Grand Junction, Colorado

September 23, 1975

ROLL CALL

The City Council of the City of Grand Junction, Colorado, reconvened in regular session at 7:30 P.M. September 23, 1975, in the Council Chambers at City Hall. Members present and answering roll call were: Larry Brown, Harry Colescott, Karl Johnson, Jane Quimby, Elvin Tufly, Robert Van Houten, and President of the Council Lawrence Kozisek. Also present: City Manager Harvey Rose, City Attorney Gerald Ashby, and City Clerk Neva Lockhart.

SEWER AGREEMENT WITH TIARA RADO SUBDIVISION

Tabled September 17 was the Sewer Agreement with CEW Development, inc. regarding the package sewage treatment plant and pumping station in the Tiara Rado Subdivision area on the Redlands. Council requested that the charge or rental for the use of the effluent from the package sewage plant for use on the adjoining golf course owned by the City be determined before final agreement. City Manager Rose said that as he understands it there is to be no charge. This is a one-year agreement and is not self-renewing.

It was moved by Councilman Brown and seconded by Councilman Johnson that the one-year Maintenance Agreement with CEW Development, Inc., be approved and authorized the City Manager to sign said Agreement. Motion carried.

PROPOSAL FOR REFINANCING 1968-1969 WATER-SEWER REVENUE BONDS

Tabled September 17, 1975, was the proposal for refinancing and refunding the 1968-1969 Water-Sewer Revenue Bonds so that staff could study the proposals and make a recommendation to Council on this date.

City Manager Rose advised that Finance Director Vic Vance, City Attorney Gerald Ashby had met with him several times to discuss the proposal. Mr. Rose said Council should be very cautious in entering this proposition for fear that damage might be done to the City's creditability in the financial world. Mr. Rose said he is more comfortable with what has come from Kirchner, Moore & Company now than he was at the beginning. He noted a philosophical point in that if the City enters into this Agreement, there should be very strong reasons that have come out have been the matter of changing the covenants, specifically the covenant of 30 percent, and the improvement in the cash-flow situation. Mr. Rose said the Staff feels neither is important to us at this moment.

In yielding the floor to City Attorney Ashby to speak on this aspect, Mr. Rose said that after the City Attorney's remarks, and should the City wish to go into this Agreement, he would then

recommend that Council then accept the proposal that Kirchner Moore & Company has made recently in Denver after discussions with Finance Director Vic Vance.

City Attorney Ashby said that as is always true in matters of this type, his position as counsel for the City Council is made somewhat easier by the fact that there is always bond counsel who speaks with considerable expertise in a highly specialized field, and there are very few who are given the recognition as bond counsel. In this particular instance, as was true in the Grand Junction, Colorado, Parking Authority bond issue, there is the arbitrage problem. Mr. Ashby noted that Mr. Barrows has indicated that the arbitrage question is a very serious question. Mr. Barrows has indicated that Bob Talmadge of Denver is prepared to indicate that the relationships that exist within this bond issue are such that we don't have to worry about it; he has indicated also that a New York firm will grant an opinion in the same way. Mr. Ashby said that the thing he is concerned about is that Council never get itself into a position where it is stating something in any of these issues that is not perhaps quite true. Mr. Ashby said he has not probed the ordinance involved in these bonds as to what is to be the statement in regard to the overriding reasons for entering into this particular refunding. Primarily, the discussions have been about the saving of money, and from what everyone has said here this is not the acceptable position to be in in order to refund bonds, because then you become suspect under the arbitrage provisions. If it then becomes a question of trying to elevate some of these other things to a position where they can be said to be overriding, then he felt we were back to "how important is it to us to maintain that 130 percent." Mr. Ashby said his feeling has been that even though we are moving along and not actually maintaining that 130 percent, we are at least prepared to commit other revenues annually to this. This may be said not to be a technical violation of our covenants in the previous issue. Mr. Ashby said he doubted very much that anyone is going to bring a lawsuit where they are being paid their interest coupons and the bonds are being paid off out of monies that are otherwise being appropriated to maintain these various reserves. He felt it was probably important to us, as was indicated by the proposal, that the reserves be put up to the point that they ought to be, but he felt this could be done within the funds that we have. His only concern was that, although capable bond counsel has offered an opinion, they are opinions. In the event something went wrong with an issue where there was really no overriding reason for the issue other than the saving of money, it's the City that still suffers. The City could go back on bond counsel and recover from them if the bondbuyers can indicate any loss as a result of what has been said, and it would be a loss probably because what they would lose would be their IRS tax exemption. He referred to the suit that was filed against Walker Field and that perhaps we are paying in this community a fraction of a percent more for our bonds because of the fact that we were sued even though we won. He noted that Boettcher & Company at that time had to go back to all the bondbuyers and advise them that we

were involved in a law suit, and somehow or other they never remembered that we won the lawsuit and that you didn't cost anybody anything -- they just remember there was a lawsuit then and it's something that taints the bonds. The same type of thinking is involved here. If we can't come up with an overriding reason for the refunding of the bonds at this particular time beyond the saving of money, then perhaps the issue is suspect -- the refunding is suspect to that extent.

President Kozisek noted the possible legalities with respect to this type of refunding as touched upon by Mr. Ashby and questioned whether the City may not stand the same change of a lawsuit in that the City is not living up to its covenants on the existing bonds.

Mr. Ashby said that No. 1, if you go along with the idea on the refunding bonds, you are making the statement that is going to involve the IRS essentially. They are the ones who would be causing any pain if any paid was caused. The bond owners don't care because they will be getting what was represented to them -- we have the risk of the coming in and saying that the City should not retain its tax-exempt status. On the other side of the coin, Mr. Ashby could not imagine the bondbuyer of the bonds we now have on issue coming in and causing any great deal of trouble unless it somehow became apparent that the City was not perhaps either in a healthy position generally or that these bonds in particular were not in a healthy position, but the probability always exists. Therefore, the probability always exists if you violate a covenant in the bond that someone may come in and make you hew to the letter of what was agreed to.

Councilman Tufly discussed the fact that the covenant was apparently agreed to in order to make the bonds more saleable. He said that if now since the bonds are sold and we are not living up to that covenant, it would appear to him that the people who hold the bonds would have the recourse of coming in and saying you will put your rates at the level at which you said you would." Councilman Tufly said that on the other hand, though, we also have the people who voted on the sales tax situation, so Council cannot do that. He felt Council was between the rock and the hard spot. He felt the people who sold the bonds would be as liable as the City would be. If they picked up the bonds and resold them to someone else with the assumption, they also would have the problem.

Mr. Ashby said he felt it is the holder of the bonds who may perhaps come against us. We have to maintain the covenants in relation to the holder of the bonds. The guy in the middle is not selling anything except on the basis of what the original representation was.

That is what any bondbuyer is going to look at. As indicated to Council, the City may face from another direction, which is that of funding the operation and maintenance of our sewer and water

facilities from the revenues of the system entirely, becoming (suspect) from the Feds the next time we attempt to get a grant from them. He said that we probably represented this to the Feds on the last grant in that we would maintain the system out of the revenues from the system. He continued that all we are trying to do at the present time is, we have indicated to the people on the basis of the vote that we are going to try and do it some other way. Mr. Ashby indicated that his feeling is the bondbuyers generally are going to be satisfied. Obviously, it does not preclude a suit by some bondbuyers and bond-holders who say "I want it to work the other way so that I can be assured that I have all that I was guaranteed in that ordinance that authorized the issuance of the bonds. But the primary thing there is that they are interested in being paid, and so long as the interest on the coupons are being paid, Mr. Ashby thought that the chance of anybody bringing action is quite remote unless the general financial picture of the City should also become involved.

In response to President Kozisek's question as to whether there would be another IRS ruling before the bonds would be sold, Mr. Kreidle, Executive Vice President of Kirchner, Moore & Company said his Company would not make application for a specific IRS ruling for this issue. He said that having the opinions of the two talented bond counsels would not warrant doing so. He knew of no cases where they do get a specific ruling on situations like this. He knew of no case where bond counsel's opinions have been challenged by IRS.

Councilman Van Houten said that if this Council has knowledge that the covenants for these bonds are not being met and if the City at a future date were to become involved in a lawsuit, would this Council not be responsible individually as well as a Council?

Mr. Ashby advised that it would be only if there is a loss. He noted there is no projection of any loss here, because we are picking up the cost of operation of the system through another method which Council has assumed to be by direction of the people within the City. He continued that the only time there would be individual liability would be if something had been done in derogation of the bond issue and there had been a loss suffered as a result of that. He felt the only thing that they could require is that Council immediately proceed to levy from the systems sufficient revenues through annual debt service and proper operation of the system.

Councilman Van Houten asked if the City continues to follow the approach of not meeting the covenants of the bonds and if at some future date (1980-1985) the City should have trouble with these bonds, are not the Councils and the individuals therein associated, not only the City but also the Council members, also responsible for the actions that were taken?

Mr. Ashby said he thought this would be true if the system were run during the interval period in such a way that insured that the

debt service was not going to be taken care of. As an example, he said you have a debt service now that you are running in regard to these particular bonds, and you are about to determine that you are going to run it both from the revenues of the system and a portion of sales tax revenue. You are going to appropriate, for example, for the year 1976 sufficient monies out of these two approaches to handle the debt service on those bonds. As previously indicated, Mr. Ashby said that possibly a bondholder at this time could come in and demand that Council go back to funding totally out of revenues from the system. He felt that this was the worst that could happen. If the City were to go along from now until 1985 and continually not meeting the debt service in the system, then Mr. Ashby thought someone could come back at any point in time and legally require it, but he did not feel the liability would ever become personal.

Mr. Joe Barrows and Mr. James D. Kreidle represented Kirchner, Moore & Company at this meeting. Also attending were Mr. Jim Hill and Mr. Dan Herrington of Boettcher and Company. Mr. Herrington presented for consideration the fact that the City may need to refund these bonds in another package later down the line for some needed revenue to meet growth. During the presentation of the proposal by Kircher, Moore & Company, the Boettcher representatives left the Council Chambers.

Finance Director Vic Vance recommended the most recent proposal, Plan E, for Council's consideration, and is reasonably convinced it does not cut off any options for the future.

During earlier discussions, it was noted that Boettcher and Company are no longer fiscal advisers for the City of Grand Junction. Boettcher and Company have not in recent years bid smaller bond issues, such as sewer districts and street improvement districts.

Both Company representatives left Council Chambers during Council discussion.

Councilman Tufly said he feels that this Council, in recognizing that the City is in violation of the covenant and does not act upon it, has a problem. Councilwoman Quimby agreed and said she feels very strongly about the fact that the City is not living up to the covenants, and if the City does not accept the refunding proposal, she would insist that the City live up to those covenants in the original issue.

President Kozisek noted that the only way the City can live up to those covenants is by an increase in the utility rates. City Attorney Ashby advised that only by refunding the bonds can the covenants be changed.

City Manager Rose said that during the discussions, he has become more convinced that the City should not refund the bonds. He felt options should be left open for future Councils. He said that when

Council indicated some months ago not raising utility rates but to explore other ways of handling utility costs, the City talked to Dan Herrington at that time and he saw no problem and in fact assisted in wording the item for the ballot. At that time he considered the covenants and felt there was no problem (and that he still feels there is no problem), and that is why we proceeded with the item on the ballot as it was. He recommended that the refunding proposal not be accepted at this time. With respect to the covenants, the only obligation, the very obvious obligation, is to pay the bonds and Council has taken steps to pay the bonds. The money is coming from two sources instead of one, but the primary obligation is being met -- the bonds are being paid.

It was moved by Councilman Johnson and seconded by Councilman Colescott that the City not accept the refunding offer at this time. Motion carried with Councilman Van Houten and Councilman Tufly voting NO.

It was moved by Councilman Van Houten that the City Manager be directed to proceed with whatever is necessary to correct the technical violations of the bond issue to bring the City into compliance with the covenants, which motion was seconded by Councilwoman Quimby. President Kozisek responded that this same Council, or members of this Council, directed to the voters of the City of Grand Junction last spring for the funding of these bonds whether it be through rate charges or through the tax. The people of the community on their vote said the tax.

Councilman Tufly stated that if that is the case, members of the Council did not have knowledge of what this was at that time as has been pointed out now, and that if that is the case there should be some way that a certain percentage of that money should be assigned directly to the water fund in some fashion so that it does not go into the general revenue fund first.

City Manager Rose advised that the ordinance to be adopted for that second cent will dedicate a portion of that cent to the utility fund. This would cover the debt and there would be additional monies to pay for operations.

Councilman Van Houten said that he wants to specifically comply with the covenant of those bonds.

Councilman Brown moved to amend the motion to eliminate increased rates as a method of doing that, which motion was seconded by Councilman Johnson.

City Attorney Ashby said he did not see any problem in committing totally whatever amount is determined specifically to the payoff of the bonds. An amendment is required to make the fund carry itself.

Mr. Ashby said that the feeling he is getting from Council is that the technical compliance to the covenants is to be made. Mr. Ashby

reviewed the covenants in the bonds.

It was determined that the rates are only required to pay the principal and interest on the bonds.

City Manager Rose said that in compliance with State regulations, rather than transferring the sales tax money into the water-sewer fund, it be kept in the general fund and then attach that equipment expense to the general fund.

Councilman Johnson withdrew his second to the amended motion and suggested that the City Manager bring back whatever options are open to us so that it can be voted upon.

ADJOURNMENT

It was moved by Councilman Johnson and seconded by Councilwoman Quimby that the meeting be adjourned. Motion carried.

Neva B. Lockhart

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Neva B. Lockhart
City Clerk