

February 21, 2002

CALLED MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
February 21, 2002 **12:15 P.M.**

PRESENT: Chairman Garry Fricks, Commissioners Chuck Hufstetler, Jerry Jennings, Tim Mahanay, and John Mayes.

OTHERS

PRESENT: County Manager Kevin Poe, County Attorney Wade Hoyt, County Clerk Michele Fountain, and Assistant County Manager Tom Tully.

BASEBALL STADIUM

Chairman Fricks stated that they would not make the announcement today regarding the stadium. He then opened the floor for questions.

Dave Butler, WRGA, asked how close they were on a decision. Commissioner Hufstetler replied that additional information is expected next week and they hope this will be the final information needed to make a decision. If things go well, they hope to make a decision by Tuesday.

Randy Davis, WLAQ stated that the biggest question being ask the media, is with all the delays on announcing the site, how will it affect us as far a completion date of the stadium, is there a possibility it could put them in any kind of jeopardy as far as not having it completed by April of next year. Commissioner Hufstetler replied that the contractor who built the Lexington stadium, which they thought was the best stadium, is building our stadium and they did not begin the construction of that stadium until September before the completion in March for their opening of April, so it is felt that we will be ahead of schedule. It is still felt that they are within the budget, they are waiting on the Program Manager, Carter and Associates, to submit the information next week.

Mr. Butler asked that Commissioner Hufstetler restate basically what step they are in at this point. Commissioner Hufstetler replied that they are down to two primary sites being considered. Early next week Carter and Associates will be presenting the final documents on all costs related to each site. There have been negotiations and changes at each site. If all goes as planned, they will be able to make a decision as to which site has been selected.

Todd Williams, K98, asked if there are other sites or still just the two? Commissioner Hufstetler replied that those two are the primary locations they are looking at and he feels it will be one of those two sites. Chairman Fricks noted that, in terms of a safety valve, knowing the parameters of the two sites, both being flat sites, the design phase can go ahead and proceed. When dealing with the Fairgrounds, basically the design had to follow the terrain of the location. Therefore, there is more flexibility since

both are similar flat sites, and that also puts them ahead of schedule. Mr. Williams asked the opinion of the City on these sites. Chairman Fricks replied that definitely the support came for the closest proximity to the downtown area, and everyone had that intention, but they are weighing costs and all of the other factors to make the decision. Fortunately, he thinks that whatever the decision, they will get the support of the City, and they are working together to work out some of the issues regarding both sites. Mr. asked if the Evans property was selected will it put them ahead of schedule since is already graded and other work has been done. Chairman Fricks replied that it definitely will put them ahead of schedule. He stated that Special Use Permits have already been applied for on both sites, but if the Evans site is selected, they can start grading immediately. At the Green Acres site, they would have to wait until the Special Use Permit comes into affect before grading could actually begin. Mr. Williams asked if the creek would have any impact on it. Chairman Fricks replied that it is part of the equation of site selection, it does have some negative affect, and it makes you lose some of the usability of some of the properties. Environmental issues and parameters based on time scheduling as well have been a part of the formula to decide the site. Chairman Fricks apologized for not being able to make the announcement at this time. He stated that he will give them advance notice of when it will be announced.

CALL TO ORDER: Chairman Fricks called the meeting to order.

INVOCATION: Commissioner Hufstetler led the Invocation.

DOWNTOWN HOTEL PROJECT

County Manager Kevin Poe presented information on a Confirmation and Amendment to the original agreement for the Marriott Hotel and Parking Deck with the City of Rome and Parkwood Management Group. A key item is a drop-dead date which is added in the Amendment. They are dealing with what happens if they do not start work by the drop-dead date. They will then be allowed to pursue other developers without any obligations or them (Parkwood) proceeding with litigation against the city and county. It keeps everything else regarding the agreement intact. The City of Rome took action on this Monday night and approved it and a copy has been received where Parkwood has signed the agreement also. If the Board wants to proceed with the project with Parkwood Management the Board will have to approve the Confirmation and Amendment to the Agreement and authorize the attorney to write a letter undoing the action which was taken earlier. This would allow Parkwood to proceed with an application for franchise with the Marriott. It was noted that the hearing with Marriott is tomorrow. County Attorney Wade Hoyt stated that a letter is needed from him indicating that the Board has approved the Confirmation and Agreement and that they will accept Parkwood and Songy Partners, should Marriott approve them. Chairman Fricks asked County Attorney Hoyt to give a report on how they reached this point. County Attorney Hoyt stated that the Chairman of the City Commission and the City Manager called a meeting which was attended by Chairman Ronnie Wallace, City Manager John Bennett, County Manager Poe, County Attorney Hoyt and Chairman Fricks and discussed the city's concerns basically with where we were. The city attorneys were very concerned with the circumstance, as he was; they wanted the County to reconsider. This was followed up with a letter from the City Attorney indicating those concerns.

At that point, City Manager Bennett and County Manager Poe worked on putting together the Confirmation and Amendment to propose to the City Commission and County Commission. The City Commission approved it and now the County Commission is considering the Confirmation and Amendment. Chairman Fricks stated that, originally, they were strong on the \$3.3 million guaranteed maximum price. They were concerned with continuing with the original guaranteed price in the original contract, and he thinks that has been done. Also, he feels the addition of the Songy Partners in the Interstate Hotel Group make it worthwhile to reconsider. He feels they have added more and stronger equity partners and have reformulated the financing on the partnership. Commissioner Hufstetler asked County Attorney Hoyt, regarding the sentence regarding the guaranteed maximum cost, has anything else been received on this or just by this being signed has this been agreed on? County Manager Poe stated there is a letter from Hogan Construction Company that confirmed the price. Commissioner Hufstetler requested seeing the letter. He asked what happens if they run into circumstances beyond their control. County Attorney Hoyt replied that they would have to prove that there are, in fact, legitimate circumstances beyond their control. If they are able to that then they will be put in the same position as the contractor at the Correctional Institute, which keeps coming back for circumstances beyond their control. Commissioner Hufstetler stated that the \$3.3 million guarantee is if everything goes right. If anything goes wrong, it is not the price. County Attorney Hoyt stated that not just anything goes wrong, but if anything goes wrong which was not contemplated and is something absolutely new, then they would come back for a Change Order. Chairman Fricks reiterated that, at this point in time, anything discovered between the parameters of time, they could not go back and claim it was not considered. County Attorney Hoyt stated that he and the City Attorneys were concerned that there was such a long period of time between the initial contract and now that even the cost of nails and boards and everything had gone up and were concerned that they may not be able to get the guaranteed price. He noted that they were relieved when they received the current \$3.3 million guaranteed maximum price. Commissioner Hufstetler stated that they really do not have a Performance Bond, we just have a promise, and the past promises were not kept. He read from the Amendment "a Performance Bond will be furnished before construction begins and the construction has to begin before May 31," so by May 30th they have to have a Performance Bond. County Attorney Hoyt agreed and noted that they will make sure that it is a good Performance Bond. It was noted that they are currently discussing the Parking Deck and that Songy and Interstate do not have anything to do with the Parking Deck.

Regarding Item 2, confirming a finance arrangement with Songy, Commissioner Hufstetler asked if documentation had been seen. County Attorney Hoyt stated that a Term Sheet had been received, but a confirmed commitment had not been seen because he would have to pay a \$25 to \$100 application fee and he did not want to pay the fee if the Board turns him down. Commissioner Hufstetler stated that they have nothing more than before they confirmed the finance arrangement. He noted that the letter from the bank said that if they apply for a loan and meet the terms then they will make the loan, which really says nothing. County Attorney Hoyt stated that they would not be able to get a loan until Marriott approves them. Chairman Fricks noted that neither the hotel nor parking deck can take place unless there is confirmation on it, since both are contingent on each other. Commissioner Mahanay asked if they had tried to obtain a rating from Dun and Bradstreet. County Manager Poe stated that they do have information on Interstate since they are publicly traded, but not on Songy since they are private.

County Attorney Hoyt noted that the first contract they had with these people, that is in effect, does not even require a Performance Bond. The contract was negotiated two or three years ago and it is on the basis of that contract they have to deal with them, and it does not require any Dun and Bradstreet ratings, any equity partners, any bonds or anything. Commissioner Hufstetler asked the amount of the "significant equity interest" which the management company of Interstate will have. County Manager Poe stated that it is enough to meet Marriott's criteria. Commissioner Mahanay asked about information on Parkwood. Chairman Fricks stated that Parkwood is just the development company putting together the financial group. Commissioner Mahanay stated that the financing and the possibility of litigation are the things which concern him, but he would rather have more information. County Attorney Hoyt stated that this Board did not draft the contract with Parkwood and all of the things they are wanting them to do now are not in the contract. County Attorney Hoyt stated that the City Attorneys felt that the only thing we are able to hold them to is the \$3.3 million maximum price, everything else we have asked them to do is outside the contract, and they have done a lot of them. Since the City has already signed the Amendment, if there is a lawsuit, it will have to be with the County. Commissioner Hufstetler stated that he (Parkwood) has made written promises that he did not keep. Commissioner Jennings asked for clarification that if they do not sign this, then we are vulnerable to suit from Parkwood and if that happens we will be on our own, and the worst that could happen if we do sign is that they don't build this project. Chairman Fricks stated that they would have to show proof of the ability to build the facility before they start construction on the parking deck, because this is in the original contract. If they cannot get financing on the hotel, then they cannot proceed with the parking deck. Commissioner Jennings stated that looking at the worst-case scenario in both situations, it seems to him it is in their best interest to sign it. Commissioner Hufstetler stated that he is in a strong supporter of the hotel and thinks that it is important to be built, but does not feel they have protected themselves adequately. He realizes they inherited a poor contract, but feels they have not protected themselves adequately, there have been opportunities to address it which they needed to have taken better advantage of, and this is another one. Chairman Fricks stated that in calculating risk, they are taking a risk in that it would not be taking place, they do have a out clause, but in calculating the risk of a lawsuit of one party stepping out of a contract and having two parties saying they are happy with it, that risk is pretty high. Chairman Fricks asked Commissioner Hufstetler if he thought they would have less exposure to risk by stepping out now. Commissioner Hufstetler replied that asking for finance arrangements means nothing. Chairman Fricks stated that if they do not confirm the finance arrangement, our risk is that the project does not get done, but if we step out and breach the contract without the third party being there, we are having possible liability risk on our breaching the contract. County Attorney stated that in his opinion, and the opinion of the City Attorney, Chairman Fricks was correct. Commissioner Hufstetler stated that the bonds for the parking deck are public money and asked at what point the money would be handed over to Parkwood. County Manager Poe stated that before they start construction, they will have to submit all of the documents, including the Performance Bond. It was noted that the initial document never really alluded to how the parking deck would be financed. That came along when they were trying to decide how they would build the parking deck and the determination was that maybe bonds would be the best way to go. Commissioner Mayes asked who will decide the percentage of money which will be distributed as construction proceeds. County Manager Poe stated that the bonds will be issued through the Rome/Floyd Development Authority and they will have to go to the Development Authority to get draw-downs from the bond money to

pay for construction. Once the bonds are issued, Parkwood is eligible for 33%, then at mid-way point gets 33% and when completed received 33% of the development fee.

Commissioner Hufstetler asked the definition of “construction has begun”. County Manager Poe replied when the permit is issued, and County Attorney Hoyt agreed.

Commissioner Mahanay asked if application and approval had been received on the Block Grant for \$500,000. County Manager Poe replied that it had been approved, but the state has given an extension on the grant.

MOTION was made by Commissioner Jennings that the Chairman of the Floyd County Board of Commissioners be authorized to sign this Confirmation and Amendment to the Agreement for the Marriott Hotel and Parking Deck Project and authorize the County Attorney to send a notice of same to the Marriott. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Hufstetler

Commissioner Jennings

" Mahanay

" Mayes

Chairman Fricks

Motion Carried

ADJOURNMENT:

There being no further business to come before the Board, MOTION was made by Commissioner Mayes, SECOND by Commissioner Hufstetler, that the meeting be adjourned. VOTING:

YES

NO

Commissioner Hufstetler

" Jennings

" Mahanay

" Mayes

Chairman Fricks

Motion Carried

COMMISSIONERS

FLOYD COUNTY BOARD OF

GARRY E. FRICKS, CHAIRMAN