

**CITY COUNCIL MEETING OF
October 18, 2006**

VERBATIM TRANSCRIPT ITEM 62a

DISCUSSION AND POSSIBLE ACTION TO DIRECT STAFF TO PREPARE A RESPONSE TO THE CITY COUNCIL ADDRESSING CONCERNS RAISED IN THE LEGAL ANALYSIS AND OPINION RELATING TO THE ROYAL LINKS GOLF COURSE PREPARED BY SENN MEULEMANS, LLP, INCLUDING, BUT NOT LIMITED TO DEVELOPMENT OF A BEST PRACTICES POLICY ADDRESSING PUBLIC PURPOSE DOCTRINE, FULL COMMUNICATION ISSUES, WHISTLEBLOWER RULES, AND CENTRALIZATION OF INFORMATION AND OTHER MATTERS RELATING THERETO

Appearance List:

OSCAR GOODMAN, Mayor

LOIS TARKANIAN, Councilwoman

GARY REESE, Councilman

STEVE WOLFSON, Councilman

LARRY BROWN, Councilman

GEORGE CHANOS, Attorney General

(00:00:03 00:29:48)

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MAYOR GOODMAN

So, well move onto Item 62a. Item 62a is discussion and possible action to direct staff to prepare a response to the City Council addressing concerns raised in the legal analysis and opinion relating to the Royal Links Golf Course prepared by Senn Meulemans, LLP, including, but not limited to, development of a Best Practices Policy addressing public purpose doctrine, full communication issues, whistleblower rules, and centralization of information and other matters relating thereto. I asked that this matter be placed on the agenda, having received the report that was prepared by the Attorney Generals office through their legal counsel. And having reviewed that report, having met with Attorney General Chanos, and had a discussion with him as to how the City is going to react to the report.

And speaking to my colleagues, without forming any consensus, but getting the gist of the feeling that this is an opportunity for the City of Las Vegas to make us a better place to be and make City government act and be more efficient, be more responsive and be more effective than we have been in the past. So I take the report as being the spark of constructive criticism and giving us a reason to be introspective, to look at our own practices and procedures and, at the end of the day, become a better place, as government should be.

I believe that the City of Las Vegas prides itself on our transparency as a government. We criticize ourselves constructively in an open fashion, an open forum, where the public is able to see how the inner workings of the City take place. And I think thats healthy for government. I think that the public should know what their elected representatives are doing and how the City is performing its functions as a governmental entity.

We have issues that will be addressed. Theyre not going to be addressed today because the report is a lengthy report and this is going to be the start of looking at how we do business in City Hall. There are issues of communication which have to be resolved. There, as recently as this morning, the Mayor Pro Tem and myself were going over an agenda item and we found that the briefings were inconsistent. That what he had been told yesterday was one thing, what I was told yesterday was another thing. And thats how problems can arise. So one of the things that Im going to be asking the Mangers office to look into is a line of authority. That when theres a briefing the briefing be given by one person and the message be a consistent message so therere not the possibility that there would be a misunderstanding and that we would be like two ships in the night

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crossing ourselves, even with good intentions, based on the briefings that we get from the staff. And that should go from the Managers office all the way down to any member of the staff who does brief us. The briefer should be the same person and the message should be the same message. We have to talk about the public purpose doctrine. Im not sure that theres a consensus as to what it really means. Ive asked the Attorney General to be our guest today and perhaps hell touch upon his view of the public purpose doctrine, but there appears to be some disagreement as to how broad the public purpose doctrine is. Just as an example, do we as a City worry about what happens in the surrounding areas because of our regional concerns and spend taxpayer dollars in order to resolve those issues or are we going to be limited to those that, matters that happened within the parameters or the confines of the City itself. I really want to know what the public doctrine, public purpose doctrine really is and I want it done with some definition and some certainty, so we know how were going to be proceeding in the future.

I think we have to look into the role of the liaison. Sometimes I get the feeling that the liaison takes the place of the Councilperson in dealing with the staff and the staff really is responsible to the Councilperson and the Councilperson should talk directly to the staff. And because we do have a Managers form of government, that message should be conveyed so that the Managers office is involved in that process and that there not be a leapfrog from the 10th floor down to the ad ministerial positions within the City government.

We have to look at how do we treat a whistleblower. The whistleblower is certainly entitled to protection. Whistleblowers serve a purpose. If theres an irregularity, they bring it to the attention of the electeds and to the media and, which is conveying to the public. But at the same time we have to look at how do we protect the person against whom the whistle is blown, because reputations can be severely maligned. And thats all we have in life, is our good name and our reputation and we have to look at a policy as to how a whistle blowing situation could take place. And equal importance, from my perspective, because if, and were not getting into the Royal Links today, were not getting into the particulars. But that particular situation lasted over a decade. And we had two mayors, myself being one. We had three city managers. We had, oh maybe, 15, 20 different council people during this period of time. And there was no repository for the institutional knowledge that we could call upon, or at least if there was one it was not made available to us. So we have to figure out a way that a Council five years from now will know why

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we made the decision that we made, what information was given to us at that time.

And I think that these are areas that make us a better place. I have no problem with a report such as that which was returned. It was critical of us, and perhaps rightfully so. But at the same time, we learn from it and that's the lesson and we're going to be a better place as a result of it.

So with that, I'm going to ask the Council members to perhaps, to chime in at this point and then I'll ask the Attorney General to come up. Because I want to hear from the Attorney General, in particular regarding some criticism that the City has received concerning our redevelopment efforts. And I don't want, the Attorney General and myself talked about this and I think that things are getting confused in the mush of a lot of what's happening here. We, as a City are trying to redevelopment, or redevelop our inner core. We're trying to make it into a vibrant place, part of a renaissance, and in order to do that we enter into TIF financing arrangements with concerns like the World Market Center, which have placed the City in the spotlight around the world. With the Chelsea properties people, we talked to Cox Communication and perhaps make life a little better for them. Give them a little sweeter situation so they'll go into an area and bring their employees into the area and thrive, so that the area will be able to benefit from them. We need a grocery store in the Westside. We're going to make concessions in order to get that. We need a grocery store downtown. We're going to make concessions to get that. That is not what I believe is the subject of the public purpose doctrine and we're not being criticized for that, but I think that when I ask the Attorney General to comment on that he'll give us, at least, his opinion and we'll be able to go from there.

So, let's hear from the Council members and then we'll hear from you, Mr. Chanos.

COUNCILWOMAN TARKANIAN

Mr. Mayor?

MAYOR GOODMAN

Yes.

COUNCILWOMAN TARKANIAN

I agree with what you said, so much of what you said. I think it's very important that we consider all of that in what we're doing. As I've thought about this I had some other thoughts also and if I

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could just briefly mention those.

MAYOR GOODMAN

Certainly.

COUNCILWOMAN TARKANIAN

I think that, as we look at what were doing and whats happened, we better, we need to realize and accept that leadership starts at the top. And we as a Council, and I include myself, cannot sidestep our responsibility in this situation. Staff takes their direction from us. Staff moves according to how they feel we feel. The final responsibility is ours as elected officials. If we believe in open, responsive government, then that belief should extend to the way the City of Las Vegas as a bureaucratic system functions. But look at what happened to the City of Las Vegas employees who had the professionalism and bravery to step forward and try to do their best in their job for the citizens of our City.

I dislike the term whistleblower, because I think thats a negative type of thing when youre looking at the courage it takes for someone to step forward. And maybe what theyre saying isnt always accurate but at least a step forward and give what they feel might be of a benefit to the City. Its important that our staff feel that they can be open, honest and professional in their dealings with us as elected representatives. I dont know whats happened in the past, as Im sure most of the other Council people dont, as far as why we have individuals who would feel they couldnt step forward and speak with us about, and speak to us about some problems. But its our job to weed through the information on difficult and contentious items and to use our discretion as elected Council members in making decisions. That is our burden, not the staff members.

And so what are we going to do about the information provided to us in this report I think is very critical. First I hope we obtain a greater understanding of the public purpose doctrine, which youve said yourself, Mayor, is a step were going to be taking. Second, I think we need to take more time to examine the history and the background material on some of the more controversial or precedent setting applications that come before us as a Council. I think myself and other members of the Council at times have mentioned why are we in such a hurry and can we obtain this additional information. I think its very critical that we use the due diligence and if it takes longer,

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if it requires more work from all of us, then so be it. So, again, agreeing with what you said, Mr. Mayor, taking what this report presents, accepting it and move on positively to make any needed changes or corrections and if we take this, what has been a negative situation, and we move positively and make the changes that can make us stronger, then that's our very positive result. I just wanted to add that. I've been thinking about it a long time.

MAYOR GOODMAN

Thank you, Councilwoman. Mayor Pro Tem.

COUNCILMAN REESE

Thank you. I did read the report. I'm going to read it, I think, a little bit more and study it a little bit more thoroughly. But, I really think that everyone must, everyone should feel that when they bring a project or an item before the City, that they know they will receive the same information as each other individual will. I don't think there should be any favoritism. And, I, again, I will reiterate what the Mayor said, I think it's important that we all, each day, whether it's last week or tomorrow or whatever, that we have a continual type person telling us and giving us the same information at each briefing. I know that I think sometimes staff tells us what they think we want to know, and I've always told them don't patronize me, let me know where we're at and what we're doing. I think staff needs to make sure that they do this for us. They're not doing us a favor if they don't tell us the truth on what we need to do. And, it's like I told them sometimes, my life is in your hands and I depend upon those briefings to make my decisions. You know, we have four or five, six books every Council meeting; they're about yeah thick, and, I think it's really hard to read and digest everything that's in there. So, we do depend upon our personal staff, as well as the City staff. I know that we all want this to happen and this report to me is a stark reminder that we all have to work hard to make sure that it does happen each and every time. So, Mayor, I appreciate the report. I just hope that we all learn from it.

MAYOR GOODMAN

Thank you. Councilman Wolfson.

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COUNCILMAN WOLFSON

Thank you. I too would like to echo many of the comments that my colleagues have met, made, but I'd like to add a couple of things. I too, join with you, Councilwoman Tarkanian, on the issue of the flow of information. You and I have spoken about this publicly, as well as privately. We voiced concerns a year, a year and a half ago about the flow of information and who receives what information and when. And I'll never forget the day, and I wanna use one example out of the case at hand, and that is the night I received a telephone call from one of our local Review Journal reporters. And this reporter called me on my cell phone and said, Councilwoman (sic), do you have any comments about the Metro report. And I said, what Metro report? And he told me that the Metro had just been released and this Review Journal reporter had the report from Metro before I did. And he asked me, you know, how do you think, how do you feel about the contents of this report and what it says. And he read a few things out of the report to me, over my cell phone, and I'll never forget the feeling I had at that moment; I was very disturbed. And that's what prompted me to reflect for about twelve hours and it caused me the very next morning to call our City Attorney, I believe, and cause this matter be put back on the Council's agenda for reconsideration. What I'm talking about is the flow of information and who gets what information when and who takes the responsibility to provide it to us, as Mayor Pro Tem Reese said so well. We make the decisions up here. We make these decisions based upon information that we get from staff and others. So, I would ask you, Dr. Selby, and I know you will, to review our methods and manners of receiving information.

The second topic I'd like to just throw out there is, I've been on the Council, I don't know, 28 months now, and almost every briefing I have, with very few exceptions, is my staff to meet by myself. None of my colleagues are sitting on these briefings. Oh, once in a while I'll have a briefing in Councilwoman Tarkanian and I or Councilman Brown, I think, and I will sit together and have a joint briefing. But 99 percent of the briefings are by an Assistant City Attorney or somebody from Leisure Services or whatever department you wanna use as an example. And I don't know why we can't have, in some cases, what I will call, joint briefings, where everybody on this dais sits in a room and is briefed by staff.

Now, I understand there's the Open Meeting Law and there's concerns about that, but I don't think that wed be violating the Open Meeting Law, especially on a case like this that has a ten-year plus

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history. And this, these matters were complicated, there were a lot of issues involved and it's hard to receive information in an hour briefing. And then the next day one of my colleagues will get a briefing from another staff member. Now, we're talking about human beings that are disseminating information and I don't care how hard you try, if you have different briefings from different people, there's going to be a different message, if you will. So, I would like to explore the idea of joint briefings, not on every matter, we don't need it on every matter, but on the big matters. So, that's something, that Dr. Selby, that I'd like you to explore. Thank you very much.

MAYOR GOODMAN

All right. Councilman Brown.

COUNCILMAN BROWN

(Inaudible)

MAYOR GOODMAN

All right. Fine. Mr. Chanos, thank you for joining us.

GEORGE CHANOS

Thank you, Mayor and Council members. I have a few prepared remarks and I'd be happy to take any questions.

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MAYOR GOODMAN

Very good.

GEORGE CHANOS

On November second two thousand and five the City Council voted to lift the deed restriction on the Royal Links Golf Course. At that time, the decision was subject to significant public criticism. Councilwoman Tarkanian was the lone vote against the measure. On November 9, Councilman Wolfson moved to reconsider the November second vote. On November 15, nine, two thousand and five our office announced our intent to investigate the matter. On November sixteen two thousand and five the City Council voted to rescind their prior action. Shortly thereafter, our office commissioned the law firm of Senn Meulemans to conduct an inquiry into the transaction. Approximately ten months later, after reviewing over 18,000 pages of documents and interviewing dozens of people, Senn Meulemans issued a highly detailed and comprehensive, a hundred and fifty seven-page report. The report detailed what I have described as a decade of indifference, incompetence and negligence and or intentional misconduct at City Hall with regard to the City's dealings with Mr. Walters. The report also concluded that the City's November second vote to lift the deed restriction violated the public purpose doctrine. Following the publication of the report, Mr. Walters withdrew his proposal. At this point, our office is engaged in an on-going investigation into issues of concern based by the Senn Meulemans' report. To that end, I have personally met with Mayor Goodman, City Manager Doug Selby, and City Attorney Brad Jerbic, all of whom have been extremely forthcoming and cooperative, and all of whom have expressed a clear, and I believe, a sincere understanding of the need for radical improvement in the policies, practices and procedures, with respect to the flow of information and other matters at City Hall. Mayor Goodman has, in my opinion, shown the kind of leadership required under these circumstances by acknowledging that the report, as he described it, is a good thing, and by calling for needed improvements in the way City Hall processes and communicates information. Councilwoman Tarkanian has, in my opinion, by being the lone vote against this proposal, shown courage, great instincts and an unwavering commitment to the public interest. Councilman Wolfson, by bringing the matter back for reconsideration on November ninth, brought the City Council back from the edge of what would have, what could have been an abyss.

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City Attorney Brad Jerbic has, throughout our interaction with him, demonstrated an openness, candor and commitment to improvement that has exceeded our expectations. And City Manager Doug Selby has acknowledged the fact that serious mistakes were made and has publicly indicated that if he knew on November second what he knows now, he would have not recommended removing the deed restriction. All of these acknowledgments are important, as important, if not more important than the criticism contained in the report. For the ultimate public benefit that can be derived from the report, is its ability to inspire reform. And to me, it is clear that this report has at least begun to do that. All that remains for public confidence to be fully restored is for that inspiration to be transformed into tangible and sustained action. I hope and trust that the City Council, armed with the information contained in that report, will insist that necessary reforms do in fact occur.

While it is clearly important to point out failures in government, when and where they exist, it is equally important to recognize and encourage success in government. It is, therefore, appropriate to recognize the fact that the same report, which chronicles a decade of indefensible conduct, with respect to this particular transaction, also provides examples of exemplary conduct. Multiple memorandums from John Redlein reveal a gifted and committed public servant, an excellent lawyer and a man whose sole motivation was to do the right thing. While one might reasonably question his well-publicized briefing of Councilman Wolfson, one would be hard-pressed to question his motives. To the extent that he made a mistake, there were many mistakes that occurred with regard to this transaction. But you need to look at the full history of his performance at this office, and from what I've seen, based on the memos that I've read, you have a great lawyer in Mr. Redlein.

Multiple memorandums from Tom Green, similarly revealed an extremely bright, talented and ethical public servant. City Attorney Brad Jerbic, although criticized, to some degree, by the report, and responsible, to some degree, for certain failures, is recognized in the report as having been responsible for demanding a reversal of one of the more egregious failures at City Hall during the last decade; the attempted two point two million dollar Western Summit change order. That action, together with his complete cooperation and genuine commitment to reform, causes me to believe that the public interest is well served by Mr. Jerbic's continued service as City Attorney.

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Others deserving a positive recognition include without limitation, Betsy Fretwell, Scott Adams, Julie Quisenberry, David Mendenhall, Lori Wohletz and Wendy Ellis. This is by no means a comprehensive list, but simply is by way of example, a way to indicate that you have many, many people working at City Hall who deserve public, the public's respect and appreciation.

In sum, the City of Las Vegas has hundreds of wonderfully talented, if not thousands, of wonderfully talented and dedicated public servants working to serve the public interest and it would be a mistake for the public to lose sight of that fact and instead focus solely on the negatives of the report. At the same time, it would be a mistake not to fully contemplate and thoughtfully consider the criticisms contained in the report. As a community, I believe that we need to learn all that we can from this failed transaction and use those lessons to improve our performance. In the end, those lessons will prove to be the greatest value that the City of Las Vegas could ever possibly receive from this transaction.

I'm happy to answer any questions that you may have.

MAYOR GOODMAN

All right. Thank you, Mr. Chanos. Why don't you touch upon our redevelopment efforts and how you perceive those as it pertains to the public purpose doctrine.

GEORGE CHANOS

Okay. First of all, the public purpose doctrine gives the City generally broad latitude for economic development. You're elected by the public to engage in matters that affect the public interest, including, but not limited to, economic development. And there's substantial case law that says that you can sell property, transfer property or dispose of property for below market value. The guiding principle is that the net effect of your transactions have to be a net benefit to the public, as opposed to a net detriment to the public. So to the extent that you articulate a valid public purpose for your actions, if, for example, and I haven't looked at any particulars with regard to your grocery store proposal or your Cox Communication proposal, but hypothetically for example, if you were to say that we want to put a grocery store in a certain area because it will revitalize that area, it will bring new residents into that area, it will cause economic development in that area. And if there's a good faith belief that that is the true purpose of the action and that the net benefit of that action

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outweighs the economic disadvantage to the taxpayers of that action, then you've satisfied the public purpose doctrine. You've done something that in the end is in the public interest.

If on the other hand, if one were to examine a transaction and find that when one weighs the costs and the benefits, the net effect is a detriment to the public, in that event you would have violated the public purpose doctrine. So, to the extent that you're engaging in these types of transactions in a view towards economic development, my recommendation would be that you articulate the public purpose, the public benefits that you hope to achieve through your action. By doing that, you established a record of what the public benefit is and you also educate the public.

When the public sees that you're giving away a piece of land for five million dollars or worth five million dollars and they don't clearly understand why you're doing that, it undermines public confidence in the process, I believe. If you have a legitimate basis for what you're doing, if you truly believe that what you're doing is good for the City, then tell the people of the City of Las Vegas why you're doing it and let them understand the true public purpose that lies behind your action.

MAYOR GOODMAN

Thank you. I appreciate that.

COUNCILMAN REESE

May I ask a question, please?

MAYOR GOODMAN

Yes, Mayor Pro Tem.

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COUNCILMAN REESE

Mr. Chanos, thank you very much for your report. I got a quest but who; okay, who is the judge and the jury on whether we, on whether it is a plus or a minus on what we do.

GEORGE CHANOS

Right. Right.

COUNCILMAN REESE

I mean, we have a lot of people who would see it as, maybe not seeing what we're doing as being a public benefit.

GEORGE CHANOS

Absolutely. And

COUNCILMAN REESE

And, you know, when we're sitting up here, we're trying to make that decision. And I see it that we're gonna bring people in the neighborhood. It's not a dollar and cents thing. It's something that you feel that it's in the best interests. And somebody over here (inaudible) going to grief. So who is the judge and the jury on this?

GEORGE CHANOS

Well, Councilman Reese, the case law surrounding the public purpose doctrine says that you have broad latitude with regard to this. That you've been elected to make those decisions and that you have broad latitude. So, it's only where your actions are clearly detrimental to the public interest that you violate the public purpose doctrine. So, in the Walters' transaction, our belief is that based on the totality of circumstances, stretching back from the inception of that transaction, through and including the lifting of the deed restriction, that the totality of those circumstances were such that it was a net negative to the public and that we could prove that case if we needed to. So ultimately, with regard to each case, you have to look on a case-by-case basis and ask yourself in looking at the totality of the circumstances, knowing that you have broad leeway, broad latitude to make

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these decisions, can an overwhelming case be made that you have gone well beyond your discretion and well beyond that latitude and done something that is clearly a net negative to the public. If that is the case, then the transaction can be voided, not simply by our office, but any taxpayer has standing to file suit to void such an action.

COUNCILMAN REESE

Right. You mentioned it, I wasn't going to, but you know I went out there and I looked at this location, we're talking about Royal Links, and right next door we had Stallion Mountain and the County went through this same process, I guess, of taking a golf course that had memberships and all this other stuff sold and turning it into housing. And they built the houses within 30 to 40 feet of their waste water treatment plant. And this was done and there wasn't any comments made about it. And so when I go out and I look at this, I say to myself, being a, well, maybe not an expert, well what's the difference in putting them here or putting them over here, when they're here, but not here. Then we got an opportunity to put them over here.

GEORGE CHANOS

Right.

COUNCILMAN REESE

And to me, it didnt make any difference whether it was a golf course or houses.

GEORGE CHANOS

Right.

COUNCILMAN REESE

cause they, we got houses right over here.

MAYOR GOODMAN

And I appreciate that, but I'm going to cut, with all due respect, I'm going to cut the discussion off here, because I don't want to get into the particulars of the Royal Links at this time.

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GEORGE CHANOS

I dont either.

MAYOR GOODMAN

The purpose of what were trying to do today is to give the staff direction as to areas that we have to correct.

GEORGE CHANOS

Sure.

MAYOR GOODMAN

And I dont want to go into the specifics. That may be for another day.

GEORGE CHANOS

Without commenting on those specifics, just generally, the City of Las Vegas is not the only public body that can learn from this report.

MAYOR GOODMAN

All right. Well, I appreciate that, but we're trying to make ourselves a better city and I appreciate that. All right. Any other comments? All right. Fine, may I have a motion, please.

COUNCILMAN REESE

Yes, Your Honor, **I'd move to accept the report and ask staff if they would certainly take into consideration the comments made by the Council members and the Mayor today, as well as Mr. Chanos, and see if we can't achieve the goal that this report's gonna give us.**

MAYOR GOODMAN

Thank you very much. Let's vote on that, please. Post. Motion carries. **(Motion carried unanimously).** Thank you for coming down.

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GEORGE CHANOS

Thank you, Mayor, for your request.

COUNCILWOMAN TARKANIAN

And, Mr. Mayor, just thanking Mr. Chanos for the help you're trying to give us so we can be the very best we can be.

(END OF DISCUSSION)

/vwd/ac;slc