MOUNT AIRY, NORTH CAROLINA
CLOSED SESSION MINUTES
City Appointed Committee Meeting
(Negotiations with Barter Theatre-Spencer's Economic Development Project)
September 6, 2018

MEMBERS PRESENT: **Mayor David L. Rowe, Commissioner Steve Yokeley, Bryan Grote, and Hugh Campbell**

STAFF PRESENT: **Barbara Jones and Pam Stone**

Mayor Rowe welcomed everyone and opened the meeting.

CLOSED SESSION:
Hugh Campbell made a motion to enter into closed session pursuant to North Carolina General Statute 143-318.11(a)(4) Economic Development. Motion was seconded by Commissioner Yokeley and approved unanimously.

Bryan Grote: This pertains to one issue that keeps coming up about ticket sales. Mr. Welker had a very thorough interview with Mr. Rose that is on Facebook. It does a good job at explaining the Barter's position. That isn't news but I think this gives a better explanation for their rationale. At some point, it may be useful material for frequently asked questions.

Commissioner Yokeley: How far did we get with them about not receiving all the subsidies if they didn't meet some goals?
Bryan Grote: Not very far. I think all we got was a very short nod from Jeremy that that would be something they could consider. That is still putting aside the unachievable. I think the performance band idea is still worth pursuing and hopefully they will agree to something. This is just a starting point. I don't feel that strongly about the particular illustration that has been drafted up here. That is one of the items that we should spend a few minutes on tomorrow. There may be eight or ten things that will be the focus of discussion tomorrow and a lot of this is just cleaning up the old agreement.

Hugh Campbell: I sent this to them this week. This still maintains it as a 20-year agreement.
Bryan Grote: This depends on our lease agreement with Dana and Gray and they need to be in alignment at some point.

Hugh Campbell: The other tension I think, in addition to the term and performance bands, is going to be pre-performance amounts. That was something that Mac had kind of finessed in the original contract because we didn't really understand what those numbers looked like. We did get some proformas but there was a period of a year or two before the performances started where the Barter was expecting budgetary and it included the capital campaign and a lot of other things, staffing, marketing, people on site here...and a lot of connection was like $300,000/year in those preliminary years as advances before we got into the subsidies and operating.

Bryan Grote: We have made it very clear that we have no responsibility for the capital campaign...it doesn't matter how well or poorly that goes. We have made it very clear that all they are getting is expansion support of up to $2 million regardless of when it starts and what you call it. If they were expecting something else, they will see that it isn't there.

Commissioner Yokeley: Rick explained it a lot different when we talked. They would repay that and whatever we paid would be used for the next year.

Bryan Grote: It started off that way but my recollection is we ended by talking about an initial advance that would just be a cash grant. Whether it is the full $600,000 that they were expecting for year one or a lesser amount, I don't think was definitive but I think where we left it was they would get a cash grant to get them going for some period of time that they would surely use up. After they got that cash grant, periodically, they would refresh their projections and send it to the city, the city would review it and if they are requesting more, the city would make sure it was a legitimate request and that they still have the ability to draw down something. They get the first chunk of the cash grant and then going forward, they would request subsequent draws based on projection and then every quarter, there would be the opportunity to review how they are spending the money and see what their cash balance is dwindling down to. When it gets down to a certain level, they are going to request more money, so after that initial cash grant, it depends on the cash flow in terms of when they are going to request something beyond that and how much it is. It would still be subject to either this schedule or a more fluid schedule but not to exceed the $2 million.

Commissioner Yokeley: At one time, he said he didn't expect the total to be much over $1 million.

Bryan Grote: It might not be. It depends on when the project is complete and they start delivering shows and when the revenues start coming in. I think that is right, maybe sometime in operating year two...certainly in year three...the revenues are going to be fairly significant and they may not need much more, if any. The first real/full operating year when things get going is 2021 in the proforma and they show in the first quarter there is $181,000 subsidy from the city and they had total income as $468,000. They have uses at $433,000 so they need another subsidy in the second quarter of $335,000. That is $520,000 right there in the first two quarters from the city. They didn't get the $600,000 up front in this old proforma so they get $181,000 and in the second quarter they get $335,000 but by the third quarter, they have significant revenues coming in so they show themselves repaying $70,000 back to the city. This is "year three", which is "operating year two"...it is the first full operating year. What they are doing is draw, draw, payback, draw, payback, payback, and it is a lot of incoming and outgoing. I think it would be better to agree on a prudent minimum cash balance. If you maintain a fairly steady balance, you get rid of these wild fluctuations. If you get $600,000, according to this proforma, you wouldn't need anything else the rest of the year. You would slowly work down that cash balance until you get to the next year. That is something that you and Jeremy would need to discuss in detail. You have to decide whether you want it quarterly or annually but I am not sure you would want to do it annually.

Barbara Jones: Pam and I have talked a little about this. My understanding is even if you fronted some money on the front end, then the anticipation was maybe even by year two,

they wouldn't need all of the year two subsidy. The accountability and how they are going to produce something to us and how often we need to do it is something we will need to discuss. That goes back to something we talked about on the front end...what do we truly need and what can they truly provide us to show that they need it.

Bryan Grote: That gets to exhibit b (budget). This would be presented to you by quarter. For each quarter, you would have results from the prior quarter and then a projection for the future quarter. You would be able to track by quarter what they are doing, how they are doing, and you would know what a future request is. Each of these income and expense items would have a detailed page that would roll up to that number for the quarter. They have already suggested this as an outline, they need to go ahead and flush this out as a real template and show how all of the details roll up into a one-page summary. The key would be the level of detail on the expense categories. I think it is important to talk about what is the prudent quarterly cash balance so everyone knows what the expectation is.

Barbara Jones: I get the first $600,000. The rest of the years, why would it not work to do a balance at the end of the year and then if there is a need...
Bryan Grote: You could but you know what they would do...they would draw down more than they need. If you are going to do that, you might as well wait until the end of the year. You will still have to agree on the cash balance because it isn't going to be zero. If they draw down a full $600,000 in that first operating year, and they get to the end of operating year one and the balance is $187,000, what are they going to repay you? I don't think you can get away from having an agreement on what the minimum cash balance should be.

Barbara Jones: I am having some heartburn beyond year one...feeling like we are the bank.
Pam Stone: We never talked about cash balance. This is like nothing we have ever done before. I talked with Jeremy when we looked at this last time and there was going to be a lot of back and forth and we would give them money and they would prove they spent that money and once they do that, we would give more money. Of course I don't like giving our money away. We need to figure out a way to account for it so that everyone is comfortable.

Bryan Grote: The key is the budget template. Down the road, if everyone is still in place, you would have to have an annual determination of profit or loss. The audited financial statements for them are complicated. I don't think either the 990 or the audited financial statement is a great way to efficiently determine surplus or deficit. I think something like this is going to be better and easier in terms of looking at cash flow.

Bryan Grote: Operating year one is when they want to start spending money so it will be well in advance. The construction would still be going on but before the theater is constructed, they will need to start spending money to hire people and figuring out what they need for the first production. It could be up to a year prior to completion. Operating year one is 15 months. It is complicated because the timing has shifted on some of this stuff. Part of the conversation tomorrow, and I am glad Dana will be there, is what do we really think is operating year one now-is it 15 months or what. I think that will determine whether they will need $600,000 or $400,000 or something in between. The idea was to get the ball rolling, what do you need for six months because I do think that is important. They won't be able to

produce actual results to you for the first quarter so they are going to be well into the second quarter before they can even present results of first quarter to you. They need an initial amount that they think will safely cover their startup costs for the first six months. We don't know what that amount is and I think that depends on when the theater is going to be finished and when they think they will start spending money.

Pam Stone: I think a good point would be looking at their projections and that would be a good way to come up with this.
Bryan Grote: Regardless, I think there needs to be an agreement on a minimum cash balance so everyone has the same expectation. If you do that, it will lessen all of this up and down and compress it into a more stable cash flow.

Pam Stone: In that first year, what would be coming in as cash other than what we are giving them?
Bryan Grote: I think for example, if operating year one is October 2019 to December 2020, you aren't going to get any ticket sales until November 2020 so you might get some towards the very end.

Pam Stone: What I am thinking is cash balance is going to be close to what we have given them less what they have spent.

Commissioner Yokeley: Wouldn't they have to have season ticket sales the first operating year before they start performances?
Bryan Grote: They do have some ticket sales coming in. They also have some fundraising and that gets to the distinction between the operating fundraising and capital campaign. There should be operating campaign funds coming in at some point in operating year one. I can't tell from this proforma-it just says fundraising.

Pam Stone: We had a separate one for capital. Originally, my understanding was what was shown on operations was operating fundraising and capital was on a separate thing.
Bryan Grote: On what I have, it says in a footnote-does not include capital campaign. They have $790,000 coming in on the first full operating year from the operating campaign, not the capital campaign.

Pam Stone: What we had a hard time with last time was their year and our year is different. If we pay them $600,000, I have to budget $600,000.
Bryan Grote: That is a group discussion that everyone will want clarity on. What is operating year one-is it 12 months or 15 months or 18 months because we all agree it was 18 months. A lot of it depends on how many months are in operating year one and having the capital campaign off the table is going to reduce their need for capital in operating year one.

Pam Stone: I think we need something that substantiates what they think they will spend that is reasonable.
Bryan Grote: They need to come up with a template for us. They need to refresh their proforma and update all the numbers. Then we can look at actual numbers. These are

completely different operating years with old numbers so it is hard to talk about a general process when the numbers are all over the place.

Hugh Campbell: Assuming they provide us proformas and the expectation of how they would spend the money, do you think we could get four votes to agree that $300,000 goes out the door against a proforma in the first six months and are you ok with that position?

Mayor Rowe: As long as we don't go over $2 million.
Barbara Jones: My goal is to go less than $2 million. My goal is to keep it at what they are anticipating-around that $1 million. In my mind, the mechanics of how we define when they get what money and the piece of what they need to show us, I think the mechanics need to work it to where we aren't guaranteeing $2 million, it is up to $2 million. Beyond year one, when revenues start rolling, how do you define it to where we are comfortable that we are only subsidizing absolutely what we have to subsidize?
Bryan Grote: I think this all gets back to the cash balance. One way to make sure that you don't put too much out there too soon is to target that agreed upon balance. By the time you get into year two, you are going to have significant revenues coming in and according to the old proforma, they only need $287,000 to break even in year two. You get to year three, their old proforma loss was quite small, almost break even so maybe they need another $150,000 to maintain a cash balance of $100,000.

Barbara Jones: Who is controlling the operating campaign when that comes in and where that is going? That could make a big difference on their cash balance.
Bryan Grote: They are supposed to be keeping separate accounting for that.
Barbara Jones: What is their goal for that? The capital was $2 million but I don't remember the operating.
Pam Stone: In everything I have seen, the operating is right around $750,000 annually. I think year one we can probably work out.

Bryan Grote: They are not going to want to lose money. Technically, if they accumulate losses of $500,000 or more, that is when they can walk away after year five under the new concept. That is on reimbursed losses. I believe they are assuming if they are showing a loss, they are going to request money from the city and the city will provide it. They recognize that maybe that doesn't happen for one reason or another so they have thought about the fact they could start accumulating losses or maybe they burn through $2 million in year three because things are going poorly. The cash balance is a cushion for them but it is also the maximum exposure to the city that you might be providing them too much. If you still have a cash balance of $200,000 by the time you get to end of year five, I would expect the city should be able to insist on getting reimbursed for that. The whole point of the expansion support is to make sure they are viable during that five-year ramp up period and if the city ends up providing them $1.3 million through this quarterly process, and they have a cash balance at the end of year five of $214,000, if I were the city, I would argue that $214,000 comes back because that is part of the $1.3 million you didn't need to be held harmless through the ramp up period.

Barbara Jones: Those are things that could happen. It is going to be hard to put all of that in an agreement where you have numerous players on both sides. This is going to be complicated.

Bryan Grote: The key is to get a good template that everyone agrees on and can be modified as you go along.

Pam Stone: We have been talking about this for three years. This has already been scrutinized in every way and it appears as the city is being their bank. That is why you need to have to have something as to the why.
Hugh Campbell: That is an important thing for tomorrow as we are negotiating. If it is going to be paid against bills, then you need to know that and that needs to be the discussion point as quarterly bills would have to come in that are tied to this proforma budget line item.

Bryan Grote: You have the opportunity to look at their audited financial statements every year or we could put in some language that the city should have the right to review their books if you are concerned about something. I don't think you would want to be looking at invoices and things like that.
Barbara Jones: My thought is what is the auditors going to be expecting. What will they be satisfied with?

Bryan Grote: Economic development incentive packages are different because they do tend to go out as cash grants....there are promises.
Pam Stone: If it is a cash grant, I don't look at anyone else's invoices because it is based on jobs.
Bryan Grote: I would call it as a series of cash grants they have to qualify for in various ways that will not exceed $2 million over those first five years. There are the performance requirements-they also have to be using the cash grant proceeds for eligible costs-everyone would have to sign off on what would be eligible uses.
Pam Stone: I have always looked at it with the subsidies like we are fronting money, they have to prove what they are doing, and we are only giving them no more than what they use each year. If we say we are going to give them $600,000, that is a different story if we aren't trying to account for it and get some of it back.

Barbara Jones: How do you do a cash grant and still have the requirements we are talking about that we are only going to give what is needed after year one or two?
Hugh Campbell: You are only allowed to have this band in the bank so if they are making money, they don't get anything but that amount in the cash grant.
Bryan Grote: That is why this has to be precise because if it isn't on here, it doesn't count. This agreement is defining the inflows and the outflows that count. If it isn't on the template, it doesn't count unless the parties agree to modify. Each quarter when they send their updated projection to you, you should be able to determine whether it is an eligible cash grant based on the inflows and the outflows, what has been provided previously as a cash grant, what the limitation of total cash grants is for that year for the first five years based on the number of performances-do they fully qualify...

Pam Stone: Say we have given them some money and this is their reporting for that quarter, in that quarter, they are requesting the next quarter and in our review, we see things that don't qualify.
Bryan Grote: What do you think you would see that wouldn't qualify? If they are saying here are all of their income items we agreed upon, here are all the expense items, here are actual results for that quarter...I agree that it does have to be auditable-I think that is a question for the Barter. Their auditors need to be comfortable that they are signing off on this. Now is the time to decide if there is something on their preliminary list you don't like, we should flag it. This can't be an illustrative recovery fee list. If they show you on their quarterly results $325,599 cost recovery fee, you say where is the detailed backup table that adds up to that amount. How much of it is Rick's travel time and expenses, how much of it is the marketing person, the accounting database...etc. This needs to be precise and comprehensive and everyone needs to agree about all the items. I think they should have their auditors look at it.

Barbara Jones: Once we get it to a point that we thing it is not going to change substantially, we will need to do the same thing. We don't want to get into the game and then be written up or find out this isn't working. Does this fit in the parameters of what we can do with cash grants. We have dealt with cash grants before and they have been problematic at times.

Pam Stone: Is this different than an incentive?

Hugh Campbell: In talking with Tyler Mulligan, he said supporting the arts is one of those traditional municipal functions where you can do cash grants. He thought that spending on the arts wasn't really the same thing as an economic incentive.

Pam Stone: So we don't need to talk about it being economic development.

Hugh Campbell: It isn't one of the traditional grants where we would have claw backs and things like that. We would define what the benchmarks are in terms of performances they have to do to qualify.

Pam Stone: To me, these agreements are good when everyone is doing what they are supposed to.

Barbara Jones: We have to have our auditors comfortable with what we are doing. We need them to feel good about the cash in and the flow out. Let's talk about the $100,000 for maintenance.

Bryan Grote: Let's save that for when we get the term sheets from Dana and Gray because that is where that kicks in. The Barter doesn't care as long as the owner or city commits to maintaining major maintenance for the building. Were you following the idea of the dedicated project fund and the CMR fund?

Barbara Jones: I have heard it several different ways. What is the intent?

Bryan Grote: The language here is supposed to be fairly general so that the city can decide how you want to structure it. We assume all parties are going to want it to be separate from all of your other activities and transparent enough so that everyone can see what is happening with facility fees, county revenues coming in, etc. All of the income items and maybe some of the major expense items you want to track very carefully. The way I have seen this done in other complicated deals is that all of the revenues are coming in from different directions and they flow into different places. You will have your general fund and water and sewer fund and your Spencer's project fund off to the side. Barter is definitely going to want to see a special account dedicated only to the major maintenance. They will do routine maintenance on the interior stuff but the city or the owner (TBD) we think it is going to be the owner/developer and not the city unless you want to take that on. One hundred thousand dollars/year does sound like a lot but I think that will be an item for negotiation. The idea here is that the facility fees are some of the revenues flowing in to this dedicated fund. Barter would like to see those facility fees flow into the CMR dedicated sub account first until it is filled up to whatever the appropriate level is so there is no question that there will always be enough money in that sub account to take care of the major maintenance items. The idea is that sub account gets filled up first to satisfy the concern by the Barter and the city would be concerned about it also. They get the flow into any other sub accounts where there is eligible use of those facility fees.

Hugh Campbell: The only other revenues I have found are the facility fees and funds from the County. Are there any others?

Bryan Grote: We know two for sure. There could be a special MSD sub account-that would be a negotiation that might be a possibility if something could be worked out. If for whatever reason all of this is insufficient to make a lease payment, then there is going to be a little spigot from the city's general fund into the dedicated project fund.

Pam Stone: If we are paying them $100,000, I am not going to have a capital repair and maintenance fund.

Hugh Campbell: That is the problem with us not doing the maintenance-we will pay that annually as part of the lease and we won't know where it is going. It may ultimately go into his pocket, which the Barter is not going to like versus us holding it and having it as a clear and transparent sub account.

Barbara Jones: Which makes more sense to have and do it that way as far as the accounting piece goes.

Hugh Campbell: Then you get into the fact of ok, who is in charge of maintenance at that point.

Bryan Grote: I think this is the point where the lease agreement needs to align with this. I think the city should insist that whether it is $100,000 or some other amount, the city wants a dedicated fund too so we all can see it and I think Gray should agree to that.

Hugh Campbell: How will that work? The city is going to hold $100,000 and Gray sends the bill over to get it done?

Pam Stone: I always thought that $100,000 would go into a fund here. That would be it-we would take care of things.

Hugh Campbell: Through city staff or pay Gray?

Pam Stone: We are the big stuff-outside aren't we?

Bryan Grote: The developer is. I think you could still have a dedicated fund and the responsibility would be assigned to Park Place, LLC. I think the city should insist in its lease agreement that piece, whatever it is, still goes into a dedicated account that everyone can see and the responsibility could still be assigned to Park Place or the entity of his choosing. If lightning strikes or a tree falls on something and it is time for that developer to reach into the fund and pay a major maintenance bill, there has to be a process to do that.

Pam Stone: When you lease the building, it is the owners responsibility to take care of, right?

Hugh Campbell: It depends on what kind of lease you negotiate. We could do a lease and pay him so he has to take care of everything or the city keep the $100,000 and out of that, pays those same things.

Barbara Jones: If we are going to be responsible for that $100,000, it needs to be housed in a way that we are comfortable with what is being utilized and accounted for. My brain was going to the fact of it is their building, why are we agreeing to pay that $100,000 maintenance fee.

Pam Stone: It is built in the lease. Normally, you don't have it defined out. I think there are advantages to both.

Hugh Campbell: In the broad picture, are you ok with the dedicated fund.

Pam Stone: We would do that anyway.

Mayor Rowe: What do you think the Barter will kick off?

Bryan Grote: I am a little concerned about their expectation of pre-performance advances under the old agreement. We want to be sure they weren't expecting anything above and beyond and up to $2 million. I hope not because there is no way we can go past that. That is a bright line.

Barbara Jones: Why would they have a problem with that now because they weren't guaranteed that in the beginning.

Hugh Campbell: They weren't guaranteed it but they thought they had a bank here they could come to and make withdrawals and get it. They thought the $600,000 was different than the pre-performance activities.

Pam Stone: I thought when we started those, we were starting the $600,000.

Bryan Grote: That is how most of us were thinking about it but the language in the old agreement isn't clear. That is a slight concern-there could be a different expectation.

Barbara Jones: I think there is now that you say that because when we were downstairs, he was talking about we were going to front money and we were going to front it every year and then he was talking about how the accounting would be. I said no, that wasn't the plan and he said yes, that has been the plan.

Bryan Grote: Part of this is the capital campaign. In our view, it is very simple-we have nothing to do with it and for whatever reason it falls short, that is an issue they have to settle with Dana and Gray. We have made that crystal clear so I hope there is not a problem.

Barbara Jones: I think we need clarity on the operating campaign. If they fall short of that, that is going to impact that $750,000 there, how is that going to work because that is going to cause a problem with the subsidy amount.

Pam Stone: I remember after the five years, when we talked with Jeremy and they agreed to do the $100,000 like we do everybody else's.

Bryan Grote: It could and after the first five years, it would be an ongoing problem. Another thorny interplay with the lease is the term of this thing. Do you think Barter still expects or wants a twenty-year agreement?

Commissioner Yokeley: I think so-that is the opinion I have gotten. Rick may have been ok with five years.

Hugh Campbell: It is a twenty-year agreement but there is really no penalty if someone walks away from it. It is really a year-to-year...there is no claw back, damages built into it so if they are losing money, they are going to walk away.

Bryan Grote: If they aren't losing money, what right does the city have. It is clear that if they are losing money, either party can pull the plug after year five. The agreement doesn't really address...we can talk about that tomorrow. I think you are right, I think they are still going to want a nominal twenty-year term. They aren't going to want to come down here for five years and then fold up. They are going to want to stay unless it is really going sideways.

Hugh Campbell: Will we be presenting this to the board in closed session after the meeting?

Barbara Jones: That was the request. I know that the committee wanted to present it before you go tomorrow in case there are any issues that haven't been addressed. I told them we

have a closed session prior and we would do that and after that, we would invite them in to go over this. That was my understanding.

Commissioner Yokeley: We might talk about the resident opportunities in closed session tonight too to see what the board wants. I don't think it is that big of a deal but that is the only question I had for the board right now. I don't think it is that big of a deal but I want to ask the board about it.

Bryan Grote: Personally, I would like to expand on that. It doesn't seem optimistic that we will get very far there but it is one of the topics to be discussed.
Commissioner Yokeley: They do more there...I don't know exactly what they do...

Hugh Campbell: Rick said this was what they did in Abington...that is how we got this far.

Commissioner Yokeley: Yes, the can goods for performance, etc. There was some discussion about the residents of Mount Airy. I don't know how you do that.

Hugh Campbell: The only question is that something for which we lose a vote. We have negotiated and I promise you we tried on several occasions to get more concessions and Rick said we are not going to agree to it.

Commissioner Yokeley: Were the Barter Days for anyone or just for residents?

Bryan Grote: I think that was for anyone but I am not sure.

Hugh Campbell: These are the things we need to figure out.

Bryan Grote: We have flagged it so it will definitely be one of the topics to be discussed. If there is going to be discussion about this tonight, my concern would be is there an expectation of the ticket guarantee-is that a significant expectation by one or more commissioners because it is not going to happen. It is extremely rare for the operator to take demand risk.

Commissioner Yokeley: I don't know that Rick has been real adamant from what I have heard, he is very adamant about that-it just isn't going to happen.

Bryan Grote: I hope that isn't a major concern for one of the commissioners as far as a bright line because that isn't going to happen.

Barbara Jones: Are you all wanting to present tonight or not?

Commissioner Yokeley: I don't see any reason to do it tonight. We aren't going to reach a final agreement tomorrow anyway.

Barbara Jones: Ok. We will carry on with closed session as planned and the other piece was up to you.

These minutes are sealed until the transaction consummates or terminates.

<u>OPEN SESSION:</u>

Commissioner Yokeley made a motion to enter back into open session. Motion was seconded by Hugh Campbell and approved unanimously.

Approved and adopted this the 5^{th} day of September, 2019.