
Minutes

**Cumberland County Board of Commissioners
December 1, 2000, 9:00 a.m.
Special Meeting Public Hearing
Cumberland County Courthouse, Room 118
Fayetteville, NC**

PRESENT: Chairman Edward G. Melvin, Jr.
Vice Chairman J. Lee Warren, Jr.
Commissioner Talmage Baggett
Commissioner Breeden Blackwell
Commissioner Jeannette Council
Commissioner Billy R. King
Commissioner H. Mac Tyson II
James Martin, County Manager
Cliff Spiller, Asst. County Manager
Amy Cannon, Asst. County Manager/Finance Director
Grainger Barrett, County Attorney
Marsha Fogle, Clerk to the Board

Chairman Melvin called the meeting to order.

The purpose of this meeting is to receive public comment on and consider revisions of the Civic Center Financing and refunding of the Detention Center financing, and to consider a proposed License Agreement and proposed Services Agreement between the Civic Center Commission and Arena Ventures, LLC, a joint venture of the National Basketball Development League ("NBDL"), a subsidiary of the National Basketball Association, and SFX.

The objective is an arrangement with Arena Ventures to base an NBDL team at the Crown Coliseum, one of eight in a regional league based in the Southeast, that will play its 26 home games each season there. Arena Ventures would also cause SFX to bring at least 22 major events annually to the Crown Coliseum, of which some 14 are projected to be Class A events on a A,B,C scale.

IRS regulations governing tax exempt financing of quasi-business entities such as public coliseums are extremely stringent. Such financing is taxable if the present value of private payments (after deducting operational expenses) projected for the life of the financing exceeds 10% of the present value of the debt service on such financing (both principal and interest) and private use other than general public use of the facility exceeds 10%. If one of the two tests above is not met, then the financing is tax exempt. To date the County has relied on taking care that the hockey team and concessionaire's use would not exceed the 10% private use limitation. There is no way to avoid exceeding the 10% private use threshold with the proposed NBDL and SFX arrangement. Bond counsel, therefore, has now focussed on not meeting the private payment test to still retain the tax-exempt nature of the interest on the Civic Center financing.

The main effect of the Civic Center financing revisions is to remove the Coliseum proper, the Arena and the north parking lot from the property subject to the deed of trust securing that financing. This is necessary to remain in compliance with IRS regulations governing the tax-exempt nature of the interest paid to investors on that financing. This in turn is necessary because of the amount of private use of the Crown Coliseum and the Arena that the Arena Ventures license agreement would cause.

In order to obtain the consent of the bond insurer (Ambac Assurance, Inc.) that insures the investors in the Civic Center financing, the County will agree to provide alternate property satisfactory to Ambac to secure the Civic Center financing obligations together with the remaining security, the Charlie Rose Agri-Expo Center and the Auditorium. Under the Civic Center financing documents, Ambac has the right to speak for and consent on behalf of those investors. The Civic Center financing documents would thus be further revised to add collateral to secure those obligations. Ambac has consented to cross-collateralizing the Civic Center financing with the Detention Center. To accomplish that, the County must advance refund the current Detention Center financing. The proceeds of the advance refunding will be placed in escrow to pay the current Detention Center financing investors as and when their bonds come due (out to the earliest permissible date when those bonds can be called) and to pay costs of issuance. Under the refinancing, the Detention Center will become collateral for both the Detention Center refunding and the Civic Center financing. The Civic Center and Detention Center financings would then include certain technical cross-default and cross-collateralization provisions.

The County's underwriter, Robinson Humphreys Company, estimates that the net present value of the increased debt service for the Detention Center Refunding over the remaining 24 years of that issue would be in the range of \$265,000, which equates to about \$18,000 additional debt service annually.

In the Arena Ventures agreements, the License Agreement is the contract that provides for the NBDL games and SFX events, states the obligations of the parties, and segments and allocates between the parties the various revenue streams. The Services Agreement is essentially a management consulting agreement. Both are structured as five year contracts renewable at Arena Ventures' option for a further five years. The License Agreement would allow termination if the NBDL team doesn't have average paid attendance for the first three seasons of 4,500 per game.

The financial impact of the License Agreement to the Civic Center is projected to be approximately \$100,000 in the first full year (reflecting various up-front expenses to the Civic Center) rising to over \$600,000 by the fourth full year (reflecting especially a steady increase in payments from Coliseum naming rights).

The Services Agreement would cost \$300,000 annually, but Arena Ventures has indicated it is confident it can offer efficiencies to the Civic Center to save at least that amount annually. It

would book additional events at the Coliseum, to be approved by the Civic Center, which events would be proportionately more profitable to the Civic Center because revenues would not be split with Arena Ventures as would happen under the License Agreement. Under the Services Agreement, all executives and employees would remain County employees. However, Arena Ventures would make recommendations regarding job descriptions and hirings and terminations, but the final decision would be the Civic Center Commission's.

The Civic Center Commission unanimously recommends approval of the License Agreement. It also unanimously approved a motion stating that it has no object to the Board of Commissioners' consideration of the Services Agreement, but that it had not had sufficient time to evaluate the consequences and impacts of that agreement, and it requested 30 days for such consideration.

The Chairman opened the Public Hearing. There were no speakers. The Chairman closed the Public Hearing.

1. Consideration of adoption of a resolution concerning final approval of amendments to installment financing for Civic Center and Refinancing of Detention Center and Mental Health Facilities and authorizing the execution and delivery of documents in connection therewith and consideration of revisions to the County's \$53,200,000 Certificates of Participation (Cumberland County Civic Center Project), Series 1995A, and \$52,950,000 refunding Certificates of Participation (Cumberland County Civic Center Project), Series 1998.

MOTION: Commissioner Warren moved to approve.

SECOND: Commissioner Tyson

DISCUSSION: Commissioner King inquired about adding Bank of America to the underwriting team. The County Manager noted that because of the nature of this transaction and the speed with which it must be handled, we would keep the same underwriting team for this project.

VOTE: UNANIMOUS

Resolution is Attachment A to these Minutes.

2. Consideration of entering into a License Agreement with Arena Ventures, LLC, to provide basketball and entertainment events at the Cumberland County Civic Center.

MOTION: Commissioner Warren moved to approve the Resolution.

SECOND: Commissioner King

SUBSTITUTE

MOTION: Commissioner Melvin moved to approve with the stipulation that the attendance figures be lowered from 4,500 to 3,500 and that they approve a termination fee

if they pull out of the deal.

SECOND: Commissioner Tyson

DISCUSSION: While staff and board members agreed that a realistic figure for attendance is 3,500, and staff has already approached Arena Ventures with the concern about the 4,500 attendance figures, George Breece, Chairman of the Civic Center Board, said Arena Ventures has indicated this figure is not negotiable. They are using the 4,500 attendance figures in all of their negotiations with other units with whom they are negotiating a contract.

Commissioner Melvin withdrew his substitute motion.

SUBSTITUTE

MOTION: Commissioner King moved to approve.

Note: This motion not needed as original motion made by Commissioner Warren is still on the floor.

VOTE ON ORIGINAL

MOTION: UNANIMOUS

Resolution is Attachment B to these Minutes.

Note: Staff will make Arena Ventures aware of the County's concerns relating to the attendance figures and a termination fee.

3. Consideration of entering into a Service Agreement with Arena Ventures for management services relating to the Cumberland County Civic Center

MOTION: Commissioner Blackwell moved to approve the concept of entering into a service agreement with Arena Ventures for management services, asking staff to fine tune the agreement to include the following issues:

1. incentive pay for the CEO;
2. cap expense management fee;
3. termination fee after 24 months if this arrangement is not a satisfactory one;

and that this agreement be approved by the Civic Center Board and brought back to the Board of Commissioners for final approval.

SECOND: Commissioner King

VOTE: UNANIMOUS

(See Attachment B to these Minutes)

MOTION: Commissioner Blackwell moved to adjourn.

SECOND: Commissioner Tyson
VOTE: UNANIMOUS

Clerk to the Board