

## FINANCE COMMITTEE MEETING

The Finance Committee of the City of Norfolk, Nebraska met in the City Council Chambers, 309 West Madison Avenue, Norfolk, Nebraska, on Monday, April 23, 2007, beginning at 7:00 a.m.

Mayor Gordon D. Adams called the meeting to order.

Roll call found the following Committee members present: Mayor Gordon Adams and Councilpersons Brenneman, Coy, Fauss, Lange, Reeder, Saunders, Van Dyke and Wilson.  
Absent: None.

Staff members present were City Administrator Mike Nolan, Public Works Director Dennis Smith, City Attorney Clint Schukei, City Clerk Beth Deck, Administrative Secretary Bethene Hoff, Property/Operations Manager Gary Miller, Information Systems Manager Jim McKenzie, Police Chief Bill Mizner, and Prevention Manager Scott Cordes.

The media was represented by Brian Masters, US92; Jim Curry, WJAG/KEXL; and Greg Wees, Norfolk Daily News.

Notice of the meeting was given in advance by publication in the Norfolk Daily News, and notice of the meeting was given to the Mayor and all members of the Council prior to the meeting.

The Mayor presided and the City Clerk recorded the proceedings.

The Mayor informed the public about the location of the current copy of the Open Meetings Act posted in the meeting room and accessible to members of the public.

Mayor Adams suggested the items addressed in a letter from Clint Schukei to Jason Doele (Attorney for Big Bang Boom) be discussed in the order listed.

Property/Operations Manager Gary Miller said “we are generally close to agreement on most of the items.” However, staff would like direction from elected officials on how to proceed on several items. Miller addressed Paragraph 2, with the only issue remaining being weather related. The **time frame** for access to the park can be determined by elected officials after input from the Park Superintendent. Miller said the question is about Big Bang Boom (BBB) setting up in the park. According to the last communication from BBB, the set up date of June 25, 2007 is fine. However, BBB had concerns about the set up date with the potential for inclement weather and how to contact the Park Superintendent, or who to contact to obtain authorization to set up earlier in the event of weather-related issues. Miller stated the Park Superintendent, or a designated person, will be available to authorize BBB to set up early in the event of inclement weather.

Jason Doele said BBB doesn't have an issue waiting until June 29 but “this does hinge on weather.” BBB would like to have the discretion to use their good judgment to access the park a day early, if necessary, instead of contacting someone from the City for permission.

Councilperson Reeder feels “this is a silly issue” and doesn't understand why BBB can't use their own good judgment to know when to go to the park to setup for the event. Reeder questioned “why are we having an issue now?”

Councilperson Van Dyke said it should be easy enough to contact the Park Superintendent.

Mayor Adams feels BBB is “over emphasizing” the difficulty of contacting city officials. Mayor is always available, as an alternate, to make that decision.

Councilperson Coy questioned whether there has been a problem in the past.

Don Wisnieski said there has never been a problem in the past and BBB never had to check with anyone before about setting up earlier in the case of inclement weather.

City Attorney Clint Schukei stated this is one of the issues in the agreement that hasn't changed. The draft agreement was in the exact same form with regard to this item as it has been for years. The Park Superintendent wording was added when the issue of inclement weather was raised. The agreement, as a whole, mentions the Park Superintendent quite often.

Public Works Director Dennis Smith stated Park Superintendent Pat Mrsny has a cell phone and BBB can also be given the cell phone numbers to several other city staff members as contact persons.

Councilperson Fauss questioned whether Wisnieski has Mrsny's cell phone number.

Wisnieski doesn't currently have Mrsny's cell phone number.

Councilperson Van Dyke would not be able to rent a building, such as the Knights of Columbus, for one night and decide to set up one day earlier without permission.

City Administrator Mike Nolan suggested the City give BBB the setup date proposed and include Pat Mrsny's cell phone number, as well as several backup phone numbers, in the agreement in the event of inclement weather.

Wisnieski agreed to Nolan's proposal.

Miller stated Paragraph 7 has several components: the age as well as the license requirements for persons to operate **ATV's** in the park. Miller said Council subcommittee members want operators to be 16 years old and licensed drivers.

Wisnieski said some younger people help with the BBB activities and may be younger than 16 years old.

Fauss questioned what was in the previous agreement.

Miller said the ATV issue wasn't in the previous agreement. It came up when City staff heard BBB may use the park in Columbus. Miller contacted the City of Columbus for agreement requirements. Columbus requires the ATV licensure and insurance coverage. Staff felt this was a good issue to address in the agreement.

Schukei stated the ordinance in place in Norfolk prohibits ATV's, or anything of that nature, that are privately owned in the park. So in the past, ATV's have not been authorized in the park. Staff suggested that the agreement address the ATV's since BBB utilizes them.

Fauss didn't realize the City of Norfolk had such an ordinance and requested a copy. Fauss questioned why City staff didn't use the previous agreement and change the insurance to \$5 million. If the agreement has worked in the past, "why are we changing multiple things." Fauss feels BBB uses good judgment and questioned "why we are starting to get in the middle of it."

Schukei read Section 18-11 of Norfolk's City Code, as follows: "No motor vehicles, or bicycles are allowed in the park except allowed on the roadways and paths provided for such vehicles and in no event is any unlicensed motor vehicle permitted within the confines of the park. No motorized vehicles are allowed on bike paths." Schukei understands there have been complaints in the past from citizens regarding the operation of the ATV's so this is in response to those issues. Schukei talked with Troy Uhlir in early April and Uhlir acknowledged there have been some issues in the past with the ATV's.

Uhlir tried to explain in the meeting with Schukei that BBB already self-police the issue. There may have been some issues in the past with ATV's but no one has been hurt and nothing has gotten out-of-hand. Uhlir feels BBB is a responsible organization and that ATV's don't need to be addressed in the agreement.

Nolan said the City's interest is still the insurance.

Schukei stated the agreement proposes allowing ATV's in the park for Big Bang Boom and then makes sure they are insured when operated in the park. The initial response received was to authorize the ATV's but take out any requirement regarding the ATV's being insured.

Doele said the City can be assured that BBB will respect the wishes of the City and insure the ATV's. BBB doesn't object to the age limit of individuals operating the ATV's. BBB borrows ATV's from Polaris. Polaris has an age requirement and the operators must watch a safety video to become certified to drive the ATV's. However, there may be some individuals who are 16 years old or older who don't have an operator's license. BBB would like to forego the requirement of an operator's license. Doele stated Nebraska Statutes don't even require a person to have an operator's license to operate an ATV.

Reeder feels watching a safety video is enough for operation of the ATV's. Reeder questioned whether Doele has a copy of the insurance policy.

Doele had a copy of the insurance policy and gave it to Schukei.

Nolan requested Doele provide the City "with something in writing" to indicate the ATV's are covered under BBB's insurance policy.

Doele will provide something in writing to the City showing the insurance coverage for operation of ATV's in the park. Doele understands that the requirement to hold a driver's license for operation of the ATV's will be eliminated from the agreement.

The third item discussed was Paragraph 9 dealing with **signage**. Schukei stated two issues are involved: (1) the sign that went across Maple Avenue and the time frame displaying it and (2) advertising signs placed around the park. Schukei said there has been a lack of compliance in the past where signs don't get taken down in a timely manner. Schukei stated the City has received complaints from the public about the signs not being taken down. Schukei stated BBB has

agreed to move the large sign from across Maple Avenue back into Skyview Park. The issue becomes the timeframe as to when the signs are allowed to be displayed.

Doele stated BBB is requested five working days after the event to take down the signs. Doele stated there are several issues involved with the request: (1) the actual structure to hold the banner that will be placed at the entrance to Skyview Park and (2) the small signs that event sponsors place around the park. BBB requests five working days for removal of the poles/structure holding the large banner. Doele stated the Monday following the BBB celebration is "typically our holiday" and BBB needs to coordinate with NPPD for help removing the structure (poles).

Schukei said Doele's previous correspondence indicates that event organizers don't help take down the signs. NPPD puts up and takes down the poles and banner and advertisers take down the other signs.

Doele said "I probably mis-spoke if I said that about the banners." Event organizers do assist NPPD with placing and removing the banner.

Wisnieski stated the banners and signs have always been taken down in compliance with the agreement. The signs are not left up "for any length of time." Wisnieski said signs are typically put up Saturday morning to avoid vandalism. The advertisers also take the signs down as quickly as possible to avoid vandalism. Wisnieski said, "Everything associated with Boom is out of there by Sunday" and "we have never left a single sign up there past Sunday other than the structure that has been over the road." Wisnieski said the large poles and banner is "more of a scheduling thing between BBB and NPPD." Wisnieski doesn't appreciate City staff calling NPPD to try to make arrangements on behalf of BBB. Wisnieski said Christian Cross organizers have also used the structure for their event and have purchased a banner. However, Christian Cross organizers decided to let it up to BBB to ask the City to have the structure placed earlier for use at the Christian Cross event as well as BBB.

Fauss questioned why there is a problem and whether this was in the agreement last year.

Wisnieski said "yes for five or six weeks" which allowed the Christian Cross organizers to utilize the structure.

Schukei has not received complaints from the public; however, Pat Mrsny, Dennis Smith and Gary Miller have received complaints and talked to Wisnieski about the problems. Schukei takes exception to Wisnieski's comments about the signs being down in a timely manner. Schukei has seen the signs up past the deadline. The Council has the ability to regulate the time frame of the signs.

Smith has received complaints about various signs left in the park after the event. A number of years ago the sign hanging over the road was not taken down for almost one month after the event. Smith said the poles were taken down one year, tossed on the terrace and left there for 4-6 weeks. Smith said two issues need to be dealt with: (1) the poles/banner and (2) the advertising signs.

Wisnieski and Uhlir disagreed with Schukei and Smith and said most signs go up late Friday or on Saturday and the signs are down by Sunday.

Fauss feels the signage language should be taken out of the agreement and “go on a gentleman’s agreement and if it doesn’t happen this year let’s address it next year.”

Nolan stated the more effective way to deal with this issue is to have BBB indicate the amount of time needed to take down the large banner/poles and the advertising signs. Nolan suggested dealing with this to accommodate everyone’s interests and without personalizing it towards staff.

Van Dyke doesn’t like to see signs advertising events that happened weeks earlier. However, there are things that happen that may prevent the signs from being taken down in a timely manner. Van Dyke would like BBB to indicate the time frame needed to remove the signs.

Doele stated BBB is requesting five (5) working days to remove the large banner/poles. Doele stated the small vendor/advertising signs can be removed by the next business working day following the holiday.

General consensus of elected officials was to agree to BBB’s request to place five (5) working days in the agreement to remove the large banner/poles and require the smaller advertising signs be removed by the next business working day following the holiday.

Coy suggested standardizing the agreement to read five (5) working days following the event.

Mayor Adams requested discussion of the next issue, Paragraph 11 regarding access of **city personnel** to the park. The agreement reads that the Public Works Department shall have access to the entire park during the term of the agreement. Mayor Adams feels this is reasonable. The Mayor said City staff need to have access to manholes located in the area but would not go to the area where the fireworks are located.

Doele stated BBB will not deny City staff access to the manholes. However, Doele said “Boom’s position is held to the fire by J&M, who provide the fireworks and fireworks insurance coverage.” In 2006, J&M notified BBB that personnel needed to be certified to handle particular items. BBB organizers went through a certification process last year to be able to be allowed access to the fireworks area, also called the “battery site”. Doele stated BBB doesn’t have the option to allow someone in the area unless they are certified. Doele said BBB must meet certain criteria set by J&M. If there is an emergency, City personnel will be allowed in the area and BBB staff will escort City personnel to access the area where the actual fireworks are set up, if necessary.

Fauss said what “is fair is fair” and City staff should call BBB organizers to be able to access a manhole in that area.

General consensus of elected officials is to agree to the language Paragraph 11 of the agreement.

Miller stated the City of Norfolk wants BBB to understand Paragraph 18 of the agreement in that the City has concerns about copyrighted music whether it relates to bands, carnival-like attractions or anything else.

Doele stated BBB agrees to hold the City harmless if something happens regarding copyrighted music being played without the proper FCC licenses in place for the event.

Schukei explained that, beginning in 2000, ASCAP and BMI started suing cities that did not have licenses for playing music, such as at swimming pools or over the telephone. Schukei stated the City's agreement (license) for the copyrighted music doesn't cover special events. Special events are designated by \$25,000 in sales of tickets or a budget in excess of \$25,000. The City's existing licenses say that if the City has that type of function there is a 1% fee based on the budget of the event and the amount of the ticket sales. The language in the BBB agreement states that any necessary licenses for the event for copyrighted music are issues that belong to the event organizer and the City isn't responsible.

Fauss said "I'm starting to see a pattern here where the item is getting easier and they aren't getting solved" by City staff.

Schukei said it is the same language that has been in the agreement for years. However, BBB objected to the language this year.

Uhlir stated some of the onus is probably on BBB. Uhlir stated BBB organizers have probably not looked at the agreement in as much detail as should have been done in the past. Uhlir feels the organizers are smart citizens and take care of the park. However, this year the City requested a \$5 million insurance policy so the organizers felt it would be a good idea to read the agreement line by line to make sure all of the requirements could be met by BBB. Uhlir stated there were some things the group really didn't understand and that is why all of the questions.

Fauss questioned whether Schukei understood the reasoning. Fauss feels Schukei should have been able to resolve these issues.

Schukei stated Big Bang Boom raised the questions.

Van Dyke stated it is the decision of the elected officials and not the city attorney. Schukei prepared the agreement, presented it to BBB and it is the final decision of elected officials as to what is in the agreement.

Schukei has had discussions with Doele about the agreement to explain the licensing requirements for copyrighted music.

Doele stated the language in the agreement is acceptable to BBB. Doele stated BBB is not securing the licenses for music played during the event but relying on radio stations to carry that licensing. However, if there is an issue that comes up regarding the music, now that BBB understands the City's standpoint, Big Bang Boom will hold the City harmless and agrees to the language in the agreement.

Miller requested clarification in the agreement of the date for placement of the signs and poles.

Wisnieski stated BBB has typically placed the poles and sign the weekend prior to the event.

Van Dyke questioned whether BBB can live with language such as "no more than seven (7) days prior" to the event.

Wisnieski responded "absolutely."

Coy wanted clarification as to whether the City was going to allow the poles to be put up early for the Christian Cross event.

Wisnieski stated Christian Cross organizers are relying on BBB to make that request. Wisnieski stated BBB would like to donate the structure for that event if the City gives permission.

Reeder and Coy don't see a problem with allowing placement of the poles to be used for the Christian Cross event.

Wisnieski stated Christian Cross will take the banner down without a problem. The structure would stay but the banner would come down.

Mayor requested consideration of discussion of insurance issues related to Paragraphs 7, 14 and 15.

Doele stated BBB agrees to provide the City with a copy of the certificate of insurance required for the event. Once the agreement is signed with the City, then J&M needs to sign the agreement and then a copy is sent to the insurance provider. Once the insurance provider receives a copy of the agreement, the insurance certificate is issued.

Schukei feels there is alignment on all of the insurance requirements issues. Paragraph 7 deals with insurance regarding ATV's. Paragraph 14 addresses all vendors or activities in the park that have not provided a separate insurance certificate. Paragraph 15 is the pyrotechnics insurance coverage. Schukei understands the general liability insurance purchased by BBB is the festival part of the event which excludes fireworks, etc. and J&M provides insurance coverage for the fireworks portion of the agreement. Schukei stated the City will make sure that the permitting process works better for the event.

Doele stated BBB will provide a letter to the City from the insurance agent to satisfy requirements of the City prior to the certificate being issued.

Fauss questioned what the problem(s) has been if BBB "has always agreed to this."

Councilperson Lange feels it is good that "when looking at the letter of the law, you want to see it." Lange sees no problem with the City asking for a letter from the insurance agent.

Fauss said BBB has "always been fine with that so why is it on our paper today."

Nolan stated the item was on the agenda because these have been part of the discussions that have occurred during the negotiations with BBB. The Council, as elected officials, should be aware of all of these things. Nolan stated there isn't a problem and one doesn't need to be created.

Reeder questioned whether the City will still require the ATV's to be listed separately on BBB's insurance policy.

Schukei stated the City has the commitment to make that work in whatever manner is easier for BBB. Staff will then take the agreement and insurance certificate to the City's insurance provider for review. Schukei stated there is a commitment between the parties to take and accept the insurance and work out any other details.

Doele stated BBB has been told by their insurance provider that ATV's are covered in the policy although not listed specifically. However, if the City wants the ATV's listed separately, BBB will be happy to do so.

Schukei has not seen a copy of the insurance policy.

Doele provided Schukei with a copy of BBB's insurance policy.

Fauss requested a copy of the email sent to Schukei regarding the insurance. Fauss also requested a copy of the ordinance regarding Section 18-11 of City Code.

Van Dyke said, "there is no way Clint can take a look at this now."

Nolan stated BBB organizers can meet with Schukei and the City's insurance carrier to look at the policy.

Schukei was at the office at 6:00 a.m. today and did not have a copy of whatever email Fauss is addressing.

Wilson said this issue has been dragging on for too long and the agreement needs to be signed. Wilson said "this Finance Committee meeting should have happened 2-3 weeks ago" so BBB could move forward with the event.

Mayor pointed out that "it is all well and good to assume that you are covered but when the trouble begins the assumption may be false". Mayor Adams stated Schukei is watching so the City has documented evidence of insurance coverage, which is for the protection of the community as well as Big Bang Boom.

Nolan stated "Success has a hundred fathers but defeat is an orphan." The City hasn't had any major claims where an error was made on what should have been done. Nolan stated the groups have shared interests and need to be congenial and constructive about accommodating the shared interests. Nolan wants the result of this to be a good agreement that has durability.

Saunders is very supportive of Big Bang Boom. Saunders also understands that contracts should probably be reviewed every few years for the interest of all parties. Saunders feels the BBB board members have been very flexible and the City needs to be flexible as well.

Doele said BBB wants to be involved in the discussions and welcomes any questions. Doele questioned when to expect the agreement approved by the City.

Schukei briefly reviewed the insurance policy but said "it isn't in place at the time of the 2007 event."

Doele agreed and said the policy expired June 4, 2006. Doele addressed the issue with the insurance company and the policy will be issued to cover June 4, 2007 to June 4, 2008.

Nolan suggested City staff meet today with BBB staff to review the insurance policy to resolve the issue(s) since Johnnie Miller with the City's insurance company is in Norfolk today.

Councilperson Wilson left the meeting at 7:55 p.m.

Coy questioned whether some type of default agreement could be issued if the State Legislature settles the recreational liability issue so that the limits will go back to what they were before.

Nolan stated “it isn’t going to go back to the original”. The tort caps have always been \$5 millions but the standards of liability are now different then before. Nolan said the City will provide the agreement to BBB “as expeditiously as we can get it done.”

Councilperson Van Dyke moved, seconded by Councilperson Fauss to adjourn the meeting at 7:56 a.m. Roll call: Ayes: Council members Brenneman, Coy, Fauss, Lange, Reeder, Saunders, Van Dyke, and Mayor Adams. Nays: None. Absent: Wilson. Motion carried.

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Elizabeth A. Deck  
City Clerk