

COUNCIL QUESTIONS/STAFF RESPONSES FOR JANUARY 9, 2012 COUNCIL AGENDA

AS OF JANUARY 8, 2012 AT 8:48 PM

Councilman: Rob Fazzini

Item 7C: Consent Agenda- “Re-appointment to the Bloomington-Normal Economic Development Council Board”

Question/Comment: “Should we consider rotating appointed board positions were city council representatives serve rather than reappointment the same people? This is not so much a question for this particular position, but a philosophical decision that should be discussed.”

Staff Response: Defer to the Mayor.

Councilman: Jim Fruin

Item 7E: Consent Agenda- “Government Center Operation and Maintenance Expenses for Calendar Year 2012”

Comment: “From a quick first read, I have no questions, other than a very minor technical note. The Addendum shoes item 7E, but the attached material pertains to 7H.”

Staff Response: Staff has verified the City’s intranet and internet Council PDF file for January 9, 2012. Both items, 7E- Government Center O & M and 7H-Enterprise Zone, are correct.

Councilman: Rob Fazzini

Item 7H: Consent Agenda- “An Ordinance Amending “An Ordinance Describing and Designating an Area Located Partially within the City of Bloomington, Town of Normal and Unincorporated McLean County as an Enterprise Zone” including Amendment to Enterprise Zone Intergovernmental Agreement – Kongskilde Industries and Nussbaum Transportation Services, Inc.”

Question/Comment: “Kongskilde Industries was my customer at Busey Bank. The Chairman of the holding company from Europe and the local President have been to my home for dinner. We have entertained the local President regularly because of the close working relationship as this company has thrived with our regular advice and financial help. Perhaps this item should be pulled, so I can recuse myself from voting on it as part of the regular agenda. This will allow me to vote on the remainder of the Consent Agenda. I am willing to take advice on this from our city attorney, but I am uncomfortable voting on this because of the significant and close relationship I have had with the leadership of this company.”

Staff Response: The situation the Alderman describes is not an illegal conflict of interest. If the Alderman does not desire to vote on the matter because he believes it may give an appearance of impropriety, he or another Alderman should ask that the item be pulled. The Alderman can then do one of two things: he can abstain, although in that case his vote will be added with whichever side prevails, or he can leave the Council Chamber during the vote itself, in which case he will be listed as “absent”.

Councilmen: Rob Fazzini and Karen Schmidt:

Item 8A: Regular Agenda – “Approval of Football License Agreement between the City, Central Illinois Arena Management, Inc. (CIAM) and ROAR, LLC.”

Questions/Staff Responses: See email attachment marked “8A”.

Councilman: Mboka Mwilambwe

Item 8B: Regular Agenda – “Request to Enter into a Professional Services Agreement with Foth Infrastructure and Environment, LLC for Sewer Master Plan”

Question/Comment: “Since it is mentioned that Farnsworth is using a traditional engineering approach, is it safe to assume that Foth is using a concurrent engineering approach and that this is the preferred

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method for this particular project? Would there be a time where a traditional engineering approach be the preferred method?"

Staff Response: The master plan engineering approach specifically refers to the use of flow meter data for identification of inflow and infiltration issues. The traditional engineering approach utilizes more extensive flow metering in the scope while the concurrent engineering approach uses more extensive modeling using Bloomington Normal Reclamation District (BNWRD) flow metering information to identify areas of concern. Either approach will accomplish the goal of identifying areas of concern but, the concurrent modeling approach is more cost effective and will allow for other items to be accomplished. There are times when a concurrent modeling approach will not be an effective way to identify areas of concern. It is dependent upon the quality of the available data.

NOTE: Aldermen Jim Fruin, Karen Schmidt and Bernie Anderson had no questions/comments on the Consent Agenda

Prepared by:
Barbara J. Adkins
Deputy City Manager

8A - Football Agreement Email

From: Todd Greenburg/Cityblm
To: City Council and Mayor
Cc: David Hales/Cityblm@Cityblm, Barb Adkins/Cityblm@Cityblm

Date: Friday, January 06, 2012 02:35PM
Subject: Staff Answers to Questions on Football Agreement

To all-

Here are the answers to specific questions from aldermen which may not have been fully set forth in the staff report:

Question: "Can you identify specific areas that are different from our other agreement(s) with sports teams? How have we improved our license agreements as we have gained experience?"

Answer: This agreement is virtually a mirror image of the current Hockey License Agreement, which was the result of five years of experience by both CIAM and the City. At the time of the adoption of the proposed hockey agreement in May of 2011, CIAM and City staff representatives met with individual aldermen to review the agreement with them. The two main improvements are the letter of credit requirement and the "attendance incentive" requirement, which is addressed in the staff memo and hereafter in this e-mail.

Question: "Can you tell us what would have been included in the few sections that say "Intentionally omitted."?"

Answer: Those sections had language with specific reference to circumstances applicable to the hockey team. Since, as noted above, this agreement is almost identical to the hockey license agreement, it was thought to be less risky to simply omit those sections rather than to renumber the sections and risk missing a cross-reference.

Question: "3B: The fifth line stating "fails to timely give the Renewal Notice" needs to be better defined with a specific time frame, e.g., within 30 days. It is difficult to impossible to enforce terms not specifically defined."

Answer: Section 3(B), when read in its entirety, specifies March 1, 2013, as the last date when the football team can tender a written renewal notice. By the terms of the section, any renewal notice tendered after that date is an untimely renewal notice.

Question: "4C: What if the league allows a team to have some debt if it provides a Letter of Credit. Would that then void this AGREEMENT as it is written? Is that what we desire?"

Answer: Yes, we do desire this provision. It permits, but does not require, the City and CIAM to declare breach. The Licensor then has the ability to inquire of the football team the reason for the debt. If, in the opinion of the Licensor, it makes business sense for the team to incur debt, the Licensor will not declare breach. The important thing to remember is that this provision puts us in the driver's seat.

Question: "4E: Do we really want to be notified every time an hourly or part time person leaves or is hired and to require a new list of employees? I would think that this is a burden that should not be imposed on the Licensee. Perhaps we should require notice when employees at a certain level leave or are hired."

Answer: Yes, we do really want to know this information. Experiences with a previous sports team caused confusion when CIAM and the City did not always know who was in charge and what their job duties were. Those experiences are the reason for this provision.

Question: "4H: Perhaps the term "adequate capitalization" needs better definition or this might allow us to void the contract any time in our sole discretion deem capitalization to be less than adequate."

Answer: As a practical matter, this provision would be invoked if the football team is not paying its bill in a timely manner. Once again, this paragraph was inserted because of past experience.

Question: "7B [probably meant to be 8B]: Should the Lessor not have some authority to not allow certain types of bad taste advertising, e.g., exotic dance company, Kappa Cabana, or other types of entities the City of Bloomington might find in bad taste? We need some clause that gives us the right to not allow certain types of advertising in our sole discretion."

Answer: Other sections of the Agreement (i.e., Sections 6(B)(2) and 8(B)), state that advertisements are subject to Licensor's approval. Not only does this protect against "bad taste" advertising, it helps to ensure that companies which have paid large amounts of money to sponsor the arena (e.g., U.S. Cellular), do not find the football team permitting business competitors to advertise and thereby jeopardizing continued sponsorship of the arena.

Question: "9: Are the terms in this section the same, better or not as good for the City of Bloomington as the current terms?"

Answer: Unequivocally, this provision is better. It gives the football team an incentive to create high attendance, which should translate into increased food and beverage revenues.

Question: "10C: Should we add "except as stated in 10C" [probably means the parking fee referred to in 9 (c)].

Answer: 10C refers to the payments which are made by persons who actually park in the parking garage. The parking fee referred to in paragraph 9 (c) is the fifty cent "ticket charge" on every arena ticket sold (except for the first 700) which is retained by the Licensor. The licensee is aware of the difference and a side letter will document this.

Question: "11F: Will we file a UCC-1? If so, should that be so indicated in 11F? If not, why not?"

Answer: The \$25,000 letter of credit is preferable to a UCC-1 filing (that is, a security interest in property). Although the agreement does not prohibit the Licensor from filing a UCC-1 form, as a practical matter the sellers of the property would have a more protected ability to repossess personal property than the Licensor, and the amount the Licensor could recoup from sale of repossessed personal property (football helmets, uniforms, goal posts, etc.) does not supply the same level of security as the letter of credit.

Question: "14A4: I believe that the Licensee should be responsible for league failure, not the City of Bloomington. I strongly recommend that this section be eliminated."

Answer: If the league fails, as a practical matter the football team would have to find a new league to play in or the Licensor would no longer permit the team to occupy the arena. As a more practical matter, this Agreement requires the football team to be responsible for its own actions or else pay liquidated damages. Requesting a provision requiring the team to pay liquidated damages for the actions of another entity (that is, the football league) would, in all likelihood, be a deal-killer.

Question: "21A: Any further suggestions are only possible upon review of the Management Agreement that this AGREEMENT is subordinate to. Who will be reviewing this document relative to the Management Agreement prior to City Council being asked to vote on accepting this AGREEMENT? Will there be written comments concerning this review provided to us?"

Answer: This section basically ensures that nothing in this agreement will be construed in a manner which would cause a breach of the agreement between CIAM and the City. Both the City Manager and the Corporation Counsel believe that the football license agreement is in the City's best interests and does not violate the Management Agreement.

Question: "21M: There needs to be a space between 21M and 21N."

Answer: Agreed.