

SPORTS AUTHORITY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE &  
DAVIDSON COUNTY

Minutes of July 10, 2018 Informational Meeting

Nissan Stadium

10:30 a.m.

**Board Members:** Kim Adkins, Catana Starks, Emmett Wynn, Bob Obrohta, Margaret Behm, Rip Ryman, Jad Duncan, Leslie Fram, Cathy Bender, Chuck Meriwether, Dudley West

**Staff:** Monica Fawknotson, Ilesha Montesrin, Quinton Herring, Margaret Darby (Legal)

**Titans/Nissan Stadium:** Steve Underwood, Bob Flynn

**Predators:** Kyle Clayton, Keith Hegger

**Visitors:** Jon Cooper (Metro Legal), Laura Womack (Nashville Fairgrounds), Ed Henley (Pillars Development), Roxanne Bethune (Alliance Synergy Group), Scott Rayson (Metro Legal), Bob Lackey (Metro Finance), Mary Cavarra (MLS2Nashville), Toby Compton (MLS2Nashville), Ron Gobbell (Gobbell Hays Partners), Michelle Scopel (Gobbell Hays Partners), Dick Darr (Capital Project Solutions), Jim Pustejovsky (Capital Project Solutions), Dave Heflin (Capital Project Solutions), Annie Parrish (Barton Malow), Michelle Lane (Metro Procurement), Yomi Ojo (Metro Finance), Nancy Amons (WSMV), Brian Murdock (D.F. Chase Inc. Construction), Freda Player-Peters (Mayor's Office), Joseph Woodson (Mayor's Office), Chris Harmon (Metro Finance), Eleanor Kennedy (Nashville Business Journal), Joey Garrison (Tennessean), Clint Brewer (Stones River Group), Tom Eddlemon (Metro Finance), Shane Smiley (Fairgrounds Stakeholder), Sharon Melman (Fairgrounds Stakeholder), Mark Melman (Fairgrounds Stakeholder)

Chairwoman Kim Adkins called the meeting of the Sports Authority to order at 10:30 a.m. and welcomed all in attendance. Ms. Adkins thanked representatives from Nissan Stadium for hosting the meeting and reminded everyone the appeals process for decisions by the Authority could be found at the top of the agenda. It was stated that the Authority would hear a detailed account of documents pertaining to the MLS Stadium from Metro Legal Director, Mr. Jon Cooper. The Board will not be asked to consider the documents until the Board meeting on July 19, 2018.

***Review of MLS Stadium Documents with Metro Legal***

Chairwoman Adkins then recognized Mr. Jon Copper. Mr. Cooper stated that throughout the duration of finalizing the documents, he was accompanied by Mr. Tom Cross (Metro Associate Law Director), Ms. Margaret Darby (Counsel to the Authority), and outside counsel

from Dickinson Wright (Mr. Craig Hammond). Mr. Hammond has vast experience with municipal financing, stadium deals and most recently, he negotiated the development agreement for the relocation of the National Basketball Association's Detroit Pistons, to a new facility.

Mr. Cooper recapped by stating that as part of Substitute Resolution No. RS2017-910, the Metropolitan Council included a number of conditions that must be satisfied prior to the issuance of debt to construct the stadium. Those include approval of a Ground Lease by both the Fair Board and the Sports Authority and approval of an Operating Agreement by the Sports Authority. In addition, the Sports Authority will be asked to approve a Development Agreement with Walsh Management, LLC (a subsidiary of Nashville Soccer Holdings) and a Construction Administration Agreement with a contractor, to be selected in the upcoming month, to build the stadium. There will be a separate agreement between the Fair Board and Walsh Management that will include certain restrictions and requirements for the operation of the stadium. The terms of this agreement are still being finalized and will be submitted to the Fair Board for approval at a later date since approval of that agreement is not necessary prior to the issuance of stadium debt.

#### Development Agreement Between the Metro Sports Authority and Walsh Management, LLC:

- Construction of the +30,000-seat stadium will be a cooperative endeavor between the Authority and Walsh Management
- ICON will serve as Walsh's representative
- Gobbell Hays Partners and Capital Project Solutions will serve as the Authority's/Metro's representatives during construction
- Establishment of a 4-member Development Committee comprised of 2 representatives from the Authority and 2 representatives from Walsh Management
  - The Development Committee will work together throughout the design, development and construction process
  - One of Walsh's representatives will serve as the Committee Chair and will have the authority to make decisions in the event of a dispute among Committee members; unless such decision would have a materially adverse impact on the Authority's future capital expense obligations. In such case, the parties would work together in good faith to resolve the issue
- Final plans must be submitted to MLS for review no later than February 25, 2019

- The Authority is to deliver the site in ready condition no later than June 30, 2019
- The stadium is to be ready for occupancy no later than February 1, 2021
- The Team will contribute \$25,000,000 toward construction costs for the stadium and will be responsible for all cost overruns

Team Operating Lease Agreement between the Metro Sports Authority and Walsh Management, LLC:

- Term is for 30 years from the date Walsh Management takes occupancy of the stadium
- Walsh will pay rent in the amount of the revenue bond debt service, less the total amount of sales and ticket taxes collected at the stadium (the “rent reduction”)
- For years 1 through 5 of the lease, Metro guarantees the total amount of sales and ticket taxes collected will not be less than \$4,000,000 per year, and not less than \$3,000,000 per year during years 6 through 10
- The rent payments will be made twice a year to coincide with the revenue bond payment dates
- Walsh Management and the Team will be responsible for all operating and maintenance expenses associated with the operation of the stadium (including utilities and security costs)
- The Sports Authority will be responsible for all capital expenses necessary to keep the stadium in compliance with MLS standards, which are applicable to all MLS stadiums
  - Starting in year 6 of the lease, \$.50 of the ticket tax on each ticket will be set aside for capital expenses, which will increase to \$.75 per ticket in year 8
  - Walsh Management will be required to provide a Capital Asset Management Plan (“CAMP”) to the Authority every other year starting in year 7 of the lease
  - CAMP will be prepared by an independent consulting firm
  - CAMP is to include a general assessment of the stadium and a summary of the capital expenses expected to be required during the next 10 years
- The Team will be required to maintain operations in Nashville and must use “Nashville” in the team name
- The Team will be allowed to play up to 3 games per year at another facility; Should Metro be required to make up the difference between actual annual collections during the 10-year guarantee period noted above, the Team will be required to reimburse Metro for the lost sales and ticket tax revenue, due to use of an alternate venue
- The Team will be entitled to keep all revenues from concessions, naming rights, advertisements and parking for stadium events

- Walsh Management and the Team will coordinate scheduling with Fairgrounds Executive Director, to ensure the continuation of the reoccurring events as required by the Metro Charter
  - Walsh Management and the Team will use good faith efforts to accommodate Fairgrounds events, specifically the dates pertaining to the flea market
- The Authority will have 20 days of rent-free use of the stadium for Metro events. Metro will be responsible for paying the expenses related to such events
- Walsh Management will be required to maintain insurance in an amount not less than the full replacement cost of the stadium and the associated improvements, as well as \$50,000,000 in general commercial liability insurance coverage
- Walsh Management will be required to indemnify the Authority for damage or injuries resulting from its operations
- Team is required to provide guaranty that unconditionally guarantees all rent payments for the duration of the lease, the Team's \$25,000,000 capital contribution, and all cost overruns for the stadium
  - However, should John Ingram cease to be the controlling owner of the team, then a successor guarantor(s), deemed acceptable to the Director of Finance, will enter into a guaranty agreement acceptable to guaranty any remaining obligations.
- Walsh Management or the Team cannot assign the lease without the written permission of the Authority
- The lease includes standard provisions required by MLS, making MLS a third-party beneficiary and allowing MLS to step in for the Team, in the event of a default

Construction Administration Agreement Between the Metro Sports Authority and Walsh Management, LLC:

- Walsh Management will carry out its responsibilities primarily through ICON, a program manager with substantial construction oversight experience
- Walsh Management, through ICON, will direct the architect and construction manager to design and construct the stadium in accordance with the Architectural/Engineering Agreement and Construction Management Agreement, approved by the Authority
- Has been modeled after the agreement between Cobb County, GA and the Atlanta Braves for the construction of their new facility, which had a similar financing arrangement
- The term of the agreement is through the completion and expiration of the construction manager's responsibilities
- ICON will be the primary conduit for communications between the design and construction teams and the Authority

- ICON will report to and meet regularly with the Authority’s representatives to facilitate the design and construction processes
- ICON will recommend to the Authority the terms of any additional contracts necessary to construct the stadium
- Walsh Management will have the right to enforce the provisions of the construction contract as a third-party beneficiary
- ICON will be responsible for:
  - Developing project milestones
  - Setting the final guaranteed maximum price, in consultation with the Authority’s representative on the Development Committee and Gobbell Hays Partners/Capital Project Solutions
  - Monitoring stadium costs in relation to the project budget and the guaranteed maximum price
  - Conducting and coordinating stadium project team meetings to discuss progress of the stadium construction
  - Monitoring completion of punch list items
  - Assisting the Authority in maintaining complete and accurate records regarding the design and construction of the stadium
  - Reviewing applications for payment to contractors and providing such applications to the Authority for approval
  - Submitting change orders to the Authority for approval

Ground Lease between the Metro Sports Authority and the Fair Board of Commissioners:

- Term is for 30 years with a nominal annual rent payment
- Sports Authority is responsible for causing the stadium to be constructed on the property
- The property may be used for Sports Authority purposes consistent with state law
- The property is being leased in “as-is” condition
- Lease cannot be transferred or assigned without written approval of the Fair Board
- The Ground Lease acknowledges the existence of the Team Operating Lease Agreement described above, and the Fair Board consents to such agreement as a sublease to the Ground Lease
- Fair Board agrees to execute a standard recognition, Non-Disturbance and Attornment Agreement (RNDA) whereby the Fair Board agrees to continue to recognize the Team Operating Lease, in the event the Ground Lease with the Sports Authority is ever terminated
- Includes the following list of prohibited uses:
  - Any use that constitutes a public or private nuisance;

- Any use or purpose that violates in any material respect any applicable law
- The sale or commercial display of any obscene sign or advertisement, including any sign or advertisement that promotes obscene activities;
- Any sexually oriented business as such term is defined in Chapter 6.54 of the Metropolitan Code;
- The sale of paraphernalia or other equipment which is used primarily in connection with the taking or use of illegal drugs;
- A shooting gallery, target range, vehicle repair facility, warehouse, or industrial use; and
- A massage parlor (provided that massage services may be offered by a licensed massage therapist as a part of a health, beauty or fitness operation) or a tanning parlor.

Construction Management Agreement:

- This agreement will be between the Authority and a Construction Manager to be selected through a competitive procurement process
- Construction Manager candidates will be required to have substantial experience on similar projects
- The selected Construction Manager will be involved in the project from the beginning of the design process, in order to aid as to value engineering, constructability and scheduling
- When stadium designs are sufficiently complete, Construction Manager will provide a not-to-exceed or guaranteed maximum price to build the stadium in accordance with those designs
- If the Construction Manager's guaranteed maximum price proposal is acceptable, the Construction Manager will be engaged to complete the project
- In order to expedite construction, the Construction Manager may undertake some parts of the project prior to establishment of the guaranteed maximum price, such as excavation and foundation work
- The Construction Manager will be accountable for completing the stadium on time and within the guaranteed maximum price

Mr. Cooper stated that the anticipated timeline for approval of these documents is as follows:

- Fair Commissioners Board Informational Session – July 11, 2018
- Fair Commissioners Board Meeting – July 17, 2018
  - Approve Ground Lease with the Sports Authority
- Sports Authority Board Meeting – July 19, 2018

- Approve Stadium Agreements – Ground Lease, Development Agreement, Construction Administration Agreement, and Operating Lease.
- Metro Council Action– Approval of ticket tax, demolition of existing structures, rezoning of private development, and the issuance of General Obligation bonds.
  - First Reading – August 7, 2018
  - Second Reading – August 21, 2018
- Sports Authority Board Meeting – August 16, 2018
  - Approve Construction Management Agreement – once the procurement process to select the construction manager has concluded.
- Metro Council Action on Third Reading (requires a minimum of 27 votes) – September 4, 2018
- Sports Authority to issue revenue bonds for stadium – October/November 2018

Contingent upon the timeline for approvals listed above, the forecasted construction timeline includes:

- Final plans submitted to Major League Soccer (MLS) – February 25, 2019
- Delivery of site plans and commencement of construction – June 20, 2019
- Team takes occupancy of completed stadium – February 19, 2021

The construction of the stadium will be funded through up to \$225,000,000 in Sports Authority revenue bonds, \$25,000,000 from Nashville Soccer Holdings and \$25,000,000 through Metro General Obligation bonds. Nashville Soccer Holdings will be responsible for all cost overruns. In response to questions from Board member, Ms. Margaret Behm, Mr. Cooper stated that approval of the contract is necessary to meet the timeline listed above. He concluded by stating that the Board would receive the final copy before Chair approves.

**There being no other business, the meeting adjourned.**

A list of questions posed by the Authority and answers (primarily from Mr. Cooper) follows on the next page.

Q: Why are SA representatives not making the final decision, in regards to development?

A: (Cooper) It was determined that ICON has the most experience for this project.

Q: The Construction Administration Agreement states that ICON will serve as the Authority's authorized representative, is this correct?

A: (Cooper) Walsh has a separate agreement with ICON. In the CAA, the SA will delegate to the Team, through Walsh Management, and Walsh will oversee day to day construction.

Q: How will the Authority hold ICON responsible for meeting deadlines?

A: (Cooper) The Team has the most to lose if there is a delay. If the Team breaches the agreement and it is a detriment to the Authority, the Authority has the ability to remedy the situation at will. But the Authority doesn't have a direct contract with ICON.

Q: The CAA states the change orders will follow the Development Committee process; what is the process?

A: (Cooper) The process will be determined once the project begins.

Q: At what point would the Authority receive a change order and what is an example of a change order?

A: (Cooper) A change order will be needed if there is a change to the final plans. Mary Cavarra gave an example of a change order as, "the need to move restrooms 10 feet from the original design." It may not have cost implications but it is an alteration to the final design plan that was approved. Ron Gobbell said "a change order is any change involving time or money, once the GMP is established. Any cost overrun would be the Team's responsibility but would still have to go through the Development Committee and possibly come before the Board."

Q: What responsibilities do GHP and CPS have and what authority do you both have if you see something you don't like?

A: (Ron Gobbell) GHP will be involved throughout the entire process (reviewing designs, commenting on designs, and adhering to Metro standards). CPS will focus on compliance and quality control. If the Development Committee cannot agree then the discussion will enter into mediation or arbitration, and the Authority will be notified in updates at Board meetings.

Q: What reason would the Team choose to play at a different facility?

A: (Mary Cavarra) I don't believe that will happen often, but it could arise should the Team host a game (such as an international match) that is expected to exceed the maximum seating at the MLS Stadium.



Q: Section 10 states the Authority's Right of Entry, but does not state anything about use (i.e. meeting space for SA Board meetings); can language to that effect be added?

A: No answer was given but Jon Cooper and Mary Cavarra acknowledged the request.

Q: What is the net worth of the Team right now? Since they are on the hook as the Guarantee, should John Ingram no longer be involved? With the Team as the Guarantee (by means of an LLC), does its net worth include all owners of the Team? Does the rest of the Team meet the net worth requirements?

A: (Mary Cavarra) Mary stated she could not disclose that information in the current setting. Jon Cooper said that the Metro Council has confidence that John Ingram will meet his obligations so they feel comfortable not having a Guarantee. Should a time come when he is no longer the controlling owner, the Team would be required to enter into a Guarantee agreement.

Q: What requirement has been made for DBE participation?

A: The goal is to achieve a minimum of 30% participation.

<https://www.youtube.com/watch?v=h6nWBIFoG24>