

**MINUTES OF A SPECIAL REGULAR MEETING
CITY COMMISSION
FORT LAUDERDALE, FLORIDA
DECEMBER 22, 2006**

Meeting was called to order at 4:14 p.m. by Mayor Naugle on the above date, City Commission Meeting Room.

Roll call showed:

Present: Commissioner Christine Teel
Commissioner Charlotte E. Rodstrom
Vice Mayor Cindi Hutchinson
Mayor Jim Naugle

Absent: Commissioner Carlton B. Moore

Also Present: City Manager George Gretsas
City Auditor John Herbst
City Clerk Jonda K. Joseph
City Attorney Harry A. Stewart
Sergeant At Arms None

Baltimore Orioles Spring Training - Facility Use Agreement

The City Attorney said the City is ready to respond to a contract received today at 1 p.m. which review was completed about five minutes ago.

Commissioner Rodstrom asked if this is a new item to be reconsidered.

The City Attorney said this item requires a motion for reconsideration. Even though this is different than the last contract, the issue is the facility use agreement with the Orioles. Based upon past practice, there should be a motion to reconsider.

Motion made by Commissioner Rodstrom and seconded by Vice Mayor Hutchinson to reconsider this item. Roll call showed: YEAS: Commissioner Rodstrom, Vice Mayor Hutchinson, and Mayor Naugle. NAYS: Commissioner Teel.

Dave Romanik, representing the Baltimore Orioles, said after the prior discussion and the comments made by Commissioner Rodstrom last Tuesday regarding a revenue neutral proposal, the Orioles redrafted the agreement in a way that complies with a revenue neutral approach.

Mr. Romanik said that the environmental clean-up could be viewed as a non-revenue neutral item and they would be happy to make it revenue neutral also. The agreement presented last Tuesday had several blanks in it, and he attempted to fill in those blanks for today given the time frame. He is willing to discuss any provisions in the agreement. The agreement presently provides that the Orioles will rent the facility or pay a use fee for the facility of \$1 per year. All expenses connected with the project, such as construction and maintenance, would be paid either by the \$500,000 annual payment

the State of Florida has authorized or the \$800,000 annual contribution authorized by the County. The Orioles will pick-up anything in addition. Some other provisions in the agreement have changed slightly because the term sheet provided that the City would pay for certain items such as insurance and establish a repair fund even though it was uncertain who would be funding the repair fund. Presently, there are provisions in the agreement that place such responsibilities on the Orioles. He attempted to make some changes in order to make those provisions a little more economically palatable to the team.

The City Attorney said he needs direction from the Commission as to what they want to accomplish. If it is a contract that is revenue neutral, this agreement is not. A contract cannot be put together in three hours. There are things included in the contract that he does not favor. There are things included that require substantive changes in order to make it revenue neutral. He understood that the Orioles were going to give the City right of refusal and charge rent for the fields, but this contract does not seem to accomplish that.

The City Manager said if they are comparing Option B (\$150,000) with the present contract, he believed that Option B has less financial exposure for the City, assuming all of the conditions from the previous agreement. The Orioles said they will negotiate use of the field later. However, in calculating projected field maintenance costs and the number of days the City wants to use the fields, there is more exposure with the present agreement than Option B.

Mayor Naugle said the estimate for maintaining the 11 fields would be \$240,000. Option B said the City would reimburse \$150,000 of the \$240,000 expense and get use of the fields. Option B, therefore, appears to be a gain of about \$90,000 for the City. With the present agreement, it would be negotiated and an open-end item. The City Manager confirmed that is correct. If the City opted not to use the fields or use them less, then the numbers would be reduced.

Commissioner Teel asked if the City Auditor reviewed the contract. The City Attorney said the Auditor is out of town. Commissioner Teel felt the City is at a disadvantage not having the Auditor's opinion and expertise. Mayor Naugle noted that the Auditor looked at Option B. Commissioner Teel noted there was not much time to talk to the Auditor about Option B after the last meeting because it was voted down. She knew he was getting additional information.

Mayor Naugle said that Commissioner Moore has just telephoned. He is not in the building or able to get to City Hall. Commissioner Moore wants to participate in this meeting via a conference call. The City Clerk believed the meeting would have to be moved to the eighth floor where there is a conference phone feature in order for that to occur.

Vice Mayor Hutchinson felt that Commissioner Moore should have known before now. Everyone was notified yesterday.

In response to Commissioner Rodstrom, the City Manager said that he was talking about maximum exposure, using the Orioles' numbers. If the fields were not used whatsoever, the cost would be substantially lower than what they think is \$300,000.

Commissioner Rodstrom understood that the Orioles were willing to give the City the right of first refusal whether or not the City uses the fields, and the City would enter into a user agreement with a fee for use of the fields.

Bernie Friedman, representing the Orioles, said that is the intent. The City Attorney could be given direction to wordsmith it to accomplish that.

The City Manager said the question as to how often the City uses the fields would be a policy decision made by the Commission. The issue of cost per day for the field would be determined by the Orioles and the City would have the option to accept or refuse. In calculating the numbers, the City took the total number of days they expect to use the fields under the previous agreement, using the Orioles' maintenance numbers.

Jeff Modarelli, Director of Business Enterprises, said the figure calculated was \$314,000.

Mr. Friedman said that Mr. Angelos has authorized him to indicate the Orioles will have an open book process and whatever the exact cost to maintain the fields that would be the cost charged to the City. The Orioles are not out to make a profit in that area.

Commissioner Rodstrom noted the maintenance cost would be the same as it would be for any field and the number of times as far as usage is concerned is speculative at this time. She wanted to get maximum usage for the residents.

Mr. Friedman noted that the Orioles are building the park for the residents, which is a sign of good faith.

The City Attorney said he has Commissioner Moore on the telephone who is demanding to be part of the meeting via telephone and claims there is an ordinance to permit this. He has threatened to sue the City.

Vice Mayor Hutchinson said that everyone was aware of this meeting yesterday. At 4:30 p.m. Commissioner Moore calls and wants the Commission to move to accommodate him. She asked why he did not know yesterday.

Mayor Naugle said that before this meeting he was told that Commissioner Moore would be in the building but was not going to attend the meeting.

Vice Mayor Hutchinson said that she has to report to work at 5:30 p.m., and therefore, whatever accommodations are made for Commissioner Moore, she might lost in the process.

Mayor Naugle said that the Commissioner has to be accommodated within reason, but he felt calling ten minutes into the meeting is an unreasonable request.

The City Attorney said the possibility is to recess the meeting and move to the eighth floor so that Commissioner Moore could be accommodated.

There was no consensus to move the meeting.

Mayor Naugle asked that Commissioner Moore be informed that the Commission would continue with the meeting at this time. In the future, the Commission would accommodate such a request if it is made earlier.

In response to Commissioner Rodstrom's question on Page 17, Mr. Romanik said that possibly the language could be revised to state the intent more clearly. The property and casualty insurance the agreement requires the Orioles to purchase has as a minimum the amount necessary to defease the bonds.

The City Manager returned to the dais at approximately 4:35 p.m.

Mr. Friedman explained the bonds would always be paid off by the proceeds of the insurance. At no time would the City have to pay off the bonds.

The City Attorney said the present agreement does not state this, but it could if the Commission requests. It needs to be subject to the defeasance of outstanding bonds, that they do not have the right to terminate without defeasance of the outstanding bonds. It is not mentioned in the referenced paragraph.

Mr. Friedman said it is mentioned in the insurance section, but they are willing to include it in the above-referenced paragraph also.

In response to Commissioner Rodstrom's question on Page 2, Item M, Mr. Romanik said that paragraph refers to the term sheet, and under the term sheet the City was putting in money. However, the next recital says that this agreement supersedes the term sheet and this is the new agreement.

In response to Commissioner Rodstrom's question on Page 7, Non-Related Events at the Site, Mr. Friedman believed that will be subject to a process at the City. He believed this language was originally included by the City. The City Attorney said this gives the authority to the City Manager, and therefore, the Commission would not see the requests unless the Commission decides otherwise.

Commissioner Rodstrom believed the Commission should review such event agreement requests.

Mr. Romanik said the last sentence provides that the City would consider a new ordinance regarding the usage of the stadium. Therefore, the Commission would be able to set guidelines for future use of the stadium.

Commissioner Rodstrom asked if any City's funds would be paying for the debt service. Mr. Friedman said none.

Commissioner Rodstrom asked if the environmental could come out of the Enterprise Fund. The City Attorney was not sure that could be done. The contract being presented today sets a floor of \$1 million of environmental remediation before the City could withdraw from the contract and refuse to fix environmental issues. The likelihood of this coming from the airport fund is not real high, but possible.

In response to Commissioner Rodstrom, the City Attorney said the Orioles are getting 5% of an abbreviated portion of the revenue which would probably not exceed the revenue collected now, which is about \$150,000.

Mayor Naugle asked if underground pollution is found that was likely there before the Parks and Recreation Department and the Orioles took it over, could that cost then come from the airport fund.

The City Attorney said that is possible, but he has not reviewed the issue extensively. If the City is going to do this contract, they should include a minimum amount of money that they are willing to spend no matter what.

Mayor Naugle suggested \$100,000. Mr. Friedman found that acceptable.

Commissioner Teel said there is the possibility that a sizeable amount of money might have to be spent. The City should be protected. She was not comfortable with the \$1 million.

Mr. Friedman said that the Commission could include whatever figure they are comfortable in doing.

Commissioner Teel suggested \$50,000 since this is supposed to be revenue neutral.

Mr. Friedman agreed to \$50,000.

In response to Commissioner Rodstrom on Page 16, third party contribution for the repair fund, Mr. Romanik said they would look hard for a third party.

Commissioner Rodstrom asked if the City would be kept informed regarding maintenance. Mr. Friedman said irrespective of who puts money into the fund, the procedure in Section 7.05 requires the City and the team to jointly agree. This was included to show that if money comes from another source, then it would satisfy that year's obligation.

Commissioner Teel questioned whether \$50,000 per year would be adequate in the future. Mr. Romanik said that Mr. Angelos discussed previously what happened at Camden Yards which houses 40,000 to 50,000 seats in Baltimore. They provided figures to the Auditor, showing what the State of Maryland contributes. In year 16 the contribution for that stadium four times this size was about \$200,000. Figures were also provided to the Auditor regarding the Roger Dean Stadium in Jupiter where the Marlins play and he did an analysis and set the \$50,000 figure plus the 5% kicker per year.

Commissioner Teel asked what would happen if the Orioles want something that costs more than what is in the fund. Mr. Romanik said the City is not obligated. It does not specifically say the Orioles have to do that, but there is no obligation on the part of the City to contribute anything.

The City Attorney said the language is unacceptable as written, but the \$50,000 is acceptable, along with the 5% CPI. Regarding the third party issue, it must be clarified that the Orioles cannot divert dollars from revenue. The 5% override on revenue still

goes. It appears to allow the Orioles to divert dollars away from revenue and reduce the 5% obligation.

Mr. Romanik said that was not their intent. Mr. Friedman said they are willing to change the language to include what the City Attorney has just stated.

The City Attorney said this is being done on the fly, and therefore, they will get the type of contract one gets working in this way.

Mayor Naugle said the Commission could authorize the City Attorney's Office to spend time on it and correct things of this nature.

In response to Commissioner Rodstrom's question on Pages 17 and 26 concerning Parties Option to Terminate the Agreement, Mr. Romanik said the sections are not repetitive because the Force Majeure talks about events beyond the control of the parties and suspends certain obligations under the agreement. The obligation to pay the bonds continues irrespective of the Force Majeure. The purpose of the paragraph on Page 17, giving the right to terminate the agreement would apply if the stadium is completely destroyed, and it costs \$200 million to rebuild it. The obligation of insurance under the contract is for the Orioles to provide casualty insurance on fair market value, and not replacement cost. The fair market value must always exceed the amount to defease the bonds. Therefore, if there is total destruction and there is not enough insurance money to completely rebuild, then the bonds are defeased.

Commissioner Rodstrom said that this is to be revenue neutral; no monies will come from the General Fund. Mr. Romanik confirmed that is correct.

Commissioner Rodstrom asked if anything that needs to be worked out would be hashed out with the City Attorney.

The City Attorney said that he is going to be out of town next week, but there will be someone here. He said they will do whatever the Commission wants, but this is not how they prefer to do a contract.

On Page 5, the City Attorney said it speaks about certain concessions and retail facilities. He wanted to make sure they are not building concessions and retail facilities without approval from the City. He did not recall concession and retail facilities shown on the plan approved by the City. He recommended that this either be changed to clarify that any concession or retail facility requires a subsequent approval of the Commission or the language be deleted.

Mr. Romanik said the language has not changed. There is a specific paragraph in the agreement that addresses concession rights being granted to the Orioles and the right to build concession stands, restaurants, and other things at the site. Whatever approvals are needed, he believed under this agreement they would be required to obtain them. He did not object to such an addition.

The City Attorney said this is talking about the definition of the project, and as he understands it, the project is a major league stadium and practice fields, not a restaurant, or concessions unless they are in the stadium. There would be no out-

parcels. Mr. Romanik confirmed that is correct. Mr. Friedman said that could be clarified as it was not their intent.

Commissioner Teel was concerned about retail facilities. She believed there needs to be more specific language. She understood there is discussion about having restaurants in the outfield toward the stands and asked for more specifics.

Mr. Romanik said they are agreeable to address the City Attorney's concerns. The plan is concessions and retail within the stadium. There are certain development rights the Orioles are being granted subject to further Commission approval.

On Page 9, Public Use of Recreational Fields, the City Attorney said this is where the Orioles can enter into agreements with third parties in connection with spring training and other instructional league activities from time-to-time at their sole discretion. Instructional activities could be anything which could take up the entire year, leaving no time for public use. This section is not first right of refusal; it leaves things at the sole discretion of the Orioles.

Mr. Friedman said they are happy to work with the City Attorney to make sure there is first right of refusal because that is their intent. Mr. Romanik said that spring training and instructional league activities mentioned are only for the Orioles and no other teams.

On Page 9, Revenue, the City Attorney wanted to know what the right to monetize any portion of the stadium means. Mr. Romanik did not know, but agreed it could be deleted. Mr. Friedman concurred. The City Attorney indicated that it generally means to turn into cash.

On Page 11, Term, the City Attorney wanted to add the language "or is terminated" after "agreement expires". Mr. Romanik agreed as it is the intent.

On Page 12, Section 4.02, the City Attorney felt they need to agree this evening that 3% is correct. Mr. Romanik said the number was left blank and he inserted a number that construction people in his office advised is a reasonable management fee. If the City pays or permits a different amount for their projects, it could be changed now.

Mayor Naugle felt 3% would be to the City's advantage.

Mayor Naugle noted the web definition for monetize is to turn anything into money and convert government debt into currency.

On Page 13, the City Attorney noted at the top of the page, the last word "required," should be struck and replaced with "inapplicable to the project." Mr. Romanik said his intent was for the City Attorney to decide whether or not relief is necessary under the consent decree.

Also on Page 13, Paragraph B, the City Attorney believed it has already been agreed as a City responsibility. If it can be out of the Airport Fund, it will be. If it is not possible, it would come from the General Fund and there is a \$50,000 cap. Mr. Romanik confirmed that is correct. Mr. Friedman said that they could also terminate because everyone has that option, which is fair. The City Attorney noted that the City could not terminate until they spend \$50,000 or the cost is greater than \$50,000. Mr. Romanik said they could

put zero as the amount if the City does not want to clean up the environmental problem. The City Attorney said there are options to environmentally damaged lands. One option is to do nothing, turn it into a brownfield or something else. The City wants to limit their liability of having to clean up the site for the Orioles.

Commissioner Teel suggested it be zero. Mr. Friedman agreed.

On Page 14, the City Attorney quoted "All payments and contributions reflected herein may be restructured as to manner and form of payment upon advice of tax or bond counsel." This means that they may decide to change the use fee from \$1 to \$800,000, pay the City and the City then pays them.

Mr. Friedman said if there are tax implications to this structure, then they would structure it differently. The Orioles would give the City the money and the City would then pay the debt service instead of the Orioles. There is no financial exposure for the City.

Commissioner Rodstrom asked if the amount of money would be the same whether or not it goes through the City. The City Attorney said that could be made clear.

In response to Commissioner Teel, the City Attorney said it would require more clerical work. Mr. Friedman said that a wire transfer would be involved. Mr. Romanik said that the City is issuing the bonds so they would already be collecting money from the State, the County and the Orioles. He did not see it as any more work.

Mayor Naugle said it enables the media to portray this as the City paying the bonds off and not explain that the City would also be receiving rent.

On Page 15, Paragraph 7.02, the City Attorney said the changes have restricted the City's right of inspection to make sure it does not interfere with the Orioles' spring training activities. Mr. Romanik said that is true except in the event of an emergency when the City could come onto the property. The City Attorney said that is when the revenue is generated and might be the time the City would want to look.

Mr. Romanik said that the language refers to interfering with the activities; it does not say that the City could not come onto the property. It is not intended to keep the City from inspecting, but to allow the Orioles to conduct the business the City is granting them the right to conduct.

In response to Commissioner Teel's question about the City entering the property while an event was ongoing to audit it but not keep the game from being played, Mr. Romanik said yes, it says, exercise the right in a way not to interfere. The City Attorney said they would have to decide what would interfere with the games. The City could agree not to go onto the field, but may want to inspect the premises without going onto the field. Mr. Romanik said that any way the City wants to write this provision is acceptable to the Orioles.

On Page 16, the City Attorney said the language needs to be changed to make sure there is no diversion of revenues to the repair fund. Mr. Romanik agreed.

In Paragraph 7.06, the City Attorney was not sure of the rationale for the additional language. It is a unilateral right to identify personal property on the part of the Orioles. The City may not agree on the list of personal property.

Commissioner Teel asked for some examples of personal property. Mr. Romanik said in the prior agreement it was blank and provided an attached exhibit. He did not have the list and therefore, provided for a 90-day period for the Orioles to prepare and attach it. If the City Attorney would prefer to remove this provision, he has no objection.

The City Attorney asked for staff comment with respect to insurance. On Page 17, the City needs the option to terminate to be subject to defeasance.

Betty Burrell, Director of Finance, referred to the provision "subject to the availability of sufficient insurance proceeds" and asked what happens if there are not sufficient proceeds.

Mr. Romanik said that such clauses are included to protect against a circumstance where there could be a AAA insurance company that goes into receivership, and all the proceeds are received. He offered a modification to provide that in any circumstance, the Orioles would defease the bonds.

The City Attorney agreed to the suggested modification.

On Page 17, the City Attorney said that he would like to further discuss disaster staging. Mr. Friedman said the Orioles would work with the City Attorney. Mr. Romanik said when disaster staging would occur on the site by the City, the Orioles would relinquish their right to occupy that part of the property back to the City at that time. The Orioles want it clear that the City is responsible during that time.

Commissioner Teel felt if the Orioles came onto the property at the time of a disaster to take care of their property they would also be responsible. Mr. Romanik said those parts of the site under City control is the responsibility of the City. The Orioles would be responsible for the rest of the site where their equipment would be situated. The Orioles would not have their equipment where trash and limbs would be. Commissioner Teel said strange things happen during those times. Mr. Friedman said they would work with the City Attorney.

On Page 19, the City Attorney said that the \$50,000 cap was addressed. Mr. Friedman concurred.

On Page 20, the City Attorney believed that the City is not providing any equipment. Mr. Romanik agreed. He used "if any" to cover the potential.

In response to Commissioner Rodstrom, Mr. Romanik said this was first written that part of the City's fleet would be left at the site for use and that is why the Orioles were going to insure City equipment left at the site. If the City is responsible to maintain and wants to store materials, it should stay under the City's insurance. If it becomes a fleet arrangement, it would go under the Orioles' insurance.

On Page 21, indemnification, the City Attorney said their attempt was to limit the City's liability because they were talking about tort to 768.28 solvent immunity cap, and

somehow failure to meet contract obligations got mixed in. The City is not agreeing to anything on a breach, that would be a subject of litigation. The attempt is to apply this only to tort liability or negligence.

Mr. Romanik said he is trying to make the Orioles' indemnification to the City reciprocal with the City's indemnification to the Orioles. In 9.05 the Orioles have to indemnify the City for a material breach of its obligations under the agreement. If the Orioles are going to indemnify the City for contract, then it would only be fair that the City indemnify the Orioles for contract. He is not attempting to do anything with sovereign immunity. If there is a problem the language could be removed. He only wants to make the agreement fair.

Mayor Naugle asked for the language to be removed.

On Page 24, the City Attorney said the Orioles have 30 days to cure and the City is being given 20 days to cure. He asked for everyone to have 30 days. Mr. Romanik agreed.

On Page 28, the City Attorney referred to the public records portion. Mr. Romanik understood that the City's records are public, but did not believe all of the Orioles' records are public. What is considered public, they would produce. They want the right to contest for what is not public. They will indemnify the City for any cost, attorneys fees, or judgments entered against the City due to their refusal to produce what later is determined to be a public record. The City Attorney said this section was changed and not bolded. Therefore, he could not rely on the fact that all changes have been bolded. He would like to reserve the right to further review the contract if it is going to be approved subject to the City Attorney's later review. Mr. Romanik said he is not attempting to sneak language; he actually asked Assistant City Attorney Paul Bangel to fix it.

Mayor Naugle left the dais at approximately at 5:17 p.m. and returned to the dais at approximately 5:18 p.m.

The City Attorney said his office received the contract at 1 p.m. and worked on it until after 4 p.m. and they got as far as Page 28. He would like to reserve the right to further review the contract. Mr. Romanik agreed.

The City Attorney said the comments would not be available until Wednesday at the earliest. As the Mayor will be out of town, the Vice Mayor should be authorized to sign on behalf of the City.

Commissioner Teel was uncomfortable doing business this way. This document came to the City Attorney's Office at 1 p.m. There was not enough time to review it as a competent attorney would do. This has been the way of doing business the whole time. She was also concerned about not having the Auditor's services. The taxpayers voted for an Auditor just for situations of this nature. This is a \$38-\$48 million bond. She felt a disservice is being done to the citizens. People are going on vacation. Everything always seems to be at the last minute.

Vice Mayor Hutchinson suggested that the City Attorney could e-mail the Auditor a draft. The City Attorney said it could be sent to him on Tuesday. It could be finished on Thursday and it could then be delivered.

Motion made by Vice Mayor Hutchinson and seconded by Commissioner Rodstrom to approve the contract subject to the City Attorney's review of the document and the changes discussed at tonight's meeting.

Commissioner Rodstrom asked what is the down side to all of this because the State and the County are contributing a total of \$39 million over the 30 years.

Since the City negotiated a revenue neutral contract, Vice Mayor Hutchinson wanted to know if it would change the County's position. Broward County Commissioner John Rodstrom did not see that this would not change his position.

Senator Skip Campbell said that three years ago the City came to him and asked him to push this deal through the state and he did it. The City has the obligation to protect its citizens, but he believed with a revenue neutral contract and if the City Attorney approves it and a City official signs it, then the City will have an agreeable deal. It would be a terrible blow to this community if the Orioles left. It was hard to get the State money, and it will send the wrong message if this deal is not done. He encouraged the Commission to let the City Attorney review the contract and get things done. It sounds like the City got everything they wanted.

Mayor Naugle noted the correspondence received from the School Board. He also referred to Coach Roland's comments from the previous meeting, and the letter from Jim Notter (Superintendent of Schools).

Mayor Naugle said that he has received a series of memoranda from Commissioner Moore who is watching at home and is concerned about the Auditor reviewing the proposal. He said the Auditor did review the previous proposal and his biggest concern was the repair fund. He had mentioned to the Auditor that the Orioles agreed that if the repair fund was not enough, they would pay the difference anyway and at that time the Auditor agreed that concern went away. However, the Auditor might have concerns about any of the bolded items.

Commissioner Teel said it does not appear that one day might be enough for the Auditor to review the proposal. The philosophy of hurry up and decide is unfortunate.

Mayor Naugle said this is not a new contract, but one with changed language. Commissioner Teel understood, but felt the City Attorney's concerns are valid about potential loopholes.

Roll call showed: YEAS: Commissioner Rodstrom, Vice Mayor Hutchinson, Commissioner Teel and Mayor Naugle. NAYS: None.

There being no further business to come before the Commission, the meeting was adjourned at 5:30 p.m.

Jim Naugle
Mayor

ATTEST:

Jonda K. Joseph
City Clerk

