

1:33:00

Mayor: Uh. Couple of questions uh, uh, Mr. Kahn that came up, um, I'm kinda asked the first one initially, um, because, um, a question came up about the ah your May invoices that have not been turned in yet, and onto, into that, uh, as far as the CORA report, um, one of the, um, one of the council members requesting that information, and basically I kind of made reference that it is the attorney-client privilege. We can talk about that a little bit. And after we talk about it we can review those. It didn't have to be a CORA report, because every time we do a CORA report it's more and more cost, so, it's for a council member, so you can address those.

Mr. Kahn: I'd be happy to address those. So, uh, let me deal with the, um, CORA request, um, regarding bills first. Um, as client constituents, um, you folks all have a certain ability to look at the bills depending on what you decide amongst yourselves. And I think, um, that the practice in the past has been, um, to allow some supervised review by the client constituent group of the...the billing invoices. So, um, I think you certainly have, um, that option, and to do that, um, you would just go to the mayor, make that request, and then, I assume, he would have some type of process that he followed in the past that involves you looking at them on-site in his office or something like that. Um, the reason he doesn't disseminate them, um, to everyone, um, is because when you start disseminating electronic documents to seven people you kind of lose control of them pretty quickly. But I don't think there's any, um, problem with you going and reviewing them top-to-bottom in an unredacted form. Now, with that said, there's privileged information that can be within those bills. And so, when you take it upon yourself to look at them in an un... unredacted form, um, you as a member of the client constituency, you have certain privileges that you're going to have to protect. So, it somewhat limits your ability go talk about those in detail, or at least in detail with respect to anything that might be privileged. Um, it could hamstring your ability to talk about them publically. Um, that's when you have an unfettered look at them. By having that unfettered look you also take on the burden of the client to protect those privileges. If you seek the bills through an alternative route, which is a CORA request, that's just a request that would be done by any citizen. It's not particular to your position to a client constituent. And so that would go through the normal CORA request process, which would require a privilege review and a redaction of the bills. You then,,, the City would then incur a significant cost for that. Um, at the conclusion of that process you would get redacted versions of the bills. You would then be free to talk about them in any way you wanted ... share them with whoever you wanted. So, um, I don't particularly see the utility in the client constituent representative taking the second path, but that would be something for each of you to decide. Um, you could change the process amongst yourselves and change the protocol, and instead of having it run through the mayor you could make a different decision.

Mayor: Um, any questions on that, or ...

Ms. Rogers: Well, the question is when are you going to submit them? Because they have not ... the finance department has not received them.

Mr. Kahn: The May bills?

Ms. Rogers: Um, hm.

Mr. Kahn: Um, May bills were submitted on, um, June 10th.

Ms. Rogers: On June 10th?

Mr. Kahn: Ah, I'd be happy to ...

Ms. Rogers: Well, I asked this morning and they do not have them.

Mr. Kahn: I'm happy to check that right now.

Ms. Rogers: Uh, you have that? Hm?

Mayor: Uh, I have not seen them... personally.

Mr. Kahn: Um, you folks certainly have them.

1:37:15

Mr. Granzella: Mr. Mayor

Mayor: Uh, Mr. Granzella

Mr. Granzella: Uh, something different than this topic for the lawyer. But we've been asked twice to answer questions from the audience about the difference between a council member being on the NRCDC board, and a member of council being on the airport board, and a member of council being on other boards like the golf club board, uh, how do we answer that?

Mayor: When we finish ...

Mr. Granzella: That's fine. I can ask questions... other people bring them up.

Mr. Kahn: You received the bills on June 13th.

Mayor: I'll follow up to see where they are at.

Mr. Kahn: The process we have followed is not to forward them. It would be that if a client constituent wanted to review them they would come to review them through you at your office in hard copy form or otherwise. Cause once we start sending them out there, they could, you know, as we've seen in many instances with our correspondence they could leak out.

Mayor: I will follow up on that. Okay, Mr. Granzella, you want to ask your question real quick?

Mr. Granzella: I'll...

Mayor: I don't know if you've got an answer yet, but...

Mr. Granzella: Yeah. And you can check on this, but, uh, a citizen asks what the difference is between a council member being on the NRCDC board, a council member being on the airport board, a council member being on any of the other boards, the steamplant board, the golf club board, that type of stuff. They're all set up in a little different way, each one of them. I think the airport's an IGA, the NRC's a separate non-profit corporation. And I'm not sure how the golf club is set up. That might be just a contract agreement.

Mr. Kahn: Um. I think, from a macro standpoint, the answer to your questions is that each one of those entities is going to have organizational documents that dictate how its board or other organizational structure is made up. And, included in those organizational documents will be any limitations or lack thereof on council member participation in the board. Um, with respect to the NRCDC, in particular, the organizational documents themselves do not prohibit a council member from participating in, um, the board, but the former city attorney concluded that there was a great potential for conflict. And I think now we've seen some of those conflicts manifest. So in that particular instance, it would be problematic to serve on the board of NRCDC simultaneous with the city where we find ourselves sitting today.

Mr. Granzella: So the airport board, which is an agreement between the county and the city, and,...

Mr. Kahn: It's not an issue I've looked at. I would not opine on it sitting here today. I'd be happy to look into it, but

Mr. Granzella: I can't think of any other boards that ...

Ms. Hallett: Um, Mr. Mayor, ...

Mayor: Ms. Hallett

Ms. Hallett: Some of them are non-voting, ex-officio positions. I think we might of ran into some questions in the past when they were voting on city council and they were voting at the NRC. I think that was where the public had objections primarily. And, so, um, I have no voting capacity on the water, um, um, Upper Ark, um, so, ..

Mayor: Okay. So, Ms. Brown-Kovacic, you had a question?

Dr. Brown-Kovacic: Um, yes. I recently learned about a letter that I believe you sent to Mike Scott, um, for the NRCDC, and um, making, I guess, sort of directing that a number of actions be taken. And I was disturbed about it, because, as being a council member and not knowing anything about this, and anything about these actions being directed. And, and I also, um, so I asked to get a copy of that. And I was also somewhat concerned with the tone of the letter. Um, I thought it to be kind of, uh, confrontational, and possibly disrespectful. And, um, just feeling like these are community leaders who have been volunteering, carrying out a mission directed by the council. And they are giving of their time and talent for free to the city. And I was concerned about that entire situation.

Mr. Kahn: Okay. I, um, first of all, thank you for your comments, Dr. Brown-Kovacic, I certainly take them to heart. Um, I don't think the, um, tone or content of your attorney's indemnity demand would

be an appropriate topic for public discussion, but certainly something you and I could address with the full council, and, um, the tone of the correspondence ...

Dr. Brown-Kovacic: And I didn't even mention any of the topics in the

Mr. Kahn: Yes, but I think that to really, to um get a good understanding of that letter we have a more thorough conversation, but um, but I would not that this isn't something you recently learned about, but you were advised as part of the council prior to any actions taken with the city administrator about the issue that were outstanding with her including the conflict associated with the indemnity demand, and so, that's information you've had in your hands for quite some time.

Dr. Brown-Kovacic: Some of it needs to be

Mayor: Okay. Are we, we're at the, where are we at?

1:43:27

Mayor: The update on the NRCDC update. Mr. Kahn

Mr. Kahn: Yeah. So, um, on the NRCDC we have two issues. We have Lowry and we have the TABOR review. Um, with respect to the Lowry transaction, we have, uh, a bit of a hiccup with the tragedy of, um, Fred's passing, but, um, I have reached out to Lowry's council, and I understand that interest remains in the transaction. We obviously need a bit of time to regroup. Um, and, uh, assuming we can reach an agreement on price we have some issues we might need to work through. So we'll continue those conversations with the understanding we need two things because of the circumstances that have just occurred. With respect um, to the NRCDC TABOR review, there's um, there's two updates on that front. First there's that the five opinion letters that we heard a great deal about are in your packet and you have a chance to review those and the public has a chance to review them. Um, and um, when you look at those opinion letters, I think you'll understand that although they've been referenced as, um opinion letters on compliance with TABOR, that they don't even purport, um, to do that, with the exception of the Mike Scott opinion letters. I think Dr. Brown-Kovacic asked last time a really good question which is how can be possibly be in this situation? How could we have been doing this for a decade without anyone saying Hey! Are there any type of TABOR issues? Um, and I think my answer at the time was, you know, there might have been some willful ignorance, or, or at least there was not um a TABOR compliance letter. One thing that I think is important to .. to note in that regard, though, is that the August, 2008, job description of the city administrator which we heard a great deal about actually specifically requires the city administrator to have an extensive and thorough knowledge of TABOR. So, this um was an issue that was firmly within the purview of the city administrator. Hopefully she took steps. I know that council had independently that looked into that from a due diligence standpoint, concluded correctly that it was okay, concluded that more advice wasn't needed. On the other hand, if she reached um an incorrect conclusion, I think that's um where you place the failure for that mistake Um, the only other issue with respect to the NRCDC is the ongoing indemnity um demand that I think was raised this evening. And, uh, we'll be starting our efforts this week, um, with the help of the city treasurer, to compile what those costs are, what falls within the maintenance

agreement and what falls outside of it, and what we can legally demand from an indemnification standpoint.

1:46:50

Ms. Rogers: Okay, let's get back to TABOR. You have mentioned that you have some people that you can consult with, and the gentleman, you gave me his name, Were you able to contact those people?

Mr. Kahn: Yeah. Well, what we did this week was, um, we had a telephone conference with ah, a gentleman we have a great deal of respect for in the law. He is not an expert in municipal law. But we feel he has sufficient expertise. And he's, uh, um, someone I have a professional relationship with, and that the mayor has a professional relationship with, and his name's Ken Salazar. And we spent a good deal of time speaking with Ken, and we're getting his advisement. He's agreed to continue to, uh, chat with us throughout the process and guide us along. He suggested that before we reach out to De Wiser(?), who's the gentleman that you met, which we said would potentially be a good resource, that um, but he's more of a bonds guy. So he's more of the guy you would go to at the outset to set up and form the 6320 and actually issue bonds. But he suggested that before we do, we try Mark Rustin(?). Mark Rustin is former counsel for Governor Lamb. He was 2014 Colorado Lawyer of the Year. He is probably the most respected government attorney .

Ms. Rogers: What's his name again?

Mr. Kahn: Grusten GRUESKIN. And, um, Mr. Grueskin happens to be with a firm that has some partners that I have a long standing relationship with and I'm co-counseling with that firm on certain matters right now for other clients. So, I reached out to the managing partner of that firm and Mark Gruskin and we have a call set up for tomorrow at 11.

Ms. Rogers: Okay.

Mr. Kahn: So, um, you know, I apologize that this is taking so long, but what I'm trying to do is get the highest quality opinion at the very lowest cost and I'd rather take more time to try to achieve that goal, and, and the reason for that, um, Councilmember Rogers, is that I'm trying to think ahead to the next step. And I feel like if we get someone very, very authoritative to opine we can bring this debate to an end one way or another. That if I just opine on my own or we get some other municipal lawyer from some other town to opine, we're going to be right back in the same situation where we really need a judicial determination in order to know, and that could be a process that takes very long and is very costly. I'd rather cut out that and get a process where everyone were to respect, and say, okay, um, whatever he concludes is fine. And I'm going to try to do that. But, um, what we found so far is that people aren't that enthused about working for free, and that, um, they do a lot of the leg work and stuff that we would have to do anyway for the factual development of the case. So, um, if worse comes to worse, we'll just be putting together a statement of facts, and eventually we'll just, uh, ... a declaratory judgment. Um, I talked to Steve earlier about the prospect of seeking original jurisdiction the Attorney General's office or the Court of Appeals and I haven't found a successful way to do that. Um, the goal is, seem on it (?) costs the least possible and move on one way or the other.

Ms. Rogers: Okay. Thank you.

Dr Brown-Kovacic: Mr Mayor

Mayor: Okay. Ms. Brown-Kovacic

Dr. Brown-Kovacic: As I was thinking about this. And you just mentioned it. It seemed to me it might be prudent for us to contact the state Attorney General's office, or maybe it's the taxation and revenue office., I'm really not sure which one, and just work with them from the very beginning on this, and, ah, because I would assume it would be the Attorney General's office that be the one to, say, prosecute us, or whatever, if we are out of line. It seems to me if we just approached them and said we're trying to do the right thing. We're trying to work this out. And then, if there is an issue, then we could also work out the solution with them that would give us time to do sensible kinds of things. So that, if there is a problem, we're not in a panic, and we're not feeling like we got to sell this or we got to do that because we have a time limit. We have to work the whole thing out with the state Attorney General's office, I would think, from the beginning, I'm just sort of wondering about that route.

Mr. Kahn: That's a good question that Dr. Brown-Kovacic raises. **So the issue you're raising is one of original jurisdiction.** Um, Does a higher court or state regulatory body has that type of jurisdiction over an issue. **And the way the Attorney General works is a representative .. state agency. So when a state agency has a problem with something and the Attorney General steps in and represents them in an enforcement action and otherwise, When you get to the constitution, it gets a little weird, because there isn't a state agency particularly charged with the constitution with their own sets of regulations. So the person charged with the constitution is the governor. So, in order to have the attorney general review a constitutional issue you need a referral from the governor and his chief legal counsel to the Attorney General for that purpose. Now, could we get that? Maybe, I do know the governor's chief legal counsel. I do know the governor's chief of staff. But I don't know that we'll get their attention very quickly on it. I have no problem reaching out to the attorney general because I know Cynthia and the folks over there. But, um, I'm not wildly optimistic about that route based on my understanding of the mechanics. But I'm more than happy to make the call and see if they can help us.**

Dr. Brown-Kovacic: It seems like we're in a situation where this attorney says that and this attorney says that and, you know, ... I know each attorney has a client and a perspective, and, uh, you know, and we end up in that situation.

Mr. Kahn: Yeah. **And that's the problem I'm trying to avoid and I'm foreseeing. My ... my estimation of this is that I think we do the leg work and issue an opinion, or I get someone else of similar, you know, uh, experience to do it, that we're ... we're going to be right into that debate. Where, if I get someone who has a certain amount of gravitas, or if we go to the court for a declaratory judgment, then you will have that weight of authority that you need. Now, if you, if you believe we'll still have those conflicts no matter who we get to do the opinion, then we have to go to the court system, and that could be 9, 12, 15 months.**

(inaudible comment from audience)

Mayor: Any questions?

1:54:35

Mr. Cordova: My name's Pete Cordova, CORDOVA. I represent Lowry Contracting Inc. First of all, I want to compliment the council and their attorney for bringing the level of this discussion to the plane that it has to be. I mean it's really those questions, those legal questions that need to be answered by someone with expertise like Mr. Gruskin, or the ... I had mentioned to them the possibility of getting an advisory opinion from the a... from the attorney general's office. He had ... I had no reason to question his conclusion that, because their charge is primarily to represent state agencies, that that might not be the appropriate way of getting their input into the matter, but if you go to the governor's office and get it done that way, then that's .. I think that would be very good as well.

But I want to be clear on what Lowry Contracting's intent is, and uh, I know that there was a lot of discussion initially about a trade for utilities ... they're putting in utility infrastructure in exchange for land. Apparently, certainly that was not well received by the council. And as I understand, and I wasn't here, but because of TABOR, and the possibility that that could be a problem with TABOR. And so I hope that that still could be something that could be asked of whoever is going to be giving you this opinion that, if there is not a TABOR issue in the sale of property in exchange for cash, can you also tell us that there would be a problem with an exchange of labor for the infrastructure, and I think the expert can probably answer that question as part of his analysis.

Uh, but with regard to, uh, the outright purchase of the property by LCI, they've indicated that, uh, they'd be prepared to offer \$400,000 for the property in question, and, uh, that would be attached to the transaction, but we've attached a number of conditions associated with that offer. And, uh, I discussed those in not as much detail with Mr. Kahn, but just a broad stroke kind of discussion, and although there are a number of them, my discussions with Mr. Kahn this evening seemed to indicate that at least two of the major – I'll say there are three major conditions – two of the major conditions – and that we may have four because there's also an indemnity agreement – but there is some room for negotiation in the second, but there appears to be no room for negotiation in one of the principal conditions that would be the condition that, uh, the city, uh, would be sure that phase one of the infrastructure would be put into place. Because, what we don't want to end up with is we don't want to end up owning a parcel of property that we can't get utilities to. And uh, so our purchase would be conditioned on our being able to tap onto the utilities and getting it to the west side of highway 50. So if that can't be done, or won't be done, or if the plan for the utilities arrangement is not lawful, then, and I think that Mr. Sherwood can correct me if I'm wrong, LCI has no interest in going further unless that condition is met, because they don't want a piece of land that they can't use and can't develop in order to make this a viable process for them. Is that right... (inaudible)

Ms. Rogers: I have a question, and I'm not sure where to go, but stay there. Shouldn't Scott be involved in this? Michael Scott and the NRCDC Board?

Mayor: Well, it all goes to them and it comes to us for approval.

Ms. Rogers: It seems to be backwards without going to them first?

Mr. Kahn: If he were here tonight we would have included him in the conversation for sure. So he did not plan on being here.

Ms. Rogers: Uh, yeah. What I want to say is including the NRDC board is ...

Mr. Cordova: I'd be glad to talk to them. I find Mike and both of them to be able to talk to and work with and be working at a professional level and professional way, and so it's just a business transaction, and, uh, even though I know from Mr. Sherwood and certainly from Mr. Lowry, this city means a lot to, and meant a lot to Fred as evidenced by a lot of the work he did for the city at no cost to the city ...

Ms. Rogers: Um, hm.

Mr. Cordova: So, um, uh, I think LCI is a legitimate company and yes, it did it for business, but it also believes it is acting in the best interests of the city. So, we're happy to talk to anybody. But we're also working under restraints, because we want to do the work, and we want to do the work in a timely manner, and if we can't do it in a timely manner, then we have to do other work in order to pay for the groceries, so, uh, I know this takes time, but it's ...

Mayor: So, let me ask a basic question here. So, you're going to purchase 40 acres for \$400,000. And you want the city to put in, estimates \$500,000 of infrastructure. So you're to get ... the development get going. So, and I'm doing all this, so, typically, doesn't the developer purchase the land with the intention of bringing the infrastructure in? And that's why you get, say, a good rate on that initial land? And the second part of my question is, shouldn't you purchase 40 acres, then another person purchases 40 acres, you purchase the first 40 acres at \$400,000, I would suspect the second person purchases the second 40 acres, it's going to be 600, 700, 800,000 because of your commitment to that development. I guess I don't see how the city is going to get the 500,000 to put you in... to lock you into the condition that you're requesting. ...

Mr. Cordova: Okay. Let me kind of turn it around a little bit and say if it was the responsibility of the... there is, there is no ... I think it's a contractual relationship that the city and Mr. Lowry can agree to any of the terms of that transaction that are not being reasonable, so, not at all, that's to say we do not have a blueprint to follow. Just before you had a willing buyer willing to pay a certain amount with certain conditions. If we were to do what you're suggesting, bring the utilities out to phase one, then hook up from there, we'd be paying \$900,000 for what we believe is a \$400,000 piece of property. And we're not going to do that. Uh, and uh, it's – personally – and a lot of people believe that the best way for the city and Lowry would have been to do what the original proposal was. Bring the utilities across for that 500,000 or 400,000 or whatever it is, in exchange for the property in question. But until this legal question is answered, whether that's lawful to do, -- and I understand where you folks are at – but we are not interested, and ... we are not interested in purchasing that 40 acres unless we know that there's going to be utilities taken out there, not at our expense. We will take it from phase one to our property, but we're not going to bring it all the way across and essentially do the work, it's \$500,000, per your number, and then pay \$400,000 for the land. It's not be a wise business decision on our part.

Dr. Brown-Kovacic: Mr. Mayor

Mayor: Sure.

Dr. Brown-Kovacic: Just a comment. I know you weren't here for the discussion, but, um, I for one was very in favor of the trade for the infrastructure and getting the utilities out there, and, I think there was support on the council, and somehow the legal issues came up, and there has been the impression, at least, that it's okay to sell, but not to do the trade, and I for one keep wondering: What's the difference between the two? I mean, if one is legal it seems that the other ought to be legal. So, I was very glad that you raised that issue, because we certainly do need a good answer for that question.

Mr. Cordova: I think that the method that Mr. Kahn is going about, finding that answer is the right method. Uh, uh, there is going to be ... I'm not a specialist in TABOR law or municipal law. Ben is going to becoming quickly an expert in municipal law, but he probably doesn't know TABOR right now as well as a lot of other people do. And I think you're right, it would be best to have an opinion from an authoritative kind of entity or a top person, maybe it's Mr. Gruskin, who can give an opinion and say you guys blew it from the very beginning, or that uh you can fix this this way, and there is a solution to the problem. But I'll tell you the solution's not going to be paying \$900,000 for a piece of property.

Dr. Brown-Kovacic: And we have had several city administrators in that office since this has gone on, so..

Mr. Cordova: I'd be glad to answer any other questions if I can.

Mayor: Thank you Mr. Cordova.

2:06:30 [Executive Session]