussed, including the purpose of the agreement and various numbers. He first spoke about the contract and RSE's out set forth in the contract. He said RSE can only opt out if the losses are \$50 million and at the end of a five year period.

Councilmember Martinez asked how the \$50 million in losses would be compiled. Mr. Birnbaum said the city would have access to the books to determine if the \$50 million in losses has accumulated.

Mr. Birnbaum also said the city has a parallel right that the team has, so after five years, during a window period of time, if the city has accumulated losses from its ownership of the arena, it would have the same right of early termination of the agreement. He said the city would pay \$15 million a year as a management fee for the arena and the arena management company would manage the arena. The city would then receive various percentages of several revenue streams which would offset the costs to the city. Mr. Birnbaum discussed several of the revenue streams, including surcharges on hockey and non-hockey events and parking revenue. Another revenue source mentioned was arena naming rights. Mr. Birnbaum spoke about a second venue or theater stage inside the main bowl of the hockey arena. He also said one hundred percent of the naming rights for that smaller venue listed in the current draft of the agreement would belong to the city. Locker rooms, or exclusive team areas, would be leased to the hockey team through the arena manager. The city will receive a flat rental fee of \$500,000 per year for those areas. These rental streams would be available to the city for at least 15 years.

Mr. Birnbaum also said the city is also allowed a total of four city sponsored events per year. All of the revenue from these events belongs to the city. There are also 6 community events where the city can utilize the facility rent free for community events or activities. All of the revenue from these events belongs to the city. In addition to providing management services, the manager must deliver the hockey team. The acquisition of the hockey team by the arena manager's affiliate is a condition to the closing of the deal.

Mr. Birnbaum discussed the timing of the agreement. He said if the agreement is approved on July 2nd, the current plan is to require acceptance by the arena manager within approximately one week. Once the agreement has been accepted, the new deadline is August 5th in which the transaction must close, including acquisition of the hockey team and approval from the NHL.

Councilmember Martinez asked about indemnification in case the city is sued. Mr. Birnbaum said the agreement has a standard mutual indemnification provision. He said if an event is caused by the arena manager, the arena manager will indemnify the city against any loss associated with those activities. If the city does something which results in damage, the city will indemnify the arena manager. If anyone were to challenge this agreement, the arena manager and the city agree to jointly defend against the action.

Mayor Weiers asked Mr. Birnbaum to discuss several of the biggest issues. Mr. Birnbaum said his staff was tasked with coming up with an agreement that was acceptable to the council. They focused on the legal terms and how to protect the city. He gave several examples of this, including naming rights and parking revenues. Further discussion was held about offsetting losses and the parts of the contract that addressed that issue.

Councilmember Alvarez asked what year the city received the 20 percent naming rights. Mr. Birnbaum said the naming rights agreement in place today is from the original agreement and the city didn't receive a percentage. The proposed arena management agreement gives the city 20 percent for the naming rights for the arena. Councilmember Alvarez asked what the city has received from the original 15 percent naming rights in the past. Mr. Birnbaum said in the past, the city has received nothing from the 15 percent naming rights. Further discussion was held regarding past naming rights agreements. Mr. Skeete said the original agreement between the city and the team owner did not allow for the city to get any name rights revenues. He said they first negotiated the naming rights issue with Mr. Jamison last year, but that deal did not close.

Councilmember Sherwood said when the team first came to Glendale, there was no arena management fee so there were no revenue streams and the city relied on city taxes from the Westgate area development for revenue. Mr. Birnbaum said in his summary regarding revenue streams, there was no mention at all of sales taxes received on tickets, parking or construction. He said they have focused their negotiations on direct revenues for the city.

Mr. Skeete said the previous arena management agreement only called out two revenue streams, a ticket surcharge and the rent. He said previously, the city did not have an arena management fee, so the arena manager and the team owner used that revenue to offset operating costs. Mr. Birnbaum said the ticket surcharge has grown a little bit over the years, but the starting surcharge of this current agreement is the highest it has ever been.

Councilmember Alvarez said this is the first time the public has had a chance to hear this information. She said the city has been losing money because of their business tactics in the past. Mr. Birnbaum said if the arena has a manager whose financial interests were tied to the city, he hoped that more and more events would occur to fill the arena. He hoped this new agreement would help generate additional revenue for the city.

Councilmember Chavira agreed with Councilmember Alvarez. He said everyone is finally able to see what has been put on the table. He thanked Mr. Birnbaum for his candid presentation.

Mr. Birnbaum addressed the early termination clauses in the agreement and specifically what has changed. He said in the last draft of this agreement, a clause provided for early termination at the

option of arena manager any time after the 5th anniversary as long as they had \$50 million in losses. The city's early termination right did not exist. In the current draft, they have limited the arena manager's early termination right to the 180 day window and have added another section which gives the city a termination right in the same 180 day window.

Vice Mayor Knaack asked Mr. Bowers about the \$25 million repayment? Mr. Bowers said the first year; the \$25 million was paid to the NHL. Currently \$20 million sits in escrow and another \$5 million would be required to complete the second payment. Vice Mayor Knaack asked what happens to the \$25 million if the agreement is signed. Mr. Bowers said if this agreement is signed, the city would pay the \$25 million over the course of 5 years, at \$5 million per year. He said if this agreement is not concluded, the \$25 million will be due immediately.

Councilmember Alvarez asked if the \$15 million arena management fee was a fixed amount. Mr. Birnbaum said this \$15 million amount was a fixed amount for the entire 15 years of the contract. He said the variables are the offset revenue streams.

Councilmember Alvarez asked Mr. Skeete where the city was going to get the additional \$9 million owed for the arena management fee. She said she did not want any layoffs or cuts in services. Mr. Skeete said the agreement generates new revenue that was not currently in the city's budget. He said Ms. Schurhammer's presentation would explain how the projected revenue streams would impact the city's budget.

Councilmember Alvarez asked how much profit the city has received from 2003 to the present time from the arena. Mr. Skeete said the city has not made a profit from the revenues collected and expenses paid from the arena. He also said there was a debt service payment of about \$8 million that has to be paid. He said the intent at the beginning was that the revenue streams collected at the arena would at least cover the debt service owed. There was additional discussion by Councilmember Alvarez about the money being lost.

Mr. DiPiazza said the last part of the presentation was budget impact and said these concerns would be addressed during that section of the presentation.

Councilmember Martinez said the debt service is there for the arena whether the team is there or not. He said about 500,000 people come to the hockey games and spends their money at Westgate. He said if the team leaves, the money situation is going to be getting a lot worse. He also said there were new businesses that anticipate moving there but are waiting for the outcome of these proceedings.

Councilmember Hugh asked about revenue streams and asked if that would be discussed later in the presentation. Mr. Skeete said today's presentation will not use any historical estimates for projections in the future, but he said those figures could be provided to the council.

Mr. Birnbaum said it would be a mistake to take anyone else's projections and use them in making their decision. He spoke about the various specific revenue streams which have been discussed. Councilmember Hugh said there has not been a great level of attendance at non-hockey events. Mr. Skeete said his research showed only 15 non-hockey events in one year that

had an attendance of 14,000. There was further discussion about the parking fees and parking lots.

Mayor Weiers asked if the city would even be able to book events at the arena with all the additional fees. Mr. Skeete said it would put the arena at the top in ticket prices. Mayor Weiers said that might backfire on the city as well. Mr. Birnbaum said the argument against this would be the most comparable arena would be US Airways, which fills hundreds of lots during their events with parking costs of \$10 to \$30 per event.

Councilmember Sherwood said it was a possibility for the other lots to start charging for events as well. He mentioned that Tanger charges \$25 for Cardinals games. Mr. Skeete said the parking for the Cardinals provided by the city is free parking. He said other lots might charge, but the city is obligated to provide 6,000 lots of free parking during the Cardinals games.

Vice Mayor Knaack said they needed to look at the bigger picture. There hasn't been a long term owner that has put an effort into making this successful. She is hoping that with a new owner, there will be more stability and they will be able to bring more events to the arena.

Ms. Schurhammer spoke about the five year forecast that was presented to Council at the April 26, 2013 budget workshop. It is based on the FY 2014 budget that Council adopted earlier in June 2013. For FY14, the expenditures will exceed revenue by \$3.4 million meaning that the General Fund reserve will decline by \$3.4M to an estimated balance of \$8 million by the end of FY 2014. The revenues and expenditures are in alignment for FY15 as a result of implementing ongoing reductions at the start of FY 2015. For the next two fiscal years, revenues exceed expenditures and the fund balance grows. Ms. Schurhammer said additional reductions are required in FY18 due to the sunset of the temporary sales tax. The \$14.3 million in total reductions over the 5-year forecast period result in ongoing GF expenses running less than revenue and, as a result, the GF fund balance growing from a projected \$8 million at the end of FY 2014 to \$20 million at the end of FY 2018.

Councilmember Martinez asked about revenue projections. Ms. Schurhammer said the revenue projections allowed for about 3.5% growth each year. Councilmember Martinez asked how that compared to other cities. Ms. Schurhammer said a comparison with other valley cities is not an apples-to-apples comparison each city has a sales tax base comprised of a different mix of businesses. Instead, staff relies on forecasts put forth by several experts on the Arizona economy.

Mr. Skeete asked how their forecasts in the past have matched up to the actual numbers. Ms. Schurhammer said revenue actual for FY 2012 was within 3% of projections. For FY 2013, it looks like revenues will be within \$1 million or a couple of percentage points of the revenue projections. Additional questions were asked about the Tanger Outlets and Ms. Schurhammer said it has exceeded expectations.

Ms. Schurhammer next discussed arena-related revenues. She said the FY 2014 budget was prepared in February and, at that time; there were no prospects for a viable owner of the Phoenix Coyotes. Therefore, as a conservative measure, the FY 2014 budget is based on the assumption that there would be no hockey in FY14. Consequently, the FY 2014 budget assumed that

revenue generated at the Jobing.com Arena would be about \$4.1 million and expenditures at \$14.9 million. So, with \$14.9 million in expenses and \$4.1 million in revenue, the GF is required to make up the difference with a transfer of \$10.8 million. .

Ms. Schurhammer presented RSE components that are not in the FY 2014 budget, but are included in the proposal. She said there will be an additional \$9 million in management fee expenses, as they only budgeted for \$6 million and the proposed fee is \$15 million. Additional revenue comes to \$6.7 million. She discussed in detail the differences in several figures. She said these projections are an educated guess made on the figures available at the time.

Vice Mayor Knaack asked where the \$1.50 surcharge showed up in the numbers being presented. Mr. Skeete said the \$1.50 surcharge is not factored into these numbers.

Ms. Schurhammer said the RSE proposal results in a net additional expense of \$2.3 million for the FY 2014 General Fund budget. . Ms. Schurhammer displayed the same 5-year forecast from the beginning of her presentation with the RSE proposal's additional revenues and expenses incorporated into it. She said the revised 5-year forecast continues to show the same reductions of \$14.3 million shown in the earlier 5-year forecast slide. However, the ending fund balance is substantially different. Instead of an estimated \$20 million by the end of FY 2018, the revised forecast incorporating the RSE proposal shows an ending GF fund balance of less than \$9 million in FY 2018. She explained this occurs because 3 of the 5 years reflect an operating deficit meaning ongoing expenses exceed ongoing revenues to pay for them. With an ending balance of less than \$9 million at the end of FY 2018, Ms. Schurhammer said the city is not in a fiscally prudent situation.

Mr. Skeete presented the revenue projections provided by RSE for years 1, 5 and 15. He said these were numbers provided by RSE based on RSE's assumptions. He also provided council with the expenses to the city as laid out in the contract, which included management fees and capital repair expenses.

Councilmember Alvarez asked about additional revenue of \$6.7 million, and how much the debt service was. Mr. Skeete said the debt service for FY14 was \$8.4 million. There was further discussion about various figures that were included in the FY14 budget and the coming years. Councilmember Alvarez asked where the additional \$9 million would come from. Mr. Skeete said staff has not looked at where that additional money would come from. He said they would end with a much smaller fund balance and said the service levels provided by the city would remain the same.

Councilmember Sherwood said they have looked at these numbers in several different ways and he said with a managed arena, the numbers would increase.

Councilmember Martinez asked Ms. Schurhammer if the Coyotes stay and there is an anchor at Westgate, will the numbers improve. Ms. Schurhammer said her staff works closely with the Economic Development staff to include that in the revenue forecast. She said the numbers are only based on what they know at the time they are putting the budget together. She said it is

somewhat speculative. Councilmember Martinez said the economy has been down but he believes the economy is getting better.

Councilmember Alvarez commented that the city could keep the Coyotes and the 41 games they bring to the city. She said they had a company that placed a bid that will only charge \$6 million to manage the arena. She said the economy was bad but a lot of the city's problem was mismanagement of funds. She said they don't have the money for this deal. She said they have been presented with the numbers and the city just doesn't have the money to spend.

Councilmember Hugh asked if there was a comparison of sales tax revenue when hockey is at the arena and when it is not. Ms. Schurhammer said we had only two months of figures from September and October 2012 and that short of a timeframe is not enough history to indicate a long-term trend. She noted that November 2012 brought the opening of the Tanger Outlet Mall and that skews a comparison with the prior FY when there were hockey games being played. In any case, for September and October 2012, sales at Westgate were down about 5% over the same two months of 2011. . However, with the opening of Tanger in November 2012, that retail activity made up for the loss of hockey due to the lockout during the first portion of the 2012-13 hockey season.

Councilmember Hugh commented about the public process to find an arena manager. He spoke about the bidder for arena management for a much smaller fee than RSE. He asked if they had done due diligence to see if they were even qualified to run the arena.

Mr. DiPiazza said the NHL owns the hockey team and they had located a potential buyer for the team. RSE then began negotiations with the city just a short time ago. He said due to the brief timeframe, the city has been unable to do the due diligence they would like to have done. He said the deadlines are not city imposed deadlines, and Mr. Bowers has attempted to get more time to complete this deal.

Councilmember Hugh said that SMG was one of the respondents to the RFP and was listed as one of the best management companies in the world, and the city should take the time to investigate whether or not RSE is even qualified to run the arena.

Vice Mayor Knaack said SMG couldn't guarantee filling the arena with non-hockey events.

Mr. Birnbaum said the position of the city is that the procurement code does not apply to this agreement due to the express exception in the code for professional services, including management and consulting services. He discussed further the procurement code and its limitations and the reasons why the city could go through RSE instead of going through the bid process.

Councilmember Martinez asked about language added to the agreement regarding an arena manager. Mr. Birnbaum said it states in the agreement that RSE is a professional management company and they are capable of professionally managing the arena.

Councilmember Sherwood spoke about some intangibles that have come with the arena, which include the Cardinals Stadium, Cabela's, Tanger Outlets and other businesses. Additionally, Glendale has hosted a Super Bowl, the Fiesta Bowl, Wrestlemania and other large events. He said there is an estimate of \$6 million for Westgate. He spoke about the economic impact of the area without hockey. He said without a major tenant, the Westgate area won't be able to get the kind of events that a first class arena could hold. Restaurants and stores will close immediately without a hockey team. Payments still must be paid on the building whether there is a team or not.

Councilmember Chavira asked if the hockey events were televised nationally. Mr. Birnbaum said he did not know the answer to that question. Councilmember Chavira asked if they would be able to get a premium price for naming rights if they had a hockey team versus not having a team. Mr. Birnbaum said having the professional sports team in the arena would most definitely be the better option.

Councilmember Martinez shared his comments. He said the hockey arena was built as a catalyst for economic growth of the Sports and Entertainment District in Glendale. Its success remains a priority for the City of Glendale. Remember MetroCenter and how stores started leaving. One by one they disappeared and the center died. He continued that he was not saying that Westgate will die, but it will be dealt a staggering blow to the business owners that remain, as well as to the city. He added to think about the people that are not going to the 41 hockey games. Think about the businesses that won't come because there won't be an anchor. He asked if Cabela's Tanger and Renaissance would be there without the arena. He said that he didn't believe there would be any growth there if the hockey arena hadn't been built. He said the figures for the operating costs for the arena have been all over the map. He referred to a study about arenas comparable to Glendale's and their costs have been running from \$12 to \$17 million each year and that doesn't include the debt service or upgrading the arena. He asked what development has occurred around various facilities that had been abandoned such as the Coliseum and Cricket Pavilion and stated none. He said prior to Staples Center there was no development and only when the teams were in place that the area became successful. He said the revenues are in the billions. The point is an anchored arena begets a successful entertainment district which begets follow-on development. If this lease agreement is approved, the city does not get everything that was wanted. He added that it was a big improvement over the previous draft agreement with Mr. Jamison. He continued that there was some risk, but believed that the goals were conservative and achievable. He concluded by saying there may be some short term pain, but in the long term there would be an economic engine for the city. He added that coming into the meeting today, he wasn't going to support the agreement, but after the several changes/concessions to the agreement, he was now going to support the agreement.

Councilmember Hugh said the arena is an anchor along with the football stadium. He said he doesn't want to take the risk of paying out \$15 million since the city already has economic problems. He said there is no certainty to the city that they will collect any money. He said he wants the best arena manager they can find.

Mayor Weiers said three Councilmembers requested to have this meeting. He said time has been an issue. He said the city has made bad decisions in the past. He said it is important that

they aren't pushed into a decision without having the time to evaluate all the issues. He said staff has worked very hard to get all the information available.

Mr. DiPiazza said the meeting and agenda is ready for Tuesday and all the documents, including the email from the city manager, will be available on the website.

Councilmember Sherwood commented that staff had made recommendations regarding the transaction and that it was a very complex transaction. He continued that some of the assumptions were dependent upon other assumptions so it was difficult to get one very clear answer. He added that there could be a range of conclusions and there were many non-financial considerations. He stated that it was inarguable that a transaction as complex as this one the question of whether the risk and rewards were acceptable was strictly a policy decision. He stated that the policy decision belonged solely to this Council. This decision affects the future of Glendale and deserves a professional assessment by staff and that he would certainly consider their data. He stated that it was important that the decision makers needed to step back and consider the larger picture. He added that the initial decision was made ten years ago when the vision was established for the venue. He commented on the businesses surrounding the arena. He encouraged his fellow councilmembers to do a careful thoughtful evaluation of the information provided. He added that any delay at this point would be poor governance and that Council needed to vote Tuesday. He thanked staff for doing such a good job, working a lot of hours and getting everything done for this meeting.

Councilmember Martinez thanked the staff for the job they did. He added that the changes were done at about 2:30 a.m. that morning. He said the direction they did give that they would send it forward and if it was acceptable to Renaissance, they would have a team and if they turned down the changes, the team would be gone. The points were very important and if the Renaissance had insisted about taking or leaving it prior to the changes, he would have said leave it. He reminded everyone that it was the revised agreement that was moving forward.

Councilmember Hugh said he would like staff's assessment of the deal.

Mr. Bowers said he had concerns with the risks associated with this deal. He said the deal doesn't take into account the budget and the long term fiscal implications. He said he would prefer that the buyer take responsibility for the gap. He said he has no concerns about the documents. His concern is about the gap which rests solely on the city's shoulders. He said it is too much risky for the city in his opinion.

Mr. DiPiazza directed everyone to Mr. Bowers' email of June 26th. Mr. DiPiazza read the email sent by Mr. Bowers where he detailed his concerns about the deal.

Councilmember Hugh asked Mr. Bowers if he would do the deal. Mr. Bowers said his recommendation is related to the financial implications and budget stability over the long term. Councilmember Hugh said he is asking questions to get the answers, not as a stalling tactic.

Councilmember Alvarez wanted to know if the workshop would be repeated on Channel 11. She said everyone should have an opportunity to view the workshop. She was told yes.

Mayor Weiers said no one is stalling and it is their due diligence to get all of the information to make the best decision possible. He said he made a promise during his campaign that public safety was not sacrificed. He said the consensus was to move this item forward to Tuesday, July 2, 2013, for a voting meeting.

ADJOURNMENT

The meeting was adjourned at 4:40 p.m.