

CRE PERSPECTIVE

COUNSELING IN THE PUBLIC SECTOR: THE PEPSI CENTER

by Peter D. Bowes, CRE

In July 1994, Mayor Wellington Webb appointed a Sports Facility Task Force and the co-chairmen were Dan Muse, city attorney, and me. I do not know why I was picked, unless it was because of my involvement with the Downtown Denver Partnership that had submitted a list of names for the Mayor to consider for the Task Force in general. The request came directly from Mayor Webb and I accepted. The Mayor thought the whole process would take about three months.

The Task Force was to consider negotiating or renegotiating relationships with the Denver Nuggets and the Denver Broncos regarding their perceived needs for new stadiums.

Mayor Webb had a few instructions in our consideration:

- Financially, the City had to be as well off after the negotiations as it was before.
- The teams had to commit to play in Denver for 25 years.

Members of the Task Force, totaling about 30, equally divided between the Nuggets and the Broncos groups, were made up of a broad representation of our community — they included people with downtown interests, lawyers, finance people, union representatives, contractors, political representatives, community leaders, etc.

Note: *Because the negotiations with the Nuggets advanced to a deal on a new stadium, I will tell that part of the story.* When the negotiations started, the Nuggets were owned by Comsat. Comsat also owned the Avalanche that was playing in McNichols and would be playing in the new facility. For simplicity, the negotiations were always described as being with the Nuggets. Over the term of the negotiations, Comsat spun off a subsidiary called Ascent that owned several operating parts, including the Nuggets and the Avalanche. Comsat controlled Ascent until the end of the negotiations when, one month before our final agreement was reached, Ascent was fully spun off from Comsat and

became an independent operating entity with similar but different shareholders and an independent board.

For about three months, the Nuggets made presentations to the Task Force explaining why they believed they needed to replace McNichols Arena with a new state-of-the-art facility that would be paid for mostly by them. One of the questions that kept coming up was “if the Nuggets were going to pay for the stadium, why was there any discussion at all about reaching an agreement?” Well there were several reasons:

- The Nuggets were playing basketball at McNichols Arena under a lease that would expire in 2008. They needed to be released from that lease and that took political action.
- The City had a surcharge on tickets that was used for the operation of their facilities and arenas. Because the Mayor said that, financially, the City had to be as well off after the negotiations as it was before, replacement of those dollars was important.
- As we got into the negotiations, it was clear that there were other public needs regarding rights-of-way, access, signage, etc.
- The contracts needed to be approved by City Council.
- The City Council had to approve the development plan (Planned Unit Development).

This clearly was a PUBLIC/private deal. We suggested that the Nuggets not talk about this being a purely private deal or they would lose the deal.

NEGOTIATING WITH THE NUGGETS

The Nuggets Task Force concluded that although McNichols was physically usable, it was functionally obsolete given today's requirements of club seats, boxes, etc. As a result, the Task Force authorized negotiations with the Nuggets.

The Task Force appointed a negotiating team that included: Peter Bowes, CRE, co-chairman of the Sports Facility Task Force; Mary Kelley, chairwoman of the Nuggets Task Force; Dan Muse, City attorney and co-chairman of the Sports Facility Task Force; Debbie Ortega, City councilwoman; and Cathy Reynolds, City councilwoman. Others that were part of the negotiating team were City staff members: Bar Chadwick, City Planning Office; and Liz Orr, City Director of Finance. Outside consultants included: Thomas Ragonetti, attorney; and Craig Skeim, sports facility consultant.

When we and our counterparts with the Nuggets met, it was a full room. Mary Kelley and I were the only ones not being paid by anyone. We were volunteers, with no commitments other than to do the best we could to negotiate a fair deal, one that the City and the Nuggets could both afford and live with for 25 years.

Before and during our negotiations, support and direction came from the full Nuggets Task Force. This kept the broad representation involved in the process.

NEGOTIATING THE DEAL

The first attempt at negotiating the deal was during the 1994 Christmas holidays. We met several times a week, sometimes eight hours at a time. Shortly after the holidays, we reached a conclusion on numbers and the rent that the Nuggets would pay to the City, but stumbled on an index of that rent. There was no give on either side regarding indexing the rent and we thought the deal was dead.

Because the Nuggets organization was a master at marketing, we expected them to argue their case in the press. We met to develop our approach, which basically was damage control. We arranged a press conference for that afternoon and, as it turned out, the Nuggets did nothing with the press.

The Mayor called and asked if I would meet with him before the press conference. Because time was short I asked him if there was someplace I could park that was close and easy. I ended up parking in a small inside parking area in the City and County building that few ever get to see, much less use, and then I rode up in the elevator reserved for the Mayor, other special dignitaries, and prisoners. I did not know that the elevator was there and probably will never get to ride in it again.

What the Mayor wanted to talk about was whether I and the City team could meet with him and the Nuggets team after the press conference or sometime in the evening, so as not to let this opportunity get away. I told him I could after the press conference, after teaching school, and after going to a family dinner party.

NO DEAL?

The press conference started with the statement "the deal is dead." We then described what we had all been through and how hard everyone had worked. We complimented the Nuggets on their participation in the community but we were just not able to make a deal. The only statement that got on the news was "the deal is dead."

The Mayor did arrange for everyone to come back about 9:30 p.m., and the faces on the Nuggets team were anything but friendly because all they had heard was "the deal is dead." But through that effort, the Mayor got a commitment for us all to meet again the next day.

This was a long day for me. It started at 8:00 a.m. and ended at 2:00 a.m., with time out for teaching and dinner.

The next day we met again, worked out a deal, and developed a letter of agreement. If the Mayor had not invited us all back the night before, I do not know what would have happened, but developing any type of a deal would have been much harder and taken much longer. The Mayor's leadership was terrific.

The next task was to draw up contracts and consider some technical legal issues. After about 90 days we were within hours of having contracts ready to sign when a Colorado Supreme Court ruling came down about possessory interests. Effectively, it said all possessory

interests, any private company, even in a publicly-owned facility, would pay possessory interest taxes. Since this deal was based on there being no real estate taxes, possessory or otherwise, this was a near fatal blow. The Colorado Legislature passed legislation before the end of its session in June that would remove the possessory interest tax. The Governor, with lots of support, vetoed the bill because it was done too quickly, was not well thought out, and probably would not survive any legal tests.

HURRY UP & WAIT . . .

Then we went into the doldrums. There was a mayoral election in May, at which Mayor Webb was re-elected. There were some new city councilmen. Through the summer, there was a lot of change in the leadership of the Nuggets' organization. They hired Tim Romani to build the new stadium. Tim had just finished building Comiskey Park in Chicago and was ready for a new challenge. He did not know there would be nothing to do for awhile.

Not much went on between June 1995 and January 1997. This was 18 months where we had infrequent meetings at which there was little or no progress. Two things did happen; the Colorado Legislature passed legislation that removed possessory interest taxes, and the Nuggets told us they could not afford the deal they agreed to in January 1995.

I am satisfied there was no will on the part of the Nuggets to do a deal. Comsat was still in charge and Ascent was a stepchild. Their interests would have been best served to get the deal done and the facility up as soon as possible, but that was not going to happen.

The Nuggets and the City jockeyed for position, often in the press:

- The Nuggets announced they were discussing a deal with Douglas County (part of the Denver metropolitan area, but way south and without a concentration of people).
- The Mayor had a press conference where he set a Coke can on the lectern.

These types of things just made everyone mad and hurt our ability to get anything done.

A GRIM FEBRUARY

In February 1997 there was a meeting that we thought would work out details from earlier meetings. It was scheduled to be short and I could not go at the time it was called. I called to check in and those that were there asked me to come, suggesting that there was progress. Then we broke for lunch and the bottom fell out. After lunch, the Nuggets had changed everything, would not agree to anything they had agreed to before lunch, and things that were matters of degree they would not consider.

I got a pit in my stomach because the games that were being played were all beyond reason. I was angry. For the first time, I had the feeling that the deal might not happen. I raised my voice and it quivered and broke. A terrible day.

After that terrible meeting in February, we talked to Tim Romani and suggested that this deal needed to be touched every day by someone at the Nuggets and that he was the one who needed to do it. He had a vested interest in getting the deal done so he could build the stadium, and the other key people for the Nuggets were not always available and their minds were not focused on this deal. Tim took that suggestion and things started to happen.

TRIMMING THE TEAM

To get rid of some of the antagonistic personalities, we reduced the negotiating team further. The City's team was: Tom Ragonetti, lawyer; Liz Orr, City Director of Finance; Craig Skeim, sports facility consultant; and me. Tim Romani was the Nuggets' key negotiator and he had comparable support.

There were a lot of issues that needed to be resolved:

- The City wanted a minimum rent, referred to as a floor, to protect it from a time when there could be a basketball strike. If that was going to happen, the Nuggets wanted an upper limit, a ceiling, to allow them to get the benefit of the significant upside that it would produce. The Nuggets did not want the floor and the City did not want the ceiling. We had to go back and explain again that what we needed was something that was fair, and if there was going to be a floor there needed to be a ceiling. There was a basketball strike the next year which illustrated why the city needed the floor.
- Effective replacement of seat tax funds to support other City theaters and arenas facilities was needed. This ended up being a sliding scale with maximums and minimums based on attendance.
- McNichols Arena would not necessarily or automatically be torn down, and operations at McNichols needed to be handled by someone. The most logical one to do that was the Nuggets because it was operating an arena that would take the major events away from McNichols, and McNichols would be available to take lesser events and events on days when the Pepsi Center was already being used. But how much should

the Nuggets be paid? . . . what is a major event? . . . what is a minor event? — difficult to get resolved. This was a place where Craig Skeim's background was a leveling influence and helped settle the issues.

- There had to be cross guarantees that dealt with the requirement that the Nuggets and the Avalanche play in The Pepsi Center for 25 years. The guarantees were such that whether the parent organization, the Avalanche organization, or the Nuggets' organization (each separate corporations) failed, all other parts of the agreement would stay in place. This was a key issue and gave the City the security it needed to be sure that the teams would be in Denver for 25 years.

So the stage was set to finish the deal. What might seem like an unrelated event, but I am sure was a very influential event, was the fact that Comsat was going to spin off all of its ownership in Ascent (the Nuggets). That was going to happen June 30, 1997. That allowed the Nuggets to focus on this as a deal and get on with it. The agreement, in principle, between the City and the Nuggets, was signed in July 1997.

The rest was really a fast track:

- contracts were ready by October;
- the PUD (zoning) was approved in November;
- the Nuggets closed on the site purchase for the facility two days after City Council approved the PUD;
- one week later construction started;
- the facility opened in September 1999.

This was an amazing journey. Three months turned into three

Photographs 1 - 3

Photograph 1:
McNichols Arena



Photograph 2:
The Pepsi Center

Photograph 3:
The Pepsi Center



years, and we had no idea what was going to happen when we started. The whole thing just grew. There were highs and lows, personalities and styles, public and private. What an education! Not really a real estate deal, but real estate related. The key was to work for something that was fair, and that needed to be the focus. We lost track of that sometimes, but had to keep coming back, never losing sight of what was fair. Being an unpaid volunteer helped me to focus on fair without there being any perception of advocacy or bias for the City.

LIFELONG BENEFITS

After the hundreds of hours that were spent in this effort, my memory will be of the people. Some good, some not so good. I knew some from before. Know them better now. Some that I met during the negotiations are my friends now.

Mary Kelley and Craig Skeim became more than just business people to me. I got to know their families beyond the business efforts we shared. I will never forget this.

Tim Romani and I became very good friends. On the day of the announcement in July 1997, the *Denver Post* included two articles written by two different reporters. One about Tim and one about me. We each credited the other with the success of the negotiations and told of our amazing friendship. This too, I will never forget.

Overall, I learned a lot about real estate, politics, and people. Some I wish I did not have to learn, but was amazed that I had never been exposed to it or learned about it before. I spent more hours in these negotiations than I can count and it was worth it. I would do it again.

My father, Eugene Bowes, CRE, encouraged me, through his example, to volunteer. I do, and I

enjoy it. This was an example of it.

My wife Devon, my best friend and critic, listened and encouraged and consoled and counseled. As always, a key to my well-being and effectiveness.

Working on this negotiation was the most diverse, challenging, and educational counseling experience I have ever had. Glad to have been asked . . . glad to have been able to help.^{REI}

NOTE: *This article is based on the author's memory. Facts and events presented are his recollections. Obviously, all parties involved would have individual interpretations of the events.*

ABOUT THE AUTHOR

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