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City Council transfers sovereign decision rights regarding Big Box Stores to Ute Tribe Corporation

Annexation agreement prevents any future prohibition of big box stores

City Council closes out further public discussion or input prior to decision

BY ROOT ROUTLEDGE

DURANGO – At a packed standing-room only meeting two months ago on February 7th, Durango City Council voted unanimously to annex the Crader property in Grandview. The vote took the form of approval of the legal “Crader Addition Annexation Agreement” between the City of Durango, Rowean Crader and Crader Properties, LLC, and GRVP, LLC, the Crader agent and developer of the property.

This nine-page document containing the “legalese” wording was voted on right

after a motion to extend the decision period until at least the next public meeting two weeks later failed; after which a large portion of the room emptied. Several members of the public requested this continuance in writing and in public testimony to allow more time for public input regarding impacts and a more thorough total cost analysis of public financial issues that the city had not addressed.

Among sections regarding contract enforcement, land use provisions, and public improvements, the legal document asserts justification for the annexation and proposed initial zoning and development based on the benefits of the annexation to the City. Under the terms and conditions set forth, it says it “would further enable the City to control the development of the area and best serve the interests of the City.”

Although City officials said in that meeting the decision under consideration wasn’t about Big Box Stores, but about annexation only; the details demonstrate that the City’s sovereignty regarding this issue was in the process of being transferred to the GRVP corporation, which is owned by the Southern Ute Indian Tribe. Thus future public say on Big Box Stores

via influencing their elected representatives is no longer viable.

Regarding public involvement in what form the development takes and any protections that can be put in place, the agreement does contain standard clauses which assert that “all future development/redevelopment shall be subject to City review and approval... and shall meet all pertinent City development standards... specifically allowed for and permitted under the City’s building permit or excavation procedures... to be approved by the City Engineer prior to start of construction.” Of course, the protocol includes public meetings where public comment is considered during the planned development process.

That means the City (public) will have influence over the box design and look, and parking lot landscaping, perhaps; but not whether or not any given retail giant is allowed to colonize the space and the community of Durango.

Beyond these planned development type clauses the City is committed to financing the main Wilson Gulch Drive extension road, based on exhibits “to be attached” later with the details of the financing description. Here

as well, crucial details related to the viability and risk of financing mechanisms were left “to be worked out at a later point in time,” as the City’s attorney noted could be done.

It is in the final clause of the agreement where the City abandons any right of approval or disapproval over what kinds and sizes of retail stores may be built, thus

[The agreement] prevents the application of any moratorium against or prohibition of large, regional retail establishments in the City

transferring its future decision sovereignty to the GRVP Corporation up front, blocking all further public involvement and influence over big box stores in this community. The statement (§III.B.3) says that “the parties shall consider the viability of a City development covenant *preventing application* within [the retail lots under consideration; Lots 1 and 3-5] *of any moratorium against or prohibition of large, regional retail establishments in the City, during the financing period.*” (emphasis added)

Out of this February 7th “annexation meeting,” Big

Box Stores — of a nature to be solely determined by this corporation — are a done deal. Yet for a decision so crucial to this community, nothing about this clause was identified, pointed out, or emphasized during the City's public presentation and discussion.

In fact, it was not even mentioned in the two-page "Highlights" summary, beyond the phrase "is approved for a 256,000 regional commercial center" and that financing of the road is "predicated upon allowing large scale retail development." Even in the minutes of the meeting, it was noted that: "Staff prepared a summary of key components to give Council a sense of the Agreement without having to read the entire document." You would only know about it if you took the time to acquire and read the fine details of a nine-page legal agreement.

In effect, what the clause does is cause the City to surrender its sovereign decision authority as a "Home Rule" municipality to a corporation over crucial future decisions without any knowledge of what those decisions may involve, beyond the maximum size of 256,000 square feet.

Under the legal standing of Home Rule, Part I of the City's Charter notes that (closely paraphrasing) the "City has all powers possible for a city to have under the constitution and laws of the state as fully and completely as though they were specifically enumerated in the Charter."

If the City is sovereign in the exercise of those powers to govern and legislate, it is not subject to the rule or control of another entity, such as a private corpora-

tion or its owners, within its own domain or sphere. So, what does it mean to sign away those powers to another sovereign entity — the Southern Ute Indian Tribe via its web of wholly owned development corporations?

Background

Durango, Colorado, for those unfamiliar with us, is one of our nations "gem communities," drawing in people from all walks of life and international travelers from all over the world. Durango probably has more going for it in terms of "real value" than most towns in this country can claim. In fact, it has been nationally recognized in various ways.

From one perspective an independent economics research firm, Policom, specializing in analyzing local and state economies and local economic development, in 2011 ranked Durango as the top #1 economic strength rating of all micropolitan areas in the country.

Outside magazine featured Durango in 2011, naming Durango "The Next Big Thing". And in its April 2012 edition it named Durango as the world "runner up," or #2 behind a New Zealand town, as the "World's Best New Adventure Hub." We are

What makes this town so dreamy is what it's not.

also found mentioned in many other publications as well, like *SkiingMag.com*, which named Durango its No. 1 "Dream Town." Contrasting Durango with ritzy Aspen and Telluride, they say "What makes this southwestern town so dreamy is what it's not." (*The Durango Herald*, 3-19-2012 and 2-22-2012)

Durango is a small western friendly college town nestled in the Southwest Colorado Rocky Mountains offering a cornucopia of outdoor amenities. In fact our local Fort Lewis College even offers a major in Adventure Education.

But the town also has to deal with contentious issues involving development, including oil and gas development involving "fracking" technologies and surface versus mineral rights. Development controversy is not new to this community as it manifests in planning and regulation at both the City and La Plata County level.

The Myth and Reality of Public Engagement:

Unfortunately, recent public involvement in the sense of the people having influence on governance through local democracy often ends up being inauthentic. Local government entities typically follow meeting and document disclosure protocol rules (however, even that level of openness has been challenged as lacking), more than making a sincere effort to engage the public in actual decision making regarding the future of their community. Stakeholder entities often get described, as in this annexation decision, as the government entities and private parties involved in the development; explicitly excluding the public as stakeholders, or simply presuming their interests to be the same as the government management entities.

This has happened recently at the county level in the development of a comprehensive plan to guide land use in the future. Hundreds of thousands of dollars of planning consultant fees and thousands of hours of

public involvement over a two-year period by hundreds of local citizens at dozens of meetings resulted in a community derived Comprehensive Plan document. But this plan was trashed by ideological extremists, put on the County Planning Commission by the two Republican County Commissioners, several of whom don't even like the word "planning" or "sustainable", and who were more guided by conspiracy theories and global warming denial than by good solid public democratic process.

The same happened with another local effort involving thousands of hours of volunteer effort by local citizens to inventory, analyze and create a Climate and Energy Action Plan. (We see the same rightwing phenomenon currently pervading our national politics as well.)

With respect to the City of Durango, which this article is about, public transparency and involvement often fall short of anything one could describe as genuine. I noted in my February 6th letter to the City Council a lack of authentic public transparency and public involvement in several ways (this letter is available at KeepDurangoLocal.com).

Beyond the lack of candor in identifying the Southern Ute Indian Tribe as a major player in all this — that is, if you didn't already know that the acronym "GRVP" was a wholly owned Tribe corporation, you'd never find out from the all the City documents related to this crucial annexation decision — the timing of document release and postings on this complex issue is so close to the actual decision that it virtually precludes meaningful public involvement if

anyone wishes to dig into what's going on.

Even when one does make a concerted effort to raise public concern, like I and others have, it often doesn't even register. For example, in the January 10th City Council meeting where the final financing details were worked on, no comments were made about public involvement or concern. Yet I had raised considerable concern in my December 19th email letter sent to one of the Council members, with about 30 people on the cc, including all the pertinent town staff managers and other Council members. And that letter generated a thread of comments expressing concern by other citizens as well.

It wasn't until my formal request letter the day before the final decision meeting, and the fact that several of us had created a website to raise the public awareness and express concerns by multiple parties, that attention was paid to it, with the meeting minutes stating for the first time, "Recently, Staff and Council became aware of a group of citizens opposed to the idea of more big boxes in Durango."

But time was running out. City meeting minutes show that the issue was slow to catch on. At the major City Planning Commission public hearing meeting addressing the complex annexation and proposed development issue, "there was minimal public comment, all favorable to the project."

The expression of inauthentic concern for a genuine interest and care for public involvement by town officials couldn't have been more poignantly made at the February 7th meeting. The bemoaning by one town offi-

cial at the end of the meeting about how hard they try to get the public involved with notices and news articles, to no avail, could not be seen as anything other than a disingenuous comment.

Here in a short period of time, from my initial December 19th email and subsequent growing public discourse thread (completely ignored), to our scrambling to get the word out right up to the meeting, we had packed the Council chambers with a standing room only crowd! What should that say to City officials about genuine public interest?

At that point late in the game, we had decided not to put our efforts at that meeting into arguing the pros and cons of Big Box Stores and their relationship to the annexation decision; but merely to request, which several of us did, a continuance to the next meeting to

The door was slammed in the face of a genuine and growing public concern

give us a chance to finish our formal impact analysis and open up the decision issues, analysis and criteria for a more thorough examination. We were actively working on that, but given the late release of crucial documents, and their shifting nature, there was not time to make our full case regarding the huge impact that this decision will have on our local economy.

The door was slammed in the face of a genuine and growing public concern, and our ability to make our case. That's all we were asking for in requesting a continuance.

What proceeded was an intake of final comments in a

foregone decision. The mayor demonstrated a blatant deference to the corporate representative by asking, "Aren't you on a contract timeline with the Craders?" — implicitly, one would think, requesting the contractual "no later than" closure date to the land purchase deal. To which the representative's response was, "Yes, we're on a timeline." The obvious follow-up question, "Oh, okay; what is that deadline and is there enough time to continue this decision another two to four weeks?" was never asked; but the mayor did give a smiling nod to the response.

Public journalism and reporting — *The Durango Herald*

What is the purpose of local media and what can or should the public expect from it in terms of critical reporting vis-à-vis stenographic presentation of a litany of unsubstantiated claims and quotes from City officials and comments from an informal reporter survey of whoever might be standing around? Can the public depend on the local newspaper in order to be adequately informed about the ramifications of crucial decisions facing the community?

Certainly not, in this case. I like our local small town paper, and it has won lots of media recognition awards. However, over the past year *The Durango Herald* has failed us miserably in its coverage of this issue, with a not so thinly veiled bias in favor of Big Box Stores.

It has spun anything to do with this Big Box Store issue as simply one of emotional feelings, rather than digging in to implications of the decision in a journalistic fashion. Even when presented with a false and fab-

ricated claim, such as that by the town manager, Ron LeBlanc, that every dollar of "leakage" prevented by Big Box Stores is like gaining four dollars in our community due to the economic rollover effect — so it's not a \$40 million leakage issue, but a \$160 million one — the paper's reporter fails to ask even the simplest follow-up question: "Where does that 4x factor come from?" This is hogwash, quoted twice a month apart, that has never been publicly retracted.

I've done a full rhetorical content analysis of all articles published by *The Durango Herald* over the past year or so related to this issue, which is part of my unfinished impact analysis paper that will be posted "as is" on our website, titled: "*Keeping Durango's Locally Rooted Economy on Track.*" This was mostly completed by the February 7th City Council meeting; but not ready to present and argue... hence my request for continuance.

Even if one just looks at the article titles, you see trivializing headline spins like "Box stores stir hopes, fears," and most recently regarding Pagosa Springs' struggle with the same issue (Walmart, in their case), "Big furor over little supercenter." Articles include inaccurate emotional characterizations, like reporting of the February 7th final decision, "...after a heated debate between supporters hungry for jobs and development, and critics worried about these stores' cannibalizing economic impact..."

So who implicitly would those emotional people be (thus denigrating any points they have)? Why... those in opposition, of course! My name appears in the imme-

diate next line. Anyone who attended the meeting knows it was a packed room, yet all discussion was cordial and respectful, as were the audience and points expressed. There was nothing about it that anyone could describe as “heated,” as if angry emotions were flying back-and-forth. (If you weren’t there, check the online video of the meeting, if you think I’m making this up).

The rhetoric of these *Durango Herald* articles characterize the issue as the possibility (at first), if not eventual inevitability, of more Big Box Stores simply as the path to the future that the City of Durango is on. Regarding the invasion and colonization of our locally rooted economy and local community by more and more Wall Street based Big Box Store corporations, whose sole purpose is to grow more money for absentee owners, nowhere is the potential impact on the very nature and health of our community examined or even questioned in the paper’s articles.

Nowhere is such a Big Box Store mega-retail vision for our future explored with

more serious journalism. This isn’t about emotional “hopes” and “fears” and “worries”; it’s about a vision for the future of our wonderful community. It’s about a deep concern for the very nature and health of our community, whether it be our environmental, social or local economic health. We see quoted, “the City is hoping/planning...” etc; but no where is the question asked: *“Just whose vision is this, anyway?”*

We haven’t even had a discussion about that; yet a Big Box Store strip mall at the edge of town seems to be the prevailing vision and our future reality, regardless of its community wide impact.

This is how it evolves when a public is disengaged for whatever reason; waking up one day to see the face of their community forever changed. *Someone has a vision for Durango’s future; but whom? The Craders? The Tribe? Town Manager?*

So, if one is depending on the local news media to be informed, and later digs in a little bit deeper; they will find themselves woefully uninformed, if not directly misled.

Regarding potential benefits and impacts of more Big Box Stores, in our daily paper we are served up a continual, often incongruent, ration of unsubstantiated claims and favorable, but trite and inane platitudes; all of which represent mere

The Durango Herald failed us miserably in the coverage of this issue.

unquestioned opinions, like a poll of city officials as if their opinions in-and-of-themselves carry the weight and legitimacy of fact and proper analysis. The City manager and similar leaning Councilors and staff offer statements that themselves fly in the face of what is known from more formal research studies across the nation, yet somehow Durango is supposedly immune from broader patterns.

Some are utterly hypocritical, like the quick “back of the envelop” scratching our bank executive Council member, Paul Broderick, did while the meeting was going on in order to address the criticism that the town had not done a financial impact analysis at all, with all costs

involved... he didn’t see anything that worried him.

Yet on another issue the town’s people would actually vote on involving the City franchise agreement with our local electricity provider, La Plata Electric Association, where the issue was local sales tax on a fee that would increase his electric bill, Broderick wrote a letter to the editor expressing his ideological outrage. “Is this really a tax? ...Surely, the city evaluated the impact of LPEA’s service to the community and required the franchise fee? No formal evaluation... Read your ballot closely and ask yourself: Did the city disclose... the financial impact...?”

All that a more interested journalist has to ask a City official making some claim is: “Where did you get that? Based on what?” But instead here’s the pabulum we get for the disengaged reader, ever boiled down to a “they say” story regarding our future: “Don’t you worry about it; it’s all good and won’t hurt us.”

Root@AlpineAnalytics.com

Editorial Comment and Reflection

The politics of Durango has recently slid into a pattern of public engagement, solicited or not; followed by a few ideologically blinded local government officials trashing the outcome. Genuine democratic engagement helps nurture a sense of community cohesion. But when officials hide behind a veneer of democracy while repeatedly eschewing the results of such efforts, even disrespecting them as if they were authorities grading a third grade exercise, or patronizing their intent like Mayor Rinderle’s statement “We all want to ‘keep Durango local’,” right after voting

the opposite, our sense of ourselves as a community is damaged and any desire for future involvement, even interest in “local politics,” wanes to the point of disrepute for our community’s sense of vibrancy and concerned governance.

As we continually tear away at the very fabric of community, we will also lose site of what it means to care for our common good. We risk finding ourselves trading in our real wealth for the phantom wealth of money and commodification of our public life.

I dare say that someday a future Durango community will be wondering,

What happened to us? False measures of community resilience, like Main Ave tax revenue, do not differentiate between the autistic economics of Wall Street franchises and real market living economies based on locally owned vibrant businesses and entrepreneurs.

The world is rapidly changing and old dreams of growth and Big Box consumerism need to give way to new unaddressed questions, like “How big is too big?” *What do we really want?* If the goal is “more,” we have no goal because there’s always more. Is Durango going to be part of the solution or problem?