

0:55:50

Mayor: Okay, next on the agenda is the NRCDC compliance plan. Mr. Kahn.

Mr. Kahn: Good evening, Mayor, City Council, the purpose of this evening is to consider resolution 2016-88. It is a resolution of the city council of the city of Salida, Colorado regarding the Salida Natural Resources Corporation Development Corporation compliance plan. The timeline associated with this action is that there was a public presentation regarding the city's position on September 20<sup>th</sup>, 2016, that was followed with two joint work session opportunities with the NRCDC on September 21<sup>st</sup> 2016 and September 28<sup>th</sup> of 2016. On October 18<sup>th</sup> of 2016 there was a public meeting. Um, council deliberations and adoption of Resolution 2016-81, um including the adoption of the NRCDC compliance plan mandate and conclusions about, um, the SNRCDC's uh entity organization and operations. On November 1<sup>st</sup> 2016 there was city council meeting where there was deliberations on the proposed resolution 2016-88 and um the SNRCDC compliance plan as it was currently drafted. There was a decision to extend, um, the date by an additional month to allow for more input from the city council and also to allow the SNRCDC an opportunity to participate which they chose not to. We did have that work session on the 14<sup>th</sup>. During that work session we did, um, address, um, 13 different issues that the council had brought to um our collective attention and refined the plan at that time. I subsequently circulated a copy of the um revised draft and did not receive any um additional comments. So, and with that said, uh, unless there's any questions, that's all I have for your.

Mr. Granzella: Uh Mr. Mayor.

Mayor: Mr. Granzella

Mr. Granzella: Uh, may I ask directly to our legal counsel, um, is it recommended by our city legal council that we file a compliance plan, is that correct?

Mr. Kahn: That's correct.

Mr. Granzella: Thank you.

Mayor: Any other questions?

Mr. Granzella: Oh, I'm sorry.

Mayor: One more?

Mayor: Yes, Um, the, you know, the attorney-client information that's ... that's between us obviously, it is not recommended by you that we produce that publically, is that correct?

Mr. Kahn: You know that's a bit of a broad statement. I.. I would say that we have had attorney-client communications over this issue dating back to the Lowry and Belmont proposals in May, so we have communications stretching back potentially six months that relate um one way or another to the

SNRCDC um, and, um to some of the concerns that .. that we have developed. I can't tell you sitting here that all of that would be subject to the attorney-client privilege. I'd have to do a piece by piece review to tell you that.

Mr. Granzella: If I can specify. The information shared that relates directly to TABOR compliance.

Mr. Kahn: I would say that the documents that you have that relate directly to TABOR compliance that were from me and include um attorney-client communications that were related to my legal impressions or legal conclusions are privileged.

[Audience moans " How can you say that?" ...]

Mayor: Don't make me have you removed please. Ah, any other questions? I'll entertain a motion.

Mr. Brown: Mr. Mayor, I move that um ..

Ms. Rogers: .....

Mayor: You have a question?

Ms. Rogers: I have a discussion.

Mayor: We'll have a discussion after ...

Mr. Brown: Uh we get the motion?

Mayor: We'll get the motion and we'll have discussion like always ..

Mr. Brown: I move that we adopt city of Salida resolution number 2016-88, a resolution of the City of Salida Colorado regarding the Salida Natural Resource Center Development Corporation compliance plan.

Mayor: We have a motion. We got a second?

Ms. Hallett: I'll second.

1:00:18

Mayor: We got a motion and second. Any discussion? Ms. Rogers ..

Ms. Rogers: I don't want to discuss it.

Mayor: Pardon me.

Ms. Rogers: I'm not .. This is not what I was going to discuss.

Mayor: Oh. Ms. Cheryl Brown-Kovacic.

Dr. Brown-Kovacic: Because this is such an important issue, I'd like to make a statement of record. I'm committed to my responsibilities to the citizens of Salida in all aspects of the issue of TABOR compliance, particularly with regard to fiscal responsibility. I do not want to breach my fiduciary duty, nor dispose of assets paid for by taxpayers in a manner in which the full value of those assets are not accounted for. I want to preserve the assets of the community as managed by the NR CDC if at all possible. That in an effort to be reasonable and prudent, I do not believe that a sale of property is appropriate without a definite legal determination, such as a declaratory judgment, or a vote of the residents of Salida. The council vote does not have legal standing. And since there is a possibility that a legal decision could override that vote, I would like to pursue one of the other listed options that will insure that compliance and fiscal actions that are ... reasonable. I urge the council to consider an option that I suggested numerous times. Our most fiscally reasonable course of action is to have Mr. Kahn specify the exact structures and operations that are not in alignment with TABOR, and then to provide direction to correct the aspects of the NR CDC so that it is in compliance, using case law and the models – I think there must be about 40 of the cities out there that have non-profits, as noted by DOLA. With this course of action, we can be compliant with TABOR while still maintaining our fiscal responsibility to the citizens of Salida. There are a number of troubling factors with our current path.

First, the way the current compliance plan is written with tight timelines and ending in an auction with no minimum reserve, it represents the fire sale that the council was opposed to. It seems conceivable that even a minimum price to cover the loan and associated costs might not be achieved. And some entity, I don't know, possibly the city or whatever, will have to cover the remainder of the loan payment or the bank will have to take the property. Second, I cannot agree with directing the NR CDC to follow a compliance plan without explicit legal authority to do so. If a majority of council is intent on the current compliance plan, then it must be a recommendation to the current NR CDC which holds the contract with High Country Bank. The council only has authority to appoint and remove members and approve property transactions. It does not have explicit authority to direct the NR CDC, which is an independent legal body, and any ... of authority is open to interpretation. Third, I believe, as a matter of council protection, that we, as the client, have the right to have in hand a written legal opinion from the city attorney that precisely states the specific reason for a non-compliance opinion. This is a protection for the council in disposing of citizen assets and can certainly remain privileged. But it needs to be in council's hands and available as a pertinent document. The 48 page piece that we have now, I believe, is a support document, not a concise legal opinion. We are the client as the council, and if we are to take action, we need to have a written document stating the legal opinion upon which we are basing any action.

Therefore, I move that we continue the current motion for the approval of the compliance plan until we have a written opinion from our city attorney as protection for the council.

Ms. Rogers: I'll second it.

Mayor: We have a motion on the table, uh ..

Ms. Rogers: Amendment.

Dr. Brown-Kovacic: So I guess I'm amending a motion.

Mayor: Any more discussion?

Mr. Bowers: Your Honor.

Ms. Rogers: Uh.

Mr. Bowers: Go ahead.

Ms. Rogers; In almost every other previous presentation I've tried to be as .. um .. serious as um docile as I can, and tonight I think I'm going to be a little more emotional. The impacts of our decision tonight are huge. Do we want to preserve the culture we now have? A diverse population, many with roots that have lived here for many generations. Others who came in the dark economic days of the '80s and '90s and established a multi-faceted visual and performing arts community. Recent retirees who have found a quieter lifestyle than the big cities offer and contributed thousands of hours as volunteers creating intellectual stimulation and recreation opportunities. Or, do we want what I consider my worst nightmare. The Vandaveer ranch sold to the highest bidder and McMansions built all over that property. Salida's service members will be forced to live in Poncha Springs and BV and ... beyond Glenwood Springs. We'll be known as the little Aspen. Pressure will build to scrap .. no .. Pressure will build to scrape off the whole east side of town and they'll build more McMansions. Salida will no longer be the Salida we know today. And most of us who love what Salida now is will be gone. Now more than anything else, we need to assure our citizens that the persons who worked so hard to create the NRCD did so with the best intentions. To recognize the ongoing contributions made by Salida citizens, staff and council members, during these past 12 or so years, the time, talents and dollars that have given us our Vandaveer ranch, our extremely valuable water rights for both today and tomorrow, and the land, available for all to benefit, providing parks and trails, recreational sites, necessary government facilities, and, most important, the acres that will be developed into several varieties of houses that Salida desperately needs now and in the future. Please keep that in mind as you make that decision tonight.

Mayor: Any more discussion?

[Audience applauds.]

1:07:40

Mr. Bowers; I've had a lot of phone calls. I've had a lot of texts in relationship to the question of whether we're in TABOR violation .. uh .. of TABOR violations here. Uh .. number one, I am a police officer and I'm damn proud of it. And I do serve the public. And I do obey the laws. And I feel like that we do have, in fact, a TABOR violation here. I'm going to try to outline some of that to you. And maybe you'll understand where I'm coming from. And this is part of transparency for me .. to you. Okay? Number one, I've been involved with the city for a long time. I saw Vandaveer purchased illegally under TABOR violations. I seen that our water rates and our sewer rates were raised as a result of having to redo that TABOR violation. From there, it was apparent that the property, which is the Vandaveer, was turned over .. the ownership was turned over to the NRCD. It no longer belongs to you and I. Only in

theory. It will come back eventually. Maybe. So right now, it's in the hands of the NRCDC, and the deeds look like ..... . And in the time that I've been a councilman, there was another suspected TABOR violation where the deeds for the property down at the Arkansas Headwaters building was going to be handed over to the state of Colorado so that property could be sold, and a purchase would be made at the Vandaveer Ranch. I opposed that because I thought it was a violation of TABOR. And why did I do that? Was because that property had been used for governmental purposes, i.e., a lease to the state of Colorado for one dollar for a hundred years. I was upheld by that. I feel now that, you know, the property at Vandaveer was purchased again, with all the reserves and all the other money that we could scrape up to bring us into TABOR compliance. So, here we go along we're finding ... uh ... we're finding out now the NRCDC contacted the county officials to excuse the taxes .. the property taxes on it. They indicated that they were a part of the Salida government for the City of Salida. That was done. There's also about, approximately, and I'm going to give you some figures here. I don't have them readily available. \$40,000 a year in money that was collected from the Forest Service, and that money was being held by the NRCDC. It was not put in Salida's hands. So virtually, right now, the NRCDC owns that property. Are they or are they not a part of the City of Salida. Some say 'yes', others say 'no'. If they weren't part of the City of Salida, then they don't have to worry about TABOR, do they? But, as the auditors have told us, they need to be figured in as part of the city. And they are a part of the city. There was not a 6320 that was registered with the state as far as I can find out. And there's other issues that they didn't .. they're not a district. They didn't apply to be a district. And therefore, are they a part of the city of Salida? I think they are. And I think that because of that, we're faced with an issue that we actually have to stand for TABOR and what TABOR says. I'm also advised that there's no enforcement agency in the State of Colorado for TABOR. Isn't that odd? Where do we get a legal opinion? Opinions are a lot out there. I mean, you're going to get a different opinion from a lot of people. I do that in police work. So we got to look at the facts. The facts are that that property .. the entire property the NRCDC was placed in the hands of the NRCDC board. It no longer is the city's. If that's true, then they are independent. And they can do as they please. There was a loan of approximately, what, \$34,000,000? No forty some million dollars. Forty-five .. forty-six, .. give me 46.

[voices]

Mr. Bowers; 4.7 runs in my mind what I read today. That loan was made by High Country Bank, not to the city of Salida. It was made to the NRCDC board and they're the people that signed that note. And where I feel it's a violation of this is, they never came to the people to ask them "is it okay if we borrow that money?" Somebody's indebted for 47 ...

[voices]

Mr. Bowers: 4.7 milliion. I'm sorry.

[voices 4.5...]

Mr. Bowers: 4.5 if you want to call it that. Somebody's indebted for that. You think it's the city of Salida? You think it's the NRCDC? Well, then my question to you is, they are probably independent. But by all other standards we're being told that they are part of the city of Salida.

[voices]

Mr. Bowers: I know. That's a difference of opinion. And as I stated in the previous council meeting, you know, opinions are .. we got seven opinions up here. We got another opinion here.

[voices]

Mayor: Hey. Let him continue.

Mr. Bowers: I don't want to see that thing at a fire sale and lose money on it for anybody. I don't want to see you lose money. I don't want to see the citizens lose money. But I will tell you this. If it comes down to it, who's going to lose the money? We've already lost. How much did we pay for it to begin with? Um 3.7 million? And another ...

[voices]

Mr. Bowers: I .. I know we're making money every month. But it's not the idea. Okay .. So, I look at it this way. Who actually owns that property? I don't. I don't think the city does. But the NRCDC is not paying any property tax on that and I verified that with our assessor. There's also actually not been any financial reporting really done in relationship to the city here. There is .. there is reports, but they're not associated with the city. So my question to you is, who's is this property? And the other thing I want to ask you .. you know .. a lot of people contact me about this fire sale. They're afraid someone's going to come in and buy this at an unreasonable price. I think that there's statutes that governs that. It .. it can't be sold for under market value. I understand that that's the statutes. I haven't been able to find it as of yet. But also I wanna ask you this. When High Country Bank's involved in there, you really believe that they're going to allow that property to be sold for under the market value?

[voices]

Mr. Bowers: That's the question that I ask myself. And based on those assumptions, and that's as transparent as I can be to you, and, uh, I'm sorry I'm not a real eloquent speaker, but I'll tell you one thing. I do believe in the laws. And I think it's best to err in favor of the law rather than say "well, I think I got a speed .. a speed limit down here and a cop's down there writin' tickets, uh, I know it's against the law. It'll be all right if we go twenty or twenty-five over. I'm taking you to court." And that's exactly what happens. And perhaps that that's something that we might want to look at, because the compliance plan needs to be passed. And I'm gonna tell you why. Because legal issues and, I think we gotta bring them to the table. I want a strong definition of who actually owns this property. And who's in violation and who isn't in violation before it goes to a sale.

[Hal Brown's cell phone rings.]

Mr. Brown: I thought it was shut off.

Dr. Brown-Kovacic: Mr. Mayor

Mayor: Yeah.

1:16:38

Dr. Brown-Kovacic: Um, I know everybody has a lot they want to say on this issue, but I do have a specific amendment that is on the table right now, and I made that amendment .. um .. because I went back to .. um .. the June 7<sup>th</sup> meeting when Mr. Kahn himself advised us that the city needs to protect itself when moving forward .. um .. making sure there's a good solid opinion of whether or not the NRCDC is a legally compliant entity. And he then talked about .. uh .. working with someone who had a malpractice policy, and if there's a problem down the road, we need to be able to rely on that advice and the insurance of that. And at this point, we have the facts and findings, and we've sort of been told it's obvious, that I really think that as protection for the council in moving forward that we need to have a written opinion that is a concise, specific, written opinion, from Mr. Kahn. And .. um .. and I think .. um .. without that, the council is at risk, and I think we need to hold out until we have that.

Mayor: We had a motion and an amendment. How do we .. Do we handle the amendment first?

Mr. Rabe: Yes. We have a motion and a second on the amendment. You need to vote on the amendment to decide what the ...

Mayor: Is there any discussion before we vote on the amendment?

Ms. Rogers: Will you restate the motion, or the amendment?

Dr. Brown-Kovacic: Um .. my amendment is that we – and I'm not sure whether it's tabling it, or continuing it until we have a written legal opinion from Mr. Kahn – and by we, I mean the council as client. And, you know, if Mr. Kahn says that's privileged, then it's privileged. But the council needs to see that and have that.

[voices]

1:18:45

Mayor: Um, excuse me. Okay, I want to make a comment before we .. ah .. vote on the amendment. Um, I really don't know how we got to this point. Ah .. What happened .. What happened prior that made it that we didn't do it correctly? It's something that wasn't done correctly – the bottom line. How did we become land speculators, land developers? I mean all this kind of stuff. How'd it get to this point? The bottom ... the bottom line is that we have to make a decision here. And I believe that we .. we are in violation of TABOR, and I believe that we should pass the compliance plan. So Mr. Samora , on the amendment.

[Amendment fails 4-3, Granzella, Rogers and Brown-Kovacic dissenting.]

Mr. Granzella: Mr. Mayor, where are we at now?

Mayor: Uh .. we have the motion to ...

Mr. Granzella: May I make an amendment to the motion, or maybe it's to change the compliance plan. I guess I have to do it by way of an amendment. Yes? Um .. Let me go back, page 1, page 2, page 3, we're already in progress. We've been trying to do that for eight years. I don't see a problem with that. And most of my concerns, as well as the concerns I've heard have been about the fire sale. If we take the final disposition phase and just change the date 90 days, that allows the potential of an initiative to be put on the ballot. And if the citizens want to do it, or the time comes and city council wants to do it, they can do it. Um, so we're changing the date from June 20<sup>th</sup> to September 20<sup>th</sup> because I believe that initiatives have to be on the ballot as of the first week or two of September or so ... If the ballot passes, ... I'm sorry. If it's on the .. if the initiative is on the ballot, and the ballot passes, then we go ahead and move forward with, with a ... And again .. and the ballot has to be different than just replacing the loan. It would have to start from day one and create a district and you get rid of the old one. But anyway, that's another point. But if it doesn't pass, in November, then the dates of 9/20 becomes 11/20 where the auction kicks in. And that would be my motion. To change the date on the final disposition phase to September 20<sup>th</sup> 2017, and then add "if there is an initiative on the ballot, and it passes, then we move forward with the ballot ... with the approval; if it does not pass, then the auction kicks in November 20<sup>th</sup> . 2017."

Ms. Rogers: Second

Mayor: The motion and second. More discussion?

Mr. Brown: Mr. Mayor

Mayor: Yes

Mr. Brown: A question. On the initiative to be voted on next November, what would that be?

Mr. Granzella: It would be, of course it would be up to the citizens or the council to put an initiative on the ballot. What it would be, from what I understand, it would ask for bond money, by law, which we can only do when it's November, but can't do in a special election, it would be to create a Vandaveer district, a ... whatever

Dr. Brown-Kovacic: An enterprise

Mr. Granzella: An enterprise, by .. by the law, through TABOR, following TABOR law, asking the people for bond money to purchase the Vandaveer property -all of it – and replace the loan with voter debt approval bond money. But, no, I'm sorry, we can't say that. It would be to create a new district enterprise something for the city of Salida. But that's up to how folks at that point that initiative or council initiative creates it or formulates it. I don't think any of us wants this fire sale. I don't, and vote for a fire sale tonight. So I'm asking for 90 days, which gives people, us, the opportunity, if we don't get a major buyer in the mean time, as we've been trying to do in the past.

Mayor: I got a motion and a second. Any more discussion?

Mr. Brown: Yes. If I may, I'm still trying to understand what this would do in terms of our .. uh .. our situation. Right now we .. we have the fact that there is a debt that was incurred using the Vandaveer property, and the Forest Service building, and the revenue from the Forest Service building as collateral. -- I'm sorry. The um, we have a debt that was incurred that uses the Vandaveer property and the Forest Service building and the revenues from the Forest Service building as collateral. That is a ten year note. And in September of 2023, there is a three and a half million dollar balloon payment due. Um ... and .. uh, there ... there is no plan that I know of in place to address that balloon payment. What I think I hear you saying is, put an initiative on the ballot next November ...

Mr. Granzella: the opportunity to do that by the citizens or us

Mr. Brown: Yeah. That would ask ... that would create a .. an enterprise or ... then fund that enterprise with a bond issue that would retire the existing High Country loan. Is that ...

Mr. Granzella: Uh, it would have to replace the .. the details of the legal .. that's the general thought. But we can't just replace the loan. It has to ... a new program or a new initiative would have to replace the whole NRCD with something else. But the purchase price, or the request on the bond issue for the people who might be for the amount of the loan at that time.

Mr. Brown: And then we're still ...

Mr. Granzella: .. and the loans, everything under TABOR, by the vote of the people, ..

Mr. Brown: Do you envision these bonds as revenue bonds? Or general obligation bonds? And .. and what would be the guarantee for the bonds?

Mr. Granzella: I would assume the guarantee for the bonds would be the rents from the Forest Service for a while. Then, of course, we got ....., we still have that, or we have the land sales. A lot of the details, I don't know the full legalities of it. I'm just .. I just ... I'm trying to get away from the fire sale in 9 months.

Mr. Brown: I don't .. I don't think anybody .. you know .. the term .. the term "fire sale" keeps coming up over and over again, and I don't think anybody wants to do that. And, in fact, I'm not sure, as Mike said, I'm not sure, even if we wanted to, do that, um, because the, there are, .. you know, we've talked, we've talked a lot about TABOR and used that term TABOR a lot. But TABOR is Article X section 20 of the constitution of the state of Colorado. And that is only one section of one article. And that's not the entire constitution. There are other articles in the constitution that have to do with the disposal of publically owned property and, uh, and I think there is case law that would prohibit the, uh, giving away of the property so to speak or selling it at a .. a substantially lower amount than uh .. than would be a reasonable value. So, um, I .. I think that the language that we put into this compliance plan last time was that extending the date, if we get a bona fide offer and enter into negotiations would be our protection. Um ...

1:28:49

Mr. Granzella: I understand that. I understand that. Even if I won the Power Ball here tonight, I would not want to be dependent on a governmental council board approving extensions, just because of the specific issues involved. But I would want to know what I'm investing in a little more. But even at that, um, I think the 90 days is pretty minimal, and it opens up a lot more doors. And we can still continue to sell it as we have in the past this eight years. I .. I understand we got an offer today, but I wasn't aware ... I'm not sure what it all is. That'll have to go through the process as well. I just think the 90 days is a minimal tool that opens up a lot more doors for citizens to work on, and for us to look at in the future.

Mayor: I think in the work session, we kinda voiced the extension of 30 days if we had a bona fide offer. You know, and I think we can continue to go down that road, you know, without continue with another amendment on that.

Mr. Granzella: And in the end, as an investor, you might want to depend on the political climate associated with it. Uh, I wouldn't.

Mayor: Let uh, we got a motion. We got a second. Ah.

Ms. Rogers; I'd like to, first of all, thank Rusty for your thoughtful plan. I think we have to be very careful that we don't add too much to it, because it should be thought through very, very carefully in the next six, eight months so that we don't make any more mistakes. So, adding we're gonna do this and we're gonna do that and we're going to do this other thing – No, I think that, what you have outlined, to begin with, to one, uh, set a final, uh, something that comes to the vote of the people by September. That it passes, and that if it doesn't, then a fire sale viable, is enough. We don't add a whole layers and layers of ...

Mr. Granzella: No, none of that was part of the motion. Just the 90 days,

Ms. Rogers: Thank you.

Mr Granzella: and the motion, and the process.

Ms. Rogers: And you're going to say specifically September 20, 2017.

Mr. Granzella: Yes. That should be plenty of time ..

Ms. Rogers: Thank you.

Mr. Granzella: ... allowed for the initiative to have to be on the ballot before that date ..

Mayor: Any more discussion?

Dr. Brown-Kovacic: I believe this is also one of the suggestions that DOLA made, is that we do take this to a vote of the people to be sure, and it was too bad the timing of the opinion, because we just missed this November's ballot. But I .. I think that just holding off 30 days so that we don't just go into this final disposition with a no-minimum reserve, um, I think .. I think would be well worth it, and it would make me feel much comfortable in terms of our fiscal responsibility to the citizens of Salida.

Mr. Granzella: 90 days.

Dr. Brown-Kovacic: 90 days. I'm sorry.

Mayor: Mr. Samora

[Amendment fails 4:3]

Mayor: Ah, now we have, ah, the initial motion. Uh, any more discussion on the initial motion? Mr. Samora

[Motion on resolution passes 4:3]

Mayor: I'll entertain a motion to ...

Ms. Rogers: Mr. Mayor, I have something to add. To question. The contents of the 23 page document that was presented by Mr. Kahn orally along with a few slides on September 20<sup>th</sup> city council meeting has now more than doubled in size. Although we never officially identified this as the city attorney's opinion, it acts as the document that the council members are expected to depend on as we made tonight's decision. Salida citizens and the Mountain Mail have filed CORA requests for copies and denied that right by our attorney, Ben Kahn stating client privilege and confidentiality rights. It is my understanding, however, that privilege and confidentiality decisions belong to the client, and not to our attorney.

[clapping]

Ms. Rogers: Since we council members are, as a body, the client, and we repeatedly profess that we desire transparency. I make a motion that we remove the privilege and confidentiality restrictions on the most recent, November 25<sup>th</sup> revised, titled, SNRCDC statement of facts and relevant considerations document and make it immediately available to our citizens.

Mr. Granzella: Is that something we have to put on the agenda for next time, or can we vote on it now

Mayor: Do we put that on the next agenda?

Mr. Rabe: It wasn't actually posted on the current agenda, so ..

Mayor: We'll put that on the next agenda then.

Ms. Rogers: Is that agreed?

Mr. Brown: Yes.

Mayor: Okay, I'll take a motion to adjourn.

