

1:54:30 after recess

Mayor: Uh, next on the agenda is the Lowry purchase agreement, Vandaveer. Ms. MacDonald.

Ms. MacDonald: Yes. This is the third time the council has been presented with this project. And it has now been approved by the board of the NRDC. And it's a trade with, between the NRDC and LCI for contracting for the extension of utilities to Vandaveer Ranch in exchange for land. Um, it's not the simplest agreement we've ever done. I know there are a number of factors built into it. I've had a lot of discussion over the past few months based on the premise the City of Salida wanted to pursue development of the ranch in accordance with the master plan and the priorities that have been developed in a number of public meetings for affordable housing, recreation, um, economic development, um and residential development on the property. So, as you are aware, the NRDC, the Natural Resource Center, does own the property. It is um encumbered with the debt related to the construction of the Forest Service. So the city council, in the development agreement with the city council does still retain the authority to approve certain actions of the board such as disposition of property, which is why it's before city council to either approve or disapprove the agreement uh between NRDC and LCI. I'm happy to answer any questions that you'd like. We have discussed this a number of times. I don't want to belabor and go through each detail of the agreement, but again we can answer any questions. We have a representative from LCI, ...Valy(?) and .. Sherwood are here and would be happy to answer any questions on the..

?? : Yeah

Mayor: Uh, my initial question would be addressed to Mr. Kahn uh concerning the uh opinion, uh, revised letter or opinion letter.

Mr. Kahn: Yeah. Putting aside the merits of the Lowry deal and the actual development, um, I have had a chance to review both the opinion letter and the revised opinion letter. I also met with the NRDC counsel in between those two letters, and, um, in my opinion, the opinion letters are, what I would describe as wholly inadequate. Um, I don't believe that they meet professional standards there with respect to opinion letters, and I don't think they're something that this city could rely in entering into a long term contractual commitment. Um, the legal issues that are involved with this development are complex. They haven't been adequately attended to, and, um, we're just not in a position to move forward ..

Mayor: I have no move forward too ...

Mr. Kahn: .. based on the kinds of assurances that we have. If there's any doubt about that, we can just look at how this opinion letter was presented to us. Um, NRDC's counsel 's own words were: Well, it's certainly your call to advise the city to rely on a legal opinion given that the NRDC. I trust that the city knows that I am not their attorney. I do not represent their legal interests, and that any advice I provide is to the NRDC, a Colorado non-profit, not to the city as a municipality. That distinction is an important

one for all involved to understand, as the entity has differing legal obligations and liabilities. When the city administrator and the NRCDC secretary forwarded the ... the revised opinion letter, uh, she qualified it by explaining "please note, this opinion is written by the legal counsel of the NRCDC board, for the NRCDC board, and that Michael Scott is not providing legal representation to the City of Salida. I don't think it would be useful to go through all the reasons why this opinion letter is inadequate. But I think we have to be realistic about it. We can't just take this and say "this is fine". Um, if you look at, um, the second paragraph of the opinion letter, for example, uh, to support the notion that this is legally compliant, "the NRCDC has the ability to dispose of real property. Section 6.4 of the NRCDC bylaws allow for officers of the NRCDC to assign and convey property owned by the NRCDC. Okay, but then down at the bottom, we see "well, the city does have the right to weigh in on the disposition of NRCDC property." So, all of a sudden this factor weighing in favor of treating it as a separate entity really starts to get watered down. If you look at the actual language of the Fourth amendment of that one specific development agreement, it actually reads as follows: "the parties agree that any future transfers of property within either the Salida Natural Resources Center Subdivision or the main Vandaveer ranch property will occur only upon the affirmative approval of the city council of the City of Salida. Um, the next factor that we see in this opinion letter is that the NRCDC is an independent entity, and not an agent of the City of Salida. Well, paragraph 2 ... paragraph 4 of the development agreement, excuse me, provides the corporation covenants and agrees that owning and operating the project shall be taken for the benefit of benefit of the city. Upon termination of this agreement, the city shall be entitled to acquire all of the corporation's right, title and interest in and to the project without cost as provided herein or in the indenture or alternate financing. If you look at Karl Hanlon's January, 2012, letter, um, the way he describes the entity is as follows: "the development corporation is a financing tool fully controlled by the City of Salida, and is required to transfer the property back to the city once the debt on the property held by it for the city is paid off. Now, we can go on and on with this issue, but I think it should be clear with everyone involved that we don't have an adequate opinion for purposes of reliance for long term contractual obligations. **And, I'm not telling you that I know the answer to whether or not the NRCDC is a legally compliant entity because I don't.** Okay? Mike Scott has a much stronger confidence in his own ability to analyze very complex constitutional TABOR issues overnight or in a matter of days. I don't share that confidence. This is an extremely complicated issue that we'll have to have somebody look at who has constitutional and municipal experience with TABOR. Um, I believe we'll be able to do that in an affordable way. We'll certainly expedite our efforts. Um, that's my current direction that I have from the mayor.

Mr. Brown: Um. Mr. Mayor

Mayor: Yes

Mr. Brown: Mr. Kahn, what, um, what would you have in mind in terms of a time frame for when we could get this legal assessment?

2:02:25

Mr. Kahn: It somewhat depends on the route you chose to pursue uh, um a review of the legal opinion. So for example if you decided .. decided that you would hire a private practitioner who specialized in constitutional TABOR issues, they could probably turn it around in 30 days. Um, then you're relying again on a lawyer's letter, um, so it has only a certain degree of safety. The other option, uh, is that you go to a court, uh, and seek, uh, a declaratory judgment, um, with respect to the issue, and that would obviously take a lot longer.

Mr. Granzella: Mr Mayor

Mayor: Yes, Mr. Granzella.

Mr. Granzella: Instead of spending the time and effort legally, what does the city have to do to protect itself and try to continue with this process?

Mr. Kahn: What the city needs to do to protect itself moving forward is make sure it has a good, solid, um, opinion on whether or not the NRCDC is a legally compliant entity. I think you need to understand that, even if it is not a result that you want, or that any of us want, that we have to be realistic, um, about confronting it if it is indeed in fact an issue. Uh, getting involved in short term contracts where you sell a piece of land it doesn't really, um, complicate the analysis if all you do is reduce the income ... ?...assuming?.. and in turn reduce the problem, but when you enter into long term obligations that can become undone, um, if the entity is not legally compliant, you start facing very significant liability. You need to get that opinion so that you can rely on somebody who, um, has a malpractice policy and is confident in doing this stuff, and who you can turn back to, um, if there's a problem down the road and say Hey! We looked to you for this advice and we relied on it. So, when we told Mike Scott that we were going to rely on his opinion, he told us, Please don't bother! So, if this opinion is not even sound enough to be relied upon from Mike Scott's perspective, or from the administrator, or, um, the secretary of NRCDC's perspective, I think it would be downright, um, irresponsible to move forward with a long term contract without having adequate legal assurances, particularly given the very, very red flag that you have here.

Ms. Rogers: Mr. Mayor

Mayor: Yes. Ms. Uh Ms. Rogers

Ms. Rogers: Um. The purchase of the Vandaveer property occurred in 2004, is that right?

Ms. MacDonald: Yes.

Ms. Rogers: The land and water was paid off. Ah, the Forestry Building was built, and the land was used as collateral in a private-public partnership. The Federal Government, the Forest Service, and High Country Bank have all been in agreement that everything was... and was in order. We have the Belmont Housing Project in the wings, the Hospital Park and Wildlife swap, and a number of developers camping at the door so that we can get moving on much needed homes, condos, duplexes and fourplexes to relieve our critical housing needs. So, why throw us another curveball at the very last minute? We have not have had time to investigate the statements that have been made... been made in the material you

have sent us In order to agree or disagree. Personally, I believe there is no issue or problems between the NRCDC and TABOR. I believe we should move forward and accomplish our goal to get the utilities to the west side of highway 50. If the majority of the council members believe otherwise, then let's do both. Let's move with the utilities and investigate TABOR to de... to determine whether the issues are real or imaginary.

Ms. Hallett: Mr. Mayor

Mayor: Yes, Ms. Hallett

Ms. Hallett: My question is ... and this should be the attorney, uh , .. If the city were to , uh, just take it over, you know, just take it back, is what it originally was, would that be.. still be an issue? Uh, I mean would we still have a lot of legal implications there, if it became, uh, uh, implemented by the city?

2:06:47

Mr. Kahn: Um, some of this is more appropriately discussed in executive session, but the short answer is that if the, uh, ownership of the... if you indeed have a TABOR problem, and ownership is transferred from the NRCDC to the City, that does not solve the TABOR problem. The TABOR problem is that you have long term debt that hasn't been approved by the voters, and that you don't have sufficient reserves set aside to finance. Um, if that is a municipal function, it is going to TABOR. If it is not a municipal function, then it is perfectly fine, typical lender financing. So the key issue becomes, Is the NRCDC in fact distinct from the City of Salida for the purpose of TABOR and other laws that might apply to municipalities for financing purposes. And the problem that you have from a policy standpoint is, that if it is legal, every municipality in Colorado could simply create a non-profit entity, transfer assets to the non-profit entity, have the non-profit entity encumber those assets to financing that's otherwise prohibited under TABOR, and you've got TABOR. TABOR wouldn't exist. So, that's... that's very problematic.

2:07:54

So if you were to draw by analogy, um, which I know some of you folks have, um, although I think it's a .. it's misplaced, but to alter ego theories or piercing the corporate veil theories, when you look at the kind of factors that courts look at in a civil context in order to pierce the corporate veil or apply alter ego theories, um, you'll see that those factors weigh very, very heavily against your analysis that concludes that the NRCDC is in fact a separate entity. So, I hope that council member Rogers is correct and that, um, she has a better sense of these legal issues than I do and the folks that I've talked to about it, but everyone who I've talked to about it, other than Mike Scott and Karl Hanlon have been very, very concerned with the structure.

02:08:45

Dr. Brown-Kovacic: Um. We seem to have been speaking about process a lot lately, but I think one of the things that is very disconcerting to me is that yesterday is when we received an email from Mr. Kahn, um, giving us this legal advice. To me that is very, very last minute, uh, it's been known for quite

some time that we would be reviewing this tonight, and I feel like it puts each of us, as a council member, in a very difficult position, um, that we do not have the time to really be, um, research this, and make the best determination. Um, I am very disturbed about this. Um, I campaigned on housing issues. I think it is the number one priority at this point for our community. Um, I think it's already been addressed tonight that we are at a point in time where we have a very unique opportunity to move forward with some housing projects that are extremely difficult to put together. Um, it's this Belmont project that would provide 48 units of rental. Um, those things just don't happen very easily. You have to have absolutely everything in place for the state to approve those kinds of funds for you. We have to have the land. We have to have the utilities. Um, and, um, we have to have the zoning. Everything has to be in place. And to be honest with you, part of that is community support and council support. Um, our state has a limited number of these federal funds that are passed through the state, um, has a limited number of funds for this. And there are communities all over the state that are applying for these funds. And we have, um, of course been in conversation with our state agencies on this. They have informed us that our application was likely to be reviewed very favorably. And to sort of have the bottom pulled out at the very last minute is very disturbing to me. Um, now I ... I looked up some things about the 6320 non-profit, and um, one line here says that it may also be possible for the non-profit sponsor to issue public or privately placed debt if it can enter into long term contracts for the use of the facility, or if the facility generates revenue from direct usage fees. It seems to me that we are already involved in long-term contracts here, and we have been for a number of years. Um, ever since the Forest Service building was put in we have a long term contract ... that we are already obligated to it and it is generating revenues from direct user fees. I again don't think I really had time or the ability to thoroughly understand this, but it does seem to me that we are already in this situation. And, um, I .. I also want to mention, um, in our last countywide housing meeting, we met with Brian Deveney(?) who is our consultant for the marketing analysis, and who looked at the various costs that go into building a house or, you know, a duplex, or whatever you want here, and identified that our major difficulty here, and the thing that's really contributing to our high housing costs, is the cost of land. You know, and we have all, I think, gotten in a position of looking at Vandaveer as an opportunity for us as a community to build both rental opportunities out there as well as some more affordable homes that could be sold. Um, Belmont, um, is a company that has, uh, done these tax credits in other programs in other communities. They have a great deal of experience. They are knowledgeable about, uh, the application, and what needs to be in terms of all of the procedures. It's very, very complicated. And they have themselves already invested, Dan can probably tell you, but several hundred thousand dollars already into this project, um, and, um, and .. and so I'm very concerned that we have this last minute notice on something like this. And, um, you know, it just makes me feel like there's some road blocks here and, um, and I think it really reflects poorly in terms of our state application on the commitment of our council and our community to this. Um, so, ... I, um, you know, this is difficult to figure out where to go on this. But, I, uh, it just does seem to me like we're already in a position where we have long term contract obligations. And I do look at the facts that we have .. we have a bank that has given us a loan in this situation, and certainly reviewed, I would think, all of the appropriate materials, and classifications and, um, before they would give us that loan. Um, we also have a lease with a federal agency that has also felt like it was appropriate to enter into that contract with us. And so, and I know we have all these different legal opinions on. And, I'm not an attorney. I don't understand all of that. And so I don't know

what to think about all of that, especially since this notice was so last minute. Um, but, you know, the NRDC has been managing this. It has been in place for a number of years. And I know there have been questions about do they have to go out to bid? and what is the TABOR situation? But the fact that we already have this long term contractual agreement with a federal agency, and we have a bank loan, ... I just don't see how all of this could have happened if there was a serious problem there. And so ...

Mayor: Is that a question for Mr. Kahn, or is ..

Dr. Brown-Kovacic: Well, I guess my question is ... , my concern about the last minute notice when all of this has been in place for so long.

Mayor: Mr. Kahn

Mr. Kahn: Yeah. I'm happy to address the notice issue and also the issue, um, about, um, the lender and Forest Service involvement. Um, with respect to notice, if you look at the date of the opinion letters themselves, um, the opinion letter was requested by the mayor and the administrator, so, um, the timing of that was done by him. Um, the first letter is undated. Um, I met with, um, Mike Scott shortly after that. He then produced the second, um, on May 26 of 2016. Unfortunately, Mike Scott didn't send me the revised opinion, um, even though I'd asked him too. And, um, in addition, the NRDC secretary and city administrator did not copy me when she distributed the revised opinion and the contractual materials related to Lowry. So I had to get those materials forwarded to me, um, a day or two later, by the mayor, and then get with him to have a sense of how he had reacted to this opinion letter and to walk through with him why, um, they were areas in it that were concerning that had been addressed and, um, with NRDC counsel and had not been properly revisited in my mind. So, um, given that we're here on June 7th, and I didn't even get this until the Memorial Day weekend, I think we've turned it around as quickly as we can. We had a memo for you, uh, privileged attorney-client communication, uh, by the 5th of June.

Now with respect to the comments about the lender, and the Forest Service, um, they're not going to have any process within their due diligence to check on the legal status of your entity and whether it is compliant with TABOR or other municipal laws. So that's not .. that's not in the scope of due diligence that a lender or a tenant would typically do, in fact, the lender really doesn't have that interest. They don't care. Because your loan is secured by a .. a significant piece of property, and a property that we've been told is worth more than the loan. So, the bank doesn't care. If it blows up, they'll take the property. So I don't think you should think there's any type of unity of interest between your lender and your borrower, or between your landlord and your tenant, um, for the purpose of legal analysis. So, I .. I think everything you said tonight has been great. And I don't disagree with, um, what you said. Uh, I think it's dangerous to bury your head in the sand, um, over a significant legal issue that you've been advised on simply because the history of the project, or, um, the merits of the project. If you ignore that issue and you enter into a long term contract with Belmont, and a court or someone else tells you you're not compliant and you have to undue that contract immediately, you're going to have significant exposure. And unless you or councilmember Rogers are willing to put up a bond to back that up or get an insurance policy to back that up, or get a lawyer whose malpractice policy will back that up, the city

will be exposed in that situation. ... Excuse me sir. What's that? ... If it turns out that it is, um, compliant, that you've done everything right legally, then you are going to be able to move forward, and do whatever you want. Um, in the meantime, I think you could move forward with short-term land sales. Because, as I said, as long as the proceeds are applied to the encumbrance, you merely reduce the size of the problem.

2:19:58

Ms. MacDonald: Mr. Mayor

Mayor: Uh, Ms. MacDonald

Ms. MacDonald: So, to address member Brown-Kovacic ... to address council member Brown-Kovacic's question, I have a question ... an opinion from Mr. Kahn on May 16th. The mayor directed that that opinion should not come from Mr. Kahn, but should come from Michael Scott. Michael Scott represents the NRDC. That is why Michael Scott was clear to say that he is representing the NRDC in his opinions. I think that's pretty typical. He's not going to provide an opinion for someone who is not his client. And I, again, after the mayor directed that Mr. Kahn not be involved in providing an opinion letter, the letter, I believe, was provided to Hal Brown, the second one, and to the mayor on the 26th of May. I did not forward that to Mr. Kahn because the direction I had from the mayor was to not involve Mr. Kahn in the generating of the opinion letter. When we negotiated the leases with the US Forest Service, and the two subsequent bank loans, um, opinion letters were provided to them from council at that time regarding the legal entity and the status of the NRC. They did ... they were interested in that, and they were provided with guidance on that at the time. I don't think anyone is proposing any long term agreements at this time. We're proposing a land sale to Lowry, and a subsequent land sale to Belmont. There's no long term agreement. Belmont would op... own the land and develop their project and subject to the limitations attached to it for affordability for a period of 30 years that can subsequently be renewed.

Dr. Brown-Kovacic: Thank you.

Ms. Hallett: Mr. Mayor

Mayor: Yes, Ms. Hallett

Ms. Hallett: Uh, as far as some of the ques ... questions that, um, Ms. Kovacic was referring to, um, um, I believe there's a number of citizens in the city that's been asking questions in and around the ... the legality of the entity, and, and, certain aspects. And part of it being TABOR. So, ah, it isn't something new that has cropped up there. Now as... to the agreement that's sep... separate there. But I do say it's the public that's been asking these questions there for quite a while now.

Mayor: Is that a question?

Ms. Hallett: No. I'm just making ...

Mayor: Any questions?

Mr. Granzella: Uh

Mayor: Kinda quick, Mr. Granzella

Mr. Granzella: Mr. Kahn. Trying to get back to a way to keep this moving forward, um and protect the city, if we do as a city everything we usually do in this type of an agreement, that ... would that protect us if we just... if we operate the deal in the format do on anything we legally do that the city's involved in?

Mr. Kahn: Uh, I'm not sure I fully understand the question. But I think that, in the current context, you have an entity, the NRCDC, that has title to the land, that has to be involved in the disposition of the land, and, uh, it's encumbered land. And so, um, the question is, whether or not the encumbrance on the land in compliant with TABOR um debt limitation purposes. You're not going to get to the answer to that by ... by doing a work around cause of the ownership structure of...of the parcels.

Mr. Granzella: I'm not sure you answered my question either. Um, maybe... let's see. If the city was the owner of the property period, okay, and we had the right to sell it or to do this deal, we would follow a set of procedures that the city has to do to sell it.

Mr. Kahn: That's correct.

Mr. Granzella: Would it go to a vote of the people? Etc. etc. Uh, go out for bids? If we follow those guidelines, can we continue with this process and be protected?

Mr. Kahn: Yes, but the premise of your question is that you own it. And the NRCDC and the city do not own it. You own it subject to an encumbrance. And that's the problem that you have. So if you were to eliminate the encumbrance, then you could absolutely do what ever you wanted with the land.

2:24:28

Mayor: Any other questions? Mr. Brown

Mr. Brown: If I may, uh, I'm kind of like Mr. Granzella, trying to figure out how we, uh, satisfy our fiduciary duty to the city citizens by not getting ourselves in uh an imprudent risk situation and still try to keep something moving forward. And uh, it seems that what I've heard, over and over again is this thing about affordable housing. And the affordable housing component of this has not really got anything directly to do with the Lowry deal. This is the Belmont issue. And the Belmont option to buy is conditioned upon a number of things, um, including the availability of utilities. Now, if the city decides that it is in the best interest of the city to bring the utilities to that site, um, then we could do that, I assume. I would ...but we would then that would be the city contracting to ... for public improvements which are well in excess of \$5,000, which would mean that we have to put the job out to bid. Um, that ... that would not ...

Mayor: Would you put the out there please?

Mr. Brown: that would not satisfy the intent of the Lowry development, but it might protect the affordable housing um component of the Belmont option to buy. Um, and I'm I'm just kinda thinking out loud here. But uh, um,

Mayor: Well was that a question too?

Mr. Brown: What am I thinking?

Mr. Granzella: Mr. Mayor

Mayor: Mr. Granzella

Mr. Granzella: Mr. Kahn, you said "eliminate the encumbrance", so if we take the property ... that LCI is interested in the property, Belmont is interested ... and there's no encumbrance on it, what uh .. does that allow the development to proceed.

Mr. Kahn: An interesting question that I haven't thought about prior to tonight. I think the hypothetical that you're suggesting is that get the encumbrance released on the parcel in question, assumedly because you have sufficient bank equity. And you would transfer title to the city, and transfer title from there. Uh, cities can certainly dispose of property in accordance with whatever rules there are for disposing of property. Um, you would no longer have a TABOR problem with that portion obviously if you eliminated the encumbrance.

Mayor: So that would be something that we would have to work out with the bank to release that portion?

Mr. Kahn: It's somewhat unusual for the bank to release a portion of the collateral, simply because you can demonstrate that you have equity in the security, because from..from a bank's perspective, you simply reduce the amount of security you have for the lending obligation. So, I'm not saying they wouldn't do it. Um, I'm just saying that, um, it would be an unusual request ... without reducing the encumbrance.

Mayor: Brown-Kovacic

Dr. Brown-Kovacic: I'm just thinking ... it is my understanding that there have already been conversations with the bank about releasing portion for this exchange and that they were willing to do so. So I don't understand why it would be any different in some of these possibilities that we're discussing now to do it, since the bank has already agreed to do it, and this situation with Lowry.

2:28:54

Ms. MacDonald: Uh I think the bank has expressed in a letter that's been presented to the city council that they're certainly willing to work with us. Um, obviously it's going to come down to ____ and to understand that the ... that coverage is covered with the remaining property. Yes. I guess I don't understand why it must go back to the city before it's transferred.

Mr. Kahn: Well, um, if you reduced, um, encumbrance and left it in the entity that's potentially has problems, then you could have problems with your transaction. Your safer route is to move it into an entity that's not problematic and, um, then have your transfer occur from that entity. Um, I'm not saying you couldn't do it, um, the other way, um, but it's certainly not something we can hash out and figure out right here, sitting here tonight. It's a transaction that would require first and foremost the bank is willing to release a portion of their security without a reduction in encumbrance, um, so that you could get the property to be unencumbered. You'd have to do that as a first step, and you could take that unencumbered property and .. and move it from there. If you made the two contingent, you might be able to work it out, but it would take some time thinking about it.

Mayor: Ms. Rogers. What do you think?

Ms. Rogers: Uh, I'm thinking. Oh, um, it appears to me that, if we go back to the beginning of the conversation tonight with Ben Kahn, that assuming two attorneys are both taking their positions and they're not willing to agree with each other, I guess. So that's one part that I find difficult to deal with. I initially thought, well, Mr. Kahn, how long have you been an attorney an attorney in Colorado?

Mr. Kahn: I graduated law school in 1995 and ...

Ms. Rogers: Okay. That's after the TABOR amendment. That's what ...

Mr. Kahn: You asked when I was admitted as an attorney.

Ms. Rogers: Okay.

Mr. Kahn: And after law school, in 1995, I then clerked for Justice George Lohr on the Colorado Supreme Court. Shortly after doing that I completed a Bates (?) fellowship in New Zealand that was sponsored by the University of Michigan that resulted in the article that I published with Stanford University. And then I was admitted to the bar in 1997. So I've been practicing law for approximately 19 years.

Ms. Rogers: 19 years. Then, so, you have been in Colorado 19 years with that law practice?

Mr. Kahn: Actually, I've been in Colorado longer than that.

Ms. Rogers: Yeah. So at least 19 years. So what I'm thinking is that you ought to know a whole lot about the TABOR amendment, because it came in in the early 90s. I remember it well because Ed Bruce was in my home town ...

Mr. Kahn: That's uh ... that's an interesting thought, but I'm a business and a real estate lawyer. And, um, in the past I've primarily represented non-municipal clients. And non-municipal clients don't have a lot of TABOR problems. So TABOR's not something that would of come across my plate unless it came across my plate as a supreme court question.

Ms. Rogers: Uh huh, and that's one of the problems we're having with your qualifications ...

Mr. Kahn: So obviously, councilmember Rogers, what you're saying and what I'm saying is the same thing. You need someone who is more qualified than myself, or by the measures you just said, Mike Scott ..

Ms. Rogers: Um, hum.

Mr. Kahn: .. to take a look at this who knows what they are doing. I'm humble enough to tell you that I need that help. And we need someone who has that expertise to look at it. Okay? I've ... I've asked NRCDC counsel to enter with me on this question. We can certainly work cooperatively with the NRCDC to get the answer to this question. But if they feel that the opinion letter of May 26th 2006 is sufficient, and you feel that notwithstanding the things that I've told you tonight, then that's the decision. But as your lawyer, I'm never going to advise you that May 26, 2016 letter is sufficient when the author of the letter tells you you can't rely on it. The information in the letter is contradicted, um, contradicted by materials within the entity formation documents, and there are numerous red flags, um, throughout the opinion that, um, it is not sufficient for you to move forward. Now, you can make a determination that you want to put that risk aside and move forward. Okay? But you need to be informed of the risks, and, and if you feel that you have enough information sitting here today then you can make that decision. But if you feel like you'd benefit from more information, to what I'm suggesting that you would, then .. then I recommend that you seek that out. It seems apparent from the conversation that no one in this room has the adequate, um, knowledge and expertise to opine on the sufficiency of the NRCDC entity in terms of TABOR and Colorado legal norms.

Ms. Rogers: I would like to comment on one statement that you made. Uh, you said that Mike Scott said that _____ (?) is unreliable or that his statement is unreliable? I ...

Mr. Kahn: That it could not be relied on.

Ms. Rogers: Now, it doesn't say that either. He said that he represents ... he represents the NRCDC. Not us. I do respect that.

Mr. Kahn: But we can't rely on his opinion. You see that the reason the opinion was requested ...

Ms. Rogers: "You can't rely on the opinion." Where does it say that?

Mr. Kahn: I'll read you his exact words, which I have already read once, but I'll read 'em to you again. "While it is certainly your call to advise the city to rely on the legal opinion given to the NRCDC, I trust that the city knows that I am not their attorney, I do not represent their legal interests, and that any advice that I provided is NRCDC as a Colorado non-profit, and not to the city as a municipality." Okay? So he's told us that you can't rely on it. Now I understand your position, and it's that he's not our lawyer. So why would we rely on him? But you must remember the origin of the opinion letter. The whole reason that the opinion letter was requested was that the city would have adequate assurance to move forward. Now that's fine that Mike Scott does not want to play that role, but someone needs to play that role, or you're not adequately advised.

Ms. Rogers: It still doesn't say "rely".

Mr. Kahn: I'll read you the language from his email again. It says "While it is certainly your call to advise the city to rely on a legal opinion to the NRCDC, I trust that the city knows that I am not their attorney,"

Ms. Rogers: I understand that completely and agree with that.

Mr. Kahn: I can't rely on it. So if you can't rely on it, what is your game plan moving forward?

Mayor: Any other questions? Uh. Where are we at? Mr. Granzella?

Mr. Granzella: ... Thank you. Unless we can move simultaneous on some different items. There are different items, um, involved here.

Mr. Brown: Um. Perhaps we need to continue this item for at least one more meeting, and then have some conversations about the alternate game plans that .. that would, uh, allow us to move forward toward the affordable housing, uh, component, while, uh, while we're seeking the, uh, legal assurances that we need. Uh ... but I don't um .. I don't feel that I'm comfortable approving this, um, resolution tonight. Uh, I .. I'm just ... I .. I don't think that it would be prudent to do that given the .. uh .. the areas of risk that have been presented to us.

2:37:15

Mayor: Is that a motion? Or is that.. I mean ...

Mr. Brown: Well, alright, then I'll make it a ... Mr. Mayor, I'll move that, uh, um item number 8 on the agenda , the Lowry Purchase Agreement for Vandaveer property be continued a minimum until the next regular council meeting.

Mayor: Do we got a motion to second? Any more discussion?

Ms. Rogers: Yes, Sir.

Mayor: Yes, Ms. Rogers.

Ms. Rogers: Can we hear from the Lowrys, whether they're going to uh .. wait? Would you come to the mic please?

Mr. Sherwood: Larry Sherwood. Lowry Contracting. **We've waited 9 months just to get this far. Just to get t'this point.** And I think you guys probably don't understand ... some of you probably do ... but the timing is super important. For us to continue .. uh .. to try to make our deal profitable, **we can't sit and wait another 30 days, and another 30 days, for a decision.** We was hoping for something ... there's going to be more contingencies with the hold harmless agreement with the NRCDC. So it's not like we was going to start moving dirt tomorrow, but we wanted some kind of a positive direction. So, I guess, to answer your question, we're not going to .. uh .. we can't wait months. So if this can happen relatively fast ... uh ... **30 days? But after that, we're not going to be a player.**

Ms. Rogers: Thank you.

Dr. Brown-Kovacic: Uh, Mr. Mayor ...

Mayor: Yes, Ms. Brown-Kovacic

Dr. Brown-Kovacic: Could we have a friendly amendment to this, uh, motion that does put a time limit on it of 30 days at the maximum?

Mr. Brown: Would you like to bring back a reconsideration?

Dr. Brown-Kovacic: Um-hum.

Mr. Brown: I would accept that.

Mayor: Any more discussion?

Mr. Granzella: Mr. Mayor, I'm not sure if we got an amendment to post...

Mr. Brown: Table it basically...

Ms. Rogers: Continue it ...

Mr. Brown: Continue it for a maximum of 30 days. I think that's it. Right?

Mr. Granzella: We want to be able to talk about it at the next meeting, don't we?

Ms. Rogers: The second ... not the second, the first meeting of July?

Mr. Brown: We can put it on any agenda for discussion that we want to, I think.

Mayor: I'll just put it on the next agenda.

Mr. Brown: Yeah.

Mayor: So, Mr. Kahn. Can we get ... the bank ... Can we figure out what the bank ... Can we kinda make sure we uh ...

Mr. Kahn: Two different issues. One would be more appropriate for the city to take the lead on and one would be more appropriate for me to take the lead on. In terms of legal review, I can get together with you in terms of this week and get started on what those options are, um, and, um, it's possible I'll be able to get the city represented for free on a matter like this giving the nature of the issue. Um, and, uh, I can put that in terms of the kind of time lines we'd be looking at for various options. Um, in terms of working directly with the bank on the issue of, um, eliminating the encumbrance on the parcel in question, eh, um, while the documents themselves might .. might, um, require some legal input, as it's probably more appropriate for the city administrator and the NRCDC secretary to take the lead on that given that she's been the main contact with the lender and has the relationship with the lender.

Mayor: What about the ... when you said you could get attorneys to work on this for free, I meant

Mr. Kahn: Because this is an issue that involves a municipality, municipalities have a lot of limited resources, and um, it's an issue that has a lot of constitutional implications, and because those implications can have a ripple effect across municipalities throughout the state, um, it's an issue of fairly prominent significance, and I, um, think that, um, I would have at least a fighting chance of getting a good, solid law firm to do, um, get involved, um, as a pro-bono project. That would certainly be my goal.

Mayor: Yes. Ms. Rogers

Ms. Rogers: How quickly can ... can you find that out about that.

Mr. Kahn: I think I can start placing phone calls this week, and then um, I'll hope to hear back from all these folks in a week or so, and ... and I could put nine or ten feelers out to some very significant that have ... have the kind of expertise that we need, and, um, we'll see if one of them is willing to do it for, um, you know, um, for free for us.

Ms. Rogers: I'm ...

Mayor: Yes, Ms. Rogers.

Ms. Rogers: I'm in agreement with that. I think it's really imperative that we have something legal done very quickly if we intend to move on this. And, so, if we don't get that, we have to be able to have a special meeting or something so that we can fund someone who can do it.

Mr. Kahn: Yeah. I agree with that. In fact, it may be useful to have an executive session for this issue once we have a better sense of our options so I can advise you all at once as to what those options are.

Ms. Rogers: I'm in agreement with that.

Mr. Kahn: We can also do it in summary form if you prefer.

Mayor: So, any more discussion?

Mr. Granzella: I have a question. Are you going to pursue the area of the total, uh, the total NRCDC as a separate non-profit? And the possibility of separating out the ...

Mr. Kahn: I'll look into the issue of the constitutional TABOR compliance and um take the lead on that, so I think that if you want to pursue detaching the encumbrance from the parcel so you have more flexibility again, that's probably, unless the city administrator disagrees. It's something that's more appropriately within her ambit.

Ms. Rogers: That's going to have to be down the road. This is imminent that we get this done.

Mr. Kahn: I think what councilmember Granzella is saying is if we get this done on two different fronts, ... a transactional structure front, and a legal compliance front, where you try to solve a problem from two different angles.

Ms. Rogers: I'm in agreement with you doing the TABOR part. I'm not in agreement doing the other part. That's what I'm interested in seeing you doing.

Mr. Kahn: And, to be clear. I would not do that other part.

Mayor: Ms. MacDonald, or someone from the city ...

Ms. Rogers: You said that you would do the other part, but we have to agree to it that you do the other part.

Mr. Kahn: I will do the due diligence of looking into for you what your options are and then come back and report to you so you can make a decision as to what option you want to prefer...

Ms. Rogers: Okay, Thank you

Mr. Kahn: ... which one you prefer and want to pursue.

2:45:03

Mr. Brown: So the motion as amended is to continue this item for a time not to exceed 30 days from today, and in the meantime pursue the, uh, options that have been discussed.

Ms. MacDonald: I would suggest that, at a minimum, we keep it as a regular item on the agenda to at least provide an update to the city council on how it's progressing.

Mr. Brown: I agree with that too.

Mayor: Okay.

[Motion to continue passes unanimously. 5 minute recess. Council returns to discuss city administrator's contract, audit, etc. and terminates the city administrator's contract. Excerpts are as follows:]

Mr. Brown:...

Mr. Bowers: I mirror...

Mayor: Mr. Bowers

3:21:23

Mr. Bowers: Yes. I mirror councilman Brown's feelings, and, um, what he said is true. And uh certainly, with what's been brought to us tonight, about the **Scope of Work** .. That's a professional piece of work. That's something that, if you're a professional person, you follow. And it's something that has to be defined. Unfortunately, previous council's in proceedings that hasn't been written down. I agree with that scope of work. It needs to be in place. And we have to have a strong understanding of what that means. It doesn't only mean for the administrator, it doesn't only mean for the mayor, it doesn't only mean for the mayor pro tem, or for the city administrator ... or city attorney that wrote it. He actually

put things in his scope of work that I other attorneys wouldn't. And I respect him for that. And I respect his decisions. And I respect his advice that he gave us tonight, which is questioned by this council. And that seems to be where we're at. We're question, question, question What Mr. Brown says about H street is very much true. What he said about people contacting us and being afraid of being in this council chamber was true. They are afraid of retribution. Did retribution happen? ... the way back at the last council meeting and what happened afterwards. It's not acceptable folks. The contract for Ms. MacDonald is a 2 year contract. It's .. it's set to expire. There are some things in it. There was an amendment made to correct it ... it's been, uh, out of compliance for some time. And the city attorney looked at that. He's trying to provide the professional service for us. I agree with the scope of work. And I believe that that contract needs to be canceled. And perhaps another one drawn, under the .. under the ground rules that's been laid here by this council and by the people that's worked very hard at it. You know, I've been on council for about 5 years, and I continually see lawsuits, lawsuits and decisions that are .. have been made that are contrary to the law. Forty-five years, folks, I've been a law enforcement officer. You have to follow the law! That's the law! If you break it, you're in trouble. You have to follow the policies. And that's what's been made her to this.. this scope of work. We need to move forward. But we need to look backwards. And, uh, this council majority accepted the scope of work. The administrator didn't like it. She doesn't want it. And that's .. That's her right. This city has to move forward in a positive manner. If you have some legal questions, stuff like this, it's not even this evening to Lowry situation, and people say how can you turn that down? How could you do this? Or you're the very reason that Belmont's not going to move here. That's not true, folks. Every one of us members up here have given an oath. We're going to follow the laws, and that we're going to follow the policies. I don't want to get you in a lawsuit. I'm going to tell you right now, you seen a lawsuit over TABOR? Any of you? It's a serious situation. It's one that we have to pay attention to. And that doesn't mean, you know, that we're in .. in a bad uh bad way. It just means to me that we've got to do things with... within the law, and we've got to move forward. Now we have to follow those laws, the scope of work, and the policies of the city. I support the scope of work, and I support the resolution to, uh, cancel the contract for Ms. MacDonald. Thank you.

3:26:06