

# Mayor walks out of mediation

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A mediation session arranged by High Country Bank between Salida city officials and the Salida Natural Resource Center Development Corp., came to an abrupt end Tuesday afternoon when Mayor Jim LiVecchi walked out of the meeting.

Retired 11th Judicial District Judge Ed Schlatter, who led the meeting, LiVecchi and Salida City Council member Eileen Rogers were in the first stage of the mediation process when Schlatter asked for their rationale of why the city believes it is in violation of the Colorado Taxpayer Bill of Rights.

“I began as I always do, asking why he and like-minded members of city council were so interested in proving they are out of compliance. What do they gain by this?” said Schlatter.

“These are things he will be asked in court next week. I did not get a response to a single question. When he began to gather his things to leave, Councilwoman Rogers put her hand out to touch his arm. He shouted at her ‘don’t touch me!’ and walked out. I was shocked.”

Larry Smith, president of High Country Bank, the lender on the Vandaveer Ranch property owned by the NRCDC, was acting upon the suggestion of attorney Pete Cordova when he asked Schlatter to attempt to mediate, at no charge, the differences between the NRCDC and the city prior to a scheduled hearing Dec. 20 with District Judge Patrick Murphy.

The city is on record with a resolution that it is in violation of the Colorado Taxpayer Bill of Rights over the NRCDC financial mechanisms.

“Jim McConaghy and I were in one room and the mediator was with Rogers and the mayor in another room, and he walked out. We never got a chance to talk about anything with him,” said NRCDC board President Ron Mazzeo.

“Basically, that speaks to the whole problem for the last 3 months – the complete unwillingness and inability to even have dialogue on these issues.”

In mediation, the parties in disagreement begin in separate rooms. The mediator asks questions to find out where the parties differ, identifies common ground and brings them together to work toward a solution.

“I want to thank Larry (Smith) for inviting us. He’s a class act,” LiVecchi said Tuesday evening. Explaining his early departure, he said, “I was hoping for more of an impartial process. I may be new to all of this, but I thought the mediator should be impartial.”

“Normally a mediation session is confidential, but there is nothing confidential here,” said Schlatter. “As to legal opinions, I picked out four or five opinions on TABOR by the Colorado Supreme Court and the Court of Appeals, most notable because they are mentioned by other judges.

“I pointed out the TABOR law is a very simple law with regard to enterprises. It is one sentence long and sets out three separate criteria that must be satisfied. Under TABOR an enterprise must be 1) a government-owned business; 2) authorized to issue its own revenue bonds; and 3) receiving less than 10 percent of annual revenue in grants from all Colorado state and local governments combined.

“Beneath that criteria, TABOR has established a four-part test to determine enterprise validity: 1) Is the enterprise government-owned? Is the enterprise a business? Does the enterprise have the authority to issue its own revenue bonds? Does the enterprise receive less than 10 percent of its annual revenue in grants from all Colorado state and local governments combined? (The Colorado Lawyer, July, 2003.)”

Schlatter described his questioning process. “I don’t go in with the intention of arguing your lawyer is right, or your lawyer is wrong. I asked if the city believes itself to be out of compliance, then why can’t it be fixed? The point is, it can.

“The NRCDC is the only entity on the note. The city has absolutely no liability and the city has no reason to worry about being on the hook for the loan – it is completely in the enterprise area just as it is supposed to be. That’s the way these enterprises work.

“It’s the same kind of financial structure that was used to build the \$100 million Colorado Judicial Center and the Colorado Historical Society building.”

When the mayor walked out of the mediation room, Smith said he attempted to stop him in the hall.

“Much to the dismay of all, Mr. LiVecchi walked out of the meeting within the first 30 minutes without having any discussion between the parties, because he felt that he was being bullied,” Smith said. “Judge Schlatter simply stated ‘there was no TABOR violation.’”

### ***Prep for the Dec. 20 hearing***

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Schlatter explained to LiVecchi and Rogers what Murphy could be considering in the Dec. 20 hearing. “I told them, he’ll look at the motions – the tone of one of which, attorney Kahn’s, is quite inappropriate.

“He’ll look at the legal opinions. There are three coming out of law firms with national reputations in municipal law. The city doesn’t have an actual opinion – it has a, what – a 45-page document of random data – this does not suffice as a legal opinion. It’s not even signed. I asked the mayor what he intends to do next week, and he had no response.”

“I asked why it is that the city wants to lose that lawsuit? The law is clear, the legal opinions have said that they are compliant. ... Some council members believe that if a person hires a law firm they’ll give them the opinion they want. Not true! Law firms have an ethical responsibility to give the truth.

“A person gets a legal opinion from a law firm to keep them safe from legal action. Law firms don’t give out legal opinions like they are boxes of chocolate. Particularly law firms with the reputation of those who have weighed in. These opinions accord great respect.”

Schlatter noted that there are 40 to 80 of these financial enterprise structures like the NRCDC around the state of Colorado, including the enterprise entity set up by attorney Mike Feeley, who provided a legal opinion to High Country Bank on the NRCDC, for the construction of the Colorado Judicial Center.

“This was set up right,” said Schlatter. “The taxpayers of Salida face no indebtedness whatsoever. Even if it were wrong – there’s no damages. Even if it weren’t properly set up, it can be fixed. There is only one punishment that is possible – a citizen suit – and who’s going to do that? For what?”

Smith said he was taken aback by the mayor’s actions.

“I was astonished and felt very disrespected by the mayor’s actions, not only for High Country Bank, but also for Judge Schlatter and for those parties that were in attendance,” said Smith.

“We simply requested the meeting to allow for an open dialogue with a highly respected and well-versed mediator about the problems causing controversy within the community. The mayor’s actions are contradictory to his vow of integrity and give me grave concern for the city of Salida.”

### ***Moving forward***

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The remaining group did finally gather. “All these people were trying to talk through this problem. I am so glad that Councilwoman Rogers was involved. She brings some fresh ideas,” said Mazzeo. “I had hoped for some progress today.”

As to the next steps, Schlatter said, “We could meet again. The city could send a different representative or two. The NRCDC has said they are open to additional meetings. I am open to mediating.”