

**MINUTES OF THE PUBLIC INFORMATIONAL MEETING OF THE
CITY OF BRANSON
BRANSON, MISSOURI, OCTOBER 13, 2003
3:00 P.M.**

The City of Branson met in a public informational meeting in the Council Chambers of City Hall on October 13, 2003 at 3:00 p.m.

David Queen of Gillmore Bell in Kansas City and legal counsel for the City of Branson, and the attorney for HCW Development Company, Bill Hart conducted the informational meeting.

Mr. Queen began the meeting by welcoming everyone and stating the purpose of the meeting is to give the citizens of Branson an opportunity to comment on the legal documentation of this part of the Branson Landing Project. The three key agreements being discussed are the Technical Service Contract, the Redevelopment Contract, and the Master Lease Contract. Both the Technical Service Contract and the Redevelopment Contract have been signed previously and there are just some amendments being considered on them. This meeting is specifically for the purpose of giving interested citizens the opportunity to address questions and comments to the attorneys, indicated Mr. Queen.

First, the amendments in the Second Amended and Restated Technical Services Contract were reviewed and explained by Mr. Queen. The Technical Services Contract was a bridging agreement that bridged from December 20, 2002 until the redevelopment agreement was signed. It stated the City's rights to walk away from the project under certain circumstances, and what money would be owed to the developer if the City chose to walk away from the project. It also stated what the developer's obligations were. Rather than eliminate that contract the City decided to amend it. Therefore, the Technical Services Contract and the Redevelopment Contract run in parallel with each other in how the preliminary site work is being done, and the expenditures for architectural services, and other work that has gone on now at the lakefront up to this point. The reason that it has been in the City's best interest to have the developer continue to spend money on the lakefront for purposes of designing in large parts the private portion and for designing the Convention Center Hotel. It has been the City's desire that the developer continue to spend money on the project to advance forward, because the philosophy behind the project is that the revenue from the commercial retail center will enable the City to build and fund a convention center at no cost to the City from the General Fund, as well as reimburse the City for the original cost of the land.

Mr. Queen indicated that the difficulty was in how to advance to the point where the developer can secure the necessary leases. The developer needs to have site control in order to sign some of the obligations for the tenants that would ultimately use the site, and site control comes in the form of the Master Lease Agreement. The reason it is being done is due to the developer trying to sign agreements with major tenants for the use of the property.

Mr. Queen walked through the Technical Services Contract page by page and discussed the amendments. He tied them to the prior documents that have already been signed by the City and took questions and comments on each amended change. The fundamental changes in this document also occurred in the Redevelopment Contract, which relates to the extension of the dates. The City gave the developer additional time to perform their duties in the Redevelopment Contract. There are several sets of dates but the basic date is related to a date that was July 1, 2003 and is now being extended to March 31, 2004. We are really not going to just March 31st because if the developer is close at that time he could possibly get it extended to July 1, 2004. Then there is an additional extension that is permitted if there is 'inexcusable delay' (circumstances outside the control of the parties) which could extend the date all the way to July 1, 2005, indicated Mr. Queen. Those extensions were fundamentally the changes that occur in the two documents that are being amended. Mr. Queen said the City wants this to happen, absolutely as soon as it can possibly happen, but the City has pushed the developer as hard as possible to get these dates sooner, rather than later because they believe this project benefits this community as a whole. The fact of the matter is that commercial retail driven projects are extremely difficult to put together, because of the leasing commitments and the way these entities make their commitments for the projects. You get into a chicken and egg situation where you have people lined up but nobody will commit until they see who their major tenants are going to be, what the rest of the mix is, where the anchor or anchors for the project will be, and what the design looks like. Questions and comments were again heard from members of the audience with Mr. Queen or Mr. Hart providing the replies.

The next portion of the meeting was the Master Lease Agreement which is the document that governs the bulk of the real estate that the City is considering entering into for a ninety-nine year term. Mr. Queen indicated he would just hit some high lights, discuss where the negotiations have been and where some of the terms come from.

The City owns some of this property, doesn't own other pieces, and leases pieces. Appearing in 1.1 of the contract is the description of the

property subject to the lease which uses the term “To Be Acquired Property”. The City is working with Empire Electric to get some control of the additional “To Be Acquired Property”. The language could change to recognize that the City may continue to lease some of the property from Empire Electric, but not buy it, so it would then sublet it to HCW. The end result will be the same although the language may change depending on whether the City owns or leases the land.

Discussion was then held regarding the “Lease Commencement Date”. While the Lease is coming to the City for their approval, the Lease has a trigger in it that it does not become effective until some conditions occur. Basically the City has to close on their financing related to improvements and pay for those costs, as well as, the cost on the financing for the Convention Center. Essentially until the City is in a position to do that, the Lease never becomes effective. If the Technical Services Contract and the Redevelopment Contract go away because of the July 1, 2004 date, the Lease would terminate also. All of the documents are tied together, indicated Mr. Queen.

“Occupancy of the Premises” in Section 1.5 was the next portion discussed. ‘The Premises shall not be occupied by Tenant or any sub-tenant for any gambling activity, except for the sale of lottery tickets or similar items as permitted by the laws of the State of Missouri or in any other manner contrary to any laws, zoning regulations, or other recorded restrictions, if any’, was read and explained by Mr. Queen. He indicated the Council specifically wanted to prohibit gambling occurring on this site, and therefore the Master Lease is drafted to prohibit gambling.

Mr. Queen then explained that the Lease document covers only the private improvement component. The Convention Center land has not been acquired. It is referenced in the Technical Services Contract and the Redevelopment Contract, but it’s not subject to this agreement. There will be a separate lease for the Convention Center land, if it is acquired. The Convention Center will probably be owned by the City and contracted out for someone to operate it. The Convention Center Hotel will be leased to a Convention Center Hotel owner who will operate that. Neither of those are the subject of the Master Lease.

Discussion was then held regarding sub-contracts and Mr. Queen indicated there was no local preference in this contract. The sub-contractors are not addressed in the Lease, just the general contractors. It was agreed by Mr. Queen that there should be a provision that encourages the general contractor to obtain as many competitive bids from underlying sub-contractors as possible and indicated he would take it up for consideration at

the discussion table before the 20th.

The next part discussed was the Lease Payment portion of the Lease. Mr. Queen explained why the Lease payment is set where it is, and why they are capped at \$450,000. The amount was capped in a determination of what was the maximum amount the City could receive for the land; yet finance the land on a tax-exempt basis. The federal tax law prohibits the City from collecting from a private source in excess of ten percent (10%) of the bond debt service of the money spent to acquire the land. This put the City in a difficult negotiation with the developer as to what the City could reasonably expect to get for rent from this land. The amount that was agreed upon is very close to the maximum amount of \$450,000 that the tax law allows. The City is getting, in addition to the rent, reimbursement for the debt service in the TIF cash flow.

Discussion was held regarding the replacement tax issue and what guarantees the existing businesses on Hwy. 76 have that that won't happen. Mr. Queen said that no one could prove the replacement tax issue one way or the other. You can't guarantee that there won't be certain consequences. The City has tried to address the issue but they can't guarantee that won't happen.

Also discussed with members of the audience the need for the Lease contract now. Mr. Queen explained that certain tenants who want to locate here couldn't enter into any agreements until the developer has control of the site. To secure those lease commitments, the developer has asked the City to sign this Master Lease subject to all of the conditions listed, and that is why it is going in this order.

The next portion of the Lease was the City's right to use the public square. Mr. Queen explained that one of the things the City spent a lot of time on was the Public Square. The City wanted to maintain the character of the public space for the City of Branson to hold festivals, fiddler contests, and unique weekends events, and wanted it designed and constructed so it leads to an entire experience. What the City ended up with is the right to basically have up to twelve (12) events per calendar year in the public square. They are not to be more than two (2) days long in any given 30-day period. Any group that the landlord chooses to sponsor can sponsor them. The City can also, at any time it wants, endorse and pay for an event to have as much use of the space they desire. The Lease does prohibit the developer from building on any of the public spaces, the boardwalk, the public square, and in those places that are designed to be 'public spaces'.

Restrictions on transferring of tenant's interest were reviewed next. The

particular part was that there would be no changes in the members of who HCW Development Company, LLC consist of prior to the time the company is done with all of their construction obligations. The City restricted HCW from having the ability to change or transfer members, and become another entity, because their membership had changed.

At the end of the meeting, Mr. Queen was asked to give his personal opinion of the project, and replied he did not think the City would lose any controls with this Lease, but thought the jury was still out on what the list will look like. As a third party, I am concerned about what Branson is going to look like fifteen years from now, and who is going to come here. From my heart you are at a critical stage. You need to make good decisions about the future. I view it as being self-contained financially, and if it is wrong how much damage will be done to the City as a whole from the General Fund. I do care about the other businesses, and I think the down side here is pretty small. Not non-existent but on the low end. I think the bigger risk is did we hit the home run? What is the alternative? Do nothing. I don't feel we are being taken advantage of here. We have a significant chance of making the problems better, but there are no guarantees, stated Mr. Queen.

At this time Mr. Queen then thanked everyone for coming and closed the meeting.