

0:38:32

**Mayor:** Next on the agenda is the City Council NRCDC joint work session. We'll be talking about the NRC's compliance plan. As we can see we do not have a joint session going. Ah, we all received a call last night – an email from the president last night, ah, they said they would not be here. Ah. This ahm. I guess I was not surprised. But I kinda think it was kinda of ahm disrespectful to the council members that are here. And uh, actually, in the uh, for the uh, .... light of the ... know they're not here. So tonight we spoke of what's going to be on 2016-88, ahm, like we all know we had 2016-81 that was passed in October, uh 18<sup>th</sup>, I know the, uh, the council, uh, NRC board didn't agree with uh the council's decision and they uh have the right to do that, but uh like one of the council members said prior that uh the decision is made we accept it and move forward. And uh, that's what we need to do. And, uh, I'm really, actually, uh, disturbed that the NRCDC board is basically trying to undermine the process. And uh, to me it's kinda being irresponsible on their part.

Uhm, so again let's focus on 2016-88, and uh, we all received the updated information, and it's the draft that says November 14 and with the highlighted areas. Um, let's see – we're just going to go through these, and ah, we'll just start on page 1 and work our way down through and, Mr. Kahn, if you can kind of explain ah the additions that were ah that we received the information to Mr. Kahn, ah today and some over the weekend. Ah, so we revised what he had at the point, ah, so we'll be going through that. And then after we go through the introduction, a going through from 1 through whatever number we are at, uh, we'll just kind of get an idea if there's going to be anything else to add and then we'll bring it to counsel again on the 29<sup>th</sup> and we'll be taking a vote on that.

0:41:15

**Eileen Rogers:** Um. I would like to ask some questions of Mr. Kahn before we begin.

**Mayor:** Is it in relation to what?

**Ms. Rogers:** This last ...., Yes. Mr. Kahn. Did you..., ah, did... **How did you decide, ah, what comments to include in this document?**

**Mr. Kahn:** When you say 'this document' do you mean the draft that I sent today?

**Ms. Rogers:** Yes

**Mr. Kahn:** Sure. And I'm happy to go through that. Uh. I circulated a revised version of the plan on November 2<sup>nd</sup> that incorporated the lender's comments that we had received. Those were the only comments that we had received at that time. Um. I received comments from late last evening from um, um, um yourself and councilmember Brown-Kovacic, and um Granzella. I had already received them, comments from councilmember Brown, Hallett, Bowers, and Mayor LiVicchi. After receiving the input last night I went through the comments I had received from the various elected officials, and without getting bogged down in the way each person presented them, um, there were 13 categories of changes

raised by, um, the various elected officials that, um, I'd be happy to go through with you. And the ones that appeared to have consensus are the ones I added into the document.

**Ms. Rogers:** You just included the ones that reached consensus? What about those of us that might have been the only ---

**Mr. Kahn:** That either appeared to have consensus or those that had consensus. So there were some that I assumed had had consensus.

0:43:00

**Ms. Rogers:** It's my understanding that we are all equal in value, and that each of our inputs should be respected and we should be able to see all of those.

**Mayor:** We could go through the introduction there and fill it in and if there's something missing there you could fill it in and we could see if we have a consensus we could go with it, and if we don't have a consensus.

**Mr. Kahn:** We're happy to add things that ...

**Mayor:** This is not a final document.

**Mr. Kahn:** We're happy to add things that have a consensus but we don't want to, we don't want to pay to draft provisions that are responsive to one council member or two council members that might ultimately have ...

**Ms. Rogers:** Isn't that how we work together, if we listen to each other and maybe somebody couldn't..., it doesn't have to be me, has a terrific idea that nobody has heard before.

**Mr. Kahn:** Yeah. And that's I think the purpose of this evening. But I think we're being delayed in terms of getting started, um, but ...

**Ms. Rogers:** Ah. No. Wait a minute. I'm asking some good questions.

**Mr. Kahn:** Well, I think if you want to have a joint work session where we work through potentially the ideas then this is the opportunity to do that. What I've done so far is to put in the things that seem to have majority support, so that we don't have to belabor issues that have support.

**Dr. Brown-Kovacic:** Uh, it was ... I guess I'm a little confused about the process here too. Um, you know we were supposed to submit our comments, and, um, you know, I - I was very - I was not sure, in submitting comments, I wanted everyone to see them, and I sent them out, and then I began to wonder was that a violation of sunshine law to send them to everybody. I didn't know whether that was or not. And then, because I felt that every council member should get to see what other council members have submitted, so we could have a discussion tonight, and have an informed discussion where people get to talk about that. And then I thought that the way the timeline was set, that between now and, um, the

next week or two another draft would be presented that included not only the comments but our discussion tonight. And it seems that ...

Mayor: That's not going to happen.

0:45:25

1:30:30

**Dr. Brown-Kovacic:** I am very opposed to the 9 months, and I am very opposed to the auction at the end. I cannot imagine why any person would purchase this property knowing that they only have to wait 9 months to get a... to come to an auction where they are more than likely to purchase the property at much ... much less than they would pay for it in a non-auction situation. And I think you put those two together and it makes it a situation where it would be very difficult to find a buyer for this property. I ... I just think this doesn't make any business sense.

**Mr. Granzella:** I happen to agree with Cheryl. 9 months is unrealistic in my opinion. I'm ready to strike the "no minimum auction" completely, or I would say 'if court ordered' at that point.

**Dr. Brown-Kovacic:** I mean it seems like we could give it a reasonable amount of time, and if nothing is happening, then we could look at that. But to tell the public ahead of time that we are going to have an auction and set a date for it, I just can't imagine why anyone would think about purchasing it prior to that.

**Ms. Rogers:** Um, I gave three statements to all of the council, and if it was in error, I mea copa, and I'm going to read it out loud so that everyone hears what I wrote. "The language embedded in the city compliance plan related to deadlines appears to be arbitrary and deliberately restrictive. These deadlines are placing the city in a precarious position and lighting the fuse for a quick and complete fire sale. A huge fiduciary mistake is then plausible, and may create a nightmare of legal challenges by one or several of our citizens. The possibility of a breach of fiduciary duty on the part of the city council is alarming and should warn us to act cautiously. To ....

**Mr. Kahn:** Ah. Let me ..., Let me just

**Ms. Rogers:** Let me finish.

**Mr. Kahn:** Uh. I ..

**Ms. Rogers:** Let me finish.

**Mr. Kahn:** I have to advise you that, as the city's council, that some of the things your saying are adverse to the city's interest, and your own interests, and they're incorrect, and they have the great potential to create confusion and ...

**Ms. Rogers:** I would like to finish.

**Mr. Kahn:** You're welcome to finish, but you should do so under advisement from the city attorney ...

**Ms. Rogers:** Thank you.

**Mr. Kahn:** ... that what you're saying is increasing exposure and liability for the city and for you as an elected official.

**Ms. Rogers:** Number 2. The actual time periods needed to complete the entire process and all of the legal requirements to complete the sale of the individual portions of the Vandaveer ranch are likely to take at least one, two or even as much as three years. I advocate that no deadlines or completion dates be included in the compliance document. Three, the contract for the current debt is a legal document between the NRDC and the High Country Bank. As such, any compliance plan, if necessary, must be created and agreed upon by those two entities. It is inappropriate for the city to create, direct, or implement any compliance plan for them. Forcing the city's compliance plan down the throats of the NRDC's board members is unconscionable. Thank you.

**Mayor:** Any other comments?

1:34:30

**Mr. Granzella:** Uh. Again, the 9 months to me isn't even close to the time that's needed. It would eliminate 90% of our potential buyers out there, that, um ... And I'm not talking about phase 1, phase 2, that's fine. That's moving forward, keeping things on a good process. But when we jump to the 9 months and that auction, it just, it makes no sense. I'd prefer to go 18 months overall, and either eliminate the no-minimum auction, or no-reserve auction, on each \_\_\_\_\_, unless we have a court order.

**Ms. Rogers:** I agree with Rusty.

1:35:20

**Mr. Bowers:** There being options, if we get to the 9 months, to come in and change this as a council.

**Mr. Granzella:** Of course.

**Mr. Bowers:** So that's nothing that's going to be written in stone and we're going to be held directly to that because of this compliance plan. Is that correct?

**Mr. Kahn:** That's a question of whose in the majority. So depending on who you have on this elected body and, uh, what their direction is, that's what will dictate the control.

**Mr. Bowers:** So if we didn't agree with the actual auction, at that time we could come in and change the timeline from 9 months to 18 months like Rusty said, with the consensus of the counsel? Would that be acceptable?

**Mr. Kahn:** You know we'd have to look at it at the time and make sure that whatever resolution you passed is consistent with 2016-81 and 2016-88. So I don't want to give you just a general answer that it's okay. You'd have to craft it in the right way.

1:36:18

**Dr. Brown-Kovacic:** But wouldn't we be better off in just taking the auction out and just reevaluating again in 18 months and seeing if we needed it at that point, rather than announcing it ahead of time?

**Mr. Kahn:** I think that's based on your business judgment that the auction would have a cooling effect on offers. And, um, I don't necessarily think that's a business conclusion that everyone would reach. Ah, potential buyers who would wait for an auction event risk, uh, take enormous risk that they might lose the property to another bidder, and when you're looking at a property like this you have to invest quite a bit in your due diligence. So, um, due diligence is also very challenging if you haven't completed it beforehand. So I would think that your, um, in my experience, buyers like to lock both price and certainty, and, um, the auction's not the most favored format for that. Um, obviously your already received two LORs, so there's developers out there who are ...

1:37:22

**Mr. Brown:** On the, um, On the subject of auction, I'd also like to point out that we just, say 'we', transaction to sell lot 3 was just completed, and that the lot was sold to the Salida Regional Hospital District. They have no use for that land whatsoever at all, except to use it to trade for another piece of land which is owned by the State. Now the state is constrained by law in selling state owned property. They have to put it out for bid at auction, at public auction, and sell to the highest bidder. That is the whole reason underlying this sale and swap with the hospital, because the hospital felt that they could not take the chance of trying to buy that land they wanted at auction for fear somebody would outbid them. So, uh, I think that the fears over the use of the word 'auction' are unfounded. I think that having the word 'auction' in there could, at some future date, be a motivator rather than a detractor. The assumption that there's only one buyer, one buyer and only one buyer, and if that buyer thinks they can get it cheaper at auction they'll wait for it. But that's not necessarily a valid assumption.

**Dr. Brown-Kovacic:** I'm not assuming it's just one buyer, and the situation that you mentioned is a very unique one because of the hospital's need, but I just think, and we had a developer stand up here and tell us that. That's what made me first think about it.

**Mr. Brown:** I think that.. I was looking for the language and I'm not finding it in this document. We've seen somewhere, and maybe it's in the resolution, where it says "to extend the period of non-compliance purely for the purpose of trying to get more money is not acceptable"

**Mr. Kahn:** It's in this document within the objectives and it's

**Mr. Granzella:** It's on page 2. At the end of page 2.

**Mr. Kahn:** We've gone through this document from page 1 through page 6 and received comments that people have had, and, uh, I think we're going to be treading old ground in terms of the document, and um, .. So what I'd like to do is to move into what happens next, so that everyone has a clear understanding ..

**Mr. Granzella:** So if we don't, uh, ... Excuse me. **So if we leave the auction in there, would anyone feel more comfortable with a court ordered auction?**

**Mr. Kahn:** That also may invite that.

**Mr. Granzella:** Well, if we're going to do it anyway, we might as well have a reason to do it.

**Mr. Kahn:** The court might order you to auction it tomorrow. They might say 'you want eleven months...'

**Mr. Granzella:** Is that reasonable by a court?

**Mr. Kahn:** I don't think a court's going to extend your timeline out.

**Mr. Granzella:** Is that reasonable to order it in 24 hours?

**Mr. Kahn:** No. A court's not...The point is, if you have nine months to set it up and you're asking for more time, and you're out of compliance, and you're, uh, going to have a very tough argument with the court.

**Mr. Granzella:** We're not asking for more time, we're just saying that they're telling us to have an auction. Which we're having anyway.

**Mr. Kahn:** Nine months from now, or possibly ten months from now. It's a long time if you're talking about legal compliance. If you're talking about business, maybe it's not a long period of time. But if you were going to go into a court right now and say 'Judge, we only had nine months to comply, and we need more time', it's not a compelling argument.

**Ms. Rogers:** It's now seven months from ..

**Mr. Kahn:** I don't think that materially changes what I am saying. ... The point is it's a crap shoot. You're going to get a liquidation event assigned to you, and, uh, that may or may not be something better than what you're looking for.

**Mayor:** Um, I still believe in nine months. Keep it as it is.

**Mr. Kahn:** All right. Having not having heard consensus to extend it out

**Dr. Brown-Kovacic:** Could we see who's in favor of nine months?

**Mayor & ???:** I am. .... I am. ... Can we vote on that? ...

**Mr. Brown:** I favor leaving it in. We've given ourselves sufficient caveats, and now we've had in at least three different places where we have the ability to extend and we have the caveat on the nine months that absent such an extension we can extend it if we get a bona-fide offer, if we're in negotiations and somebody presents us some reasonable assurance that they are in good faith wanting to purchase the property and it's going to take beyond the end of the nine month deadline, then we can extend it. Um, but I, I, I think it's worthwhile to go back and review these words on page 2. It says the city affirmatively rejects the goal of maximizing the underlying asset value as a valid rationale for unreasonably elongating the period of any potential non-compliance. And we don't want to risk being out of compliance for the sole purpose of making money. And we end this language repudiating the suggestion that the city should violate the state constitution for monetary purposes, or that it should increase the city's SNRCDC

venture investment or gamble. ... and somebody used the term 'crap shoot' a little while ago. I think we should set this nine months with the ability to extend it if we get a bona fide offer. I think is reasonable and prudent, and uh, I think we should stick to it.

**Dr. Brown-Kovacic:** I just want to make sure that, in the process of doing this, we are fiscally responsible to our citizens. And we have not ever looked at what taxpayers have really invested at this point. We know that property is very expensive in Salida and continuing to go up, and I just want to make sure that these are city assets, or, at this point I guess are NRDC assets, ... they're assets of the community, and I think we have a responsibility to the citizens to not just get rid of it for... the minimum of what we can. **We want to make sure that we are being responsible to the citizens when it comes to the fiscal management of their assets.**

**Mr. Kahn:** **A lot of this is getting ahead of ourselves. We don't have a good sense of what kind of residual value there is or whether this is a quote asset as opposed to a quote liability close quote. We don't really know that.**

**Mr. Granzella:** That might be true in the future. I agree with the paragraph that Hal just read because we went through it and approved it. But we also have the other side, are we doing our fiduciary duty to our... to the people who elected us, and are we doing our due diligence to be sure ...

**Mr. Kahn:** **I don't believe you have a fiduciary duty to, to maximize the value of the, um, asset as you sell it.**

**Mr. Granzella:** You just read the paragraph saying we are not saying that. And that's what we're not doing.

**Ms. Rogers:** **On the other hand, if we give it away, sometime in the future someone could come back on us and sue either us or you.**

**Mr. Kahn:** **I disagree. And, uh, it's frankly an outlandish idea, and, um, it's sad that, as a representative of the city, you would continue to make public statements that expose the city and its representatives to the potential for a lawsuit. You're welcome to do that, but it's not, um, wise, and I don't you're acting under the advisement of any counsel who's advised you on breach of fiduciary duties or what the scope could be, or who's got standing to sue the city, or whether the city has immunity, or if you have standing to sue the city attorney if you're not the client... All those kinds of things. So what's hard to me is that you're spreading misinformation and creating exposure for yourself. And it's to the detriment of the city that you love. It's confusing to watch this unfold in a public forum.**

**Ms. Rogers:** **My opinion is that I must consider all the considerations, all the options, and all the things that are going to be in the future, whether I'm alive or dead, and I need to know what's right and wrong. And what I feel is right and wrong, I'm going to share.**

**Mr. Kahn:** **And I don't have a problem with you expressing what's right and wrong. Um, I can't address the afterlife. I can only address the present tense here now. And your views are welcome. But your conclusions about the law and the city's liability that are unfounded, and aren't based on any type of**

legal advisement are just off the charts. They're just... They're not what, um, you should be doing if you're genuinely interested in the city's interests.

1:47:45

**Mayor:** So we haven't heard from a couple council members, so what do you have ...

**Mr. Bowers:** I don't have a problem with the nine months, our honor. I uh, I understand that we are, I feel like, out of compliance. I have based that on a lot of considerations and stuff. And so, I don't have a problem with the nine months. And I think clearly what Mr. Brown has stated about, if we do have a potential buyer and that the time can be extended. And I feel comfortable in the legal advice given by Mr. Kahn. And, uh, there's been a lot of questions as to why this came about and one thing or another. And as being part of a law enforcement portion of this I want to fall into compliance as soon as we possibly can. And I think the nine months is, is a \_\_\_\_\_.

**Ms. Hallett:** I agree with the nine months. I think that, you know, if we're talking about duties here, we've got a lot of other options that have not even been presented or come up, and this was just piece of property is indebted quite a bit. So we may have other options out there will accomplish some of the things that citizens are really wanted to accomplish.

**Dr. Brown Kovacic:** Excuse me.

**Ms. Hallett:** \_\_\_

**Mayor:** Are there any other additions?

1:49:30

**Mr. Kahn:** Okay. So moving forward, what will happen is I will integrate these comments that we've received. I'll circulate a final version of the compliance plan on the 27<sup>th</sup> to the council that will be an attachment to Resolution 2016-88 at the city council meeting on the 29<sup>th</sup>. And then several days prior to the 29<sup>th</sup>, in accordance with our reading of the laws will publish the final compliance plan that will be part of the resolution.

**Ms. Rogers:** On One more question.

**Mr. Kahn:** On Sure.

**Ms. Rogers:** On We've been going back and forth here with this nine month thing. If it's going to be nine months, we're going to have to change the 6/20/17, because nine months from the 29<sup>th</sup> is what?

**Mayor:** No, nine months from when we started the time line.

**Mr. Kahn:** On It's designed to be nine months from the time there was a first acknowledgement of the issue that we are addressing here.

1:50:40

**Dr. Brown-Kovacic:** Um. I never got my question answered about sending out an email to the rest of council that included what was my comments to the compliance plan that was requested to submit. Was that okay with sunshine law or not.

**Mr. Kahn:** It's okay for you to distribute, um, that email. What the danger is that if you get into dialog about that email. So when you send it out to the people, you run the risk that that might happen. In this case, that didn't happen, but it could have happened. And so, I think that you can be cautious about by simply saying 'please don't respond to the group' or 'don't respond to this email' ....

1:51:30

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