

**TRANSCRIPT - COUNCIL WORKSHOP
JULY 14, 1997
ITEM #3**

[Transcript Entered into Record by Mayor Janet Terry]

RIGHT-OF-WAY REQUEST: Bill Merkel will ask Council to assist with some right-of-way acquisition for a project he wishes to build at the west end of Horizon Place.

Janet Terry: Before we go into any discussion of this at all, I need to get some legal advice - there you are - you moved. Just to make sure everyone is aware, I have heard this presentation that we are going to hear tonight on this issue and in doing that it was an issue of, "I can listen to this issue because I can not make any decisions", and I think that is how this workshop discussion has evolved. So I need to defer to Mr. Wilson to make sure we have strong guidance as to what we can and can not do here.

Dan Wilson: Dr. Merkel met with several staff members, I've forgotten how long ago it was, and talked, I think, in similar terms of what your going to see here tonight. When I saw the letters and saw the packet, actually we debated internally on whether or not the Council should see it at all because what he is going to talk about tonight is a project and right-of way is critical to their plan. But what follows, eventually, will be a land use review. And that's the constraint for the Council, of course, because the land use review process requires that when you go into that hearing, and it could take several forms, it could take the classic rezoning that might be required. The [word not known] zones that you will have, that you will make a decision based on the record before you that developed at the City Council meeting and partially based on what comes up at the Planning Commission. And part of the other notion that goes with it, is other members of the public have a right to see that same information and to question it, cross examine, input. And so the tension, of course is, at this stage when the doctor is really going to be talking big picture, not asking for any action, is really, I'm assuming, going to be doing information. How much of that could effect eventually cut against the ability of have an open due process part of the land use process. Because of those issues, I believe Dr. Merkel had originally intended he wanted to contact each of you and try to avoid creating problems in the land use context. But when David Varley and I originally visited, we thought it actually made more sense to have him present to you in public so that it was in public and so that all of you has the same view, and if we ever do get to the land use hearing, I think what we need to do is supplement the record, indicate this happened, and simply move forward. I don't think we will be tainting unduly that process so long as they sort of know that up front and we limit, especially the Council's giving of approval or disapproval tonight. So what I would ask that you do tonight is be a sponge, listen. You'll get information like this again as it moves forward down the track. Try not to give Dr. Merkel any indication of which way you might vote in the future, because that

becomes the critical thing. You need to be an open book so that the public can also be able to influence you later. This afternoon I called Rich Livingston, and I believe Rich Livingston may have talked to Dr. Merkel describing the tension for tonight. Just so there are no surprises. I just didn't want him coming here expecting one result when the City Attorney would be advising another. I haven't had a chance to talk to him to see what he's done so some of this may be news to him as well. The project that he is going to be talking to you about currently is a planned residential zone. So almost any use that he is going to be contemplating is likely to require a rezone, so I think the issue will come forward at some point. With that backdrop...yes sir?

Reford Theobald: If your instruction to the Council is to solely listen to information and then include this information tonight as well as other information gleaned from the public at a later date, what on earth is the purpose of this tonight?

Dan Wilson: Well it is a difficult thing. Let me tell you the bind if I were Dr. Merkel and certainly he is going to be much more articulate on his own. One of the issues for their current plan involves right-of-way on his east side. Access from 7th Street in effect to the east side of the property you're talking about developing. That decision in years passed a portion of the road got vacated. The initial contact from his people is "Wasn't that a mistake?" We looked at the record and couldn't determine that it was a mistake. It looked like it was one of those vacations that occurred assuming development on Mesa View II property, south of Northridge was going to occur relatively soon thereafter. Market had changed, and various other things had happened and that new road didn't get dedicated. The vacating ordinance didn't say this vacation is contingent on a new dedication. It simply said it is vacated. So initially, was this an error? Could that be fixed? Because that would have been the best case scenario, "Oh there is an easy administrative process to reinstate the road right-of-way". That turned out to not be an option. So there are two other, theoretical options, one would be to acquire from the current landowner, buy the property and as part of this development or another development, he could dedicate it and make it access. I'll certainly leave it up to him to address the viability of that. Or third is not used in Grand Junction, but legally permissible notion, for the public, in the right circumstances, and I don't even know enough to say its the right facts, but at the least the principal is even though there is a private benefit, the public could condemn the right-of-way under the right kind of scenarios. It is not something that happens frequently in Colorado. It has happened enough in other states and there is enough case law in Colorado that I would say to you the legal principal is good. I am not suggesting that is a step the Council would take quickly based on past history, but it is at least something that is legally available. So given that context, if I were the doctor, I would say I have got to have this road to make this plan work. I need to try and get an indication from those who will make that decision, do I spend more money? Do I head down this road before I go to rezone? I understand that. Now the City Attorney says "Yeah,

but the road question ought to be tied with, tied to the question of the rezone and any other land use application because that has been a contentious issue over the years connecting Horizon to First other than going down Patterson and the public has a right to have input. And so the City Attorney portion of me says, don't make a decision, don't commit yourself in that legislative fashion until you know more and until you have seen what the public input is. And therefore, delay or synchronize any land use decision, rezoning, with any decision to condemn eight feet of right-of-way. That puts him in a box and I recognize that and your question is a fair one - why is he even here? Nevertheless, where do you start? And so, it makes sense to at least present the dream and then later on present the dream again at a public hearing so that the public has the benefit of the detail. It is awkward.

Reford Theobald: The problem that presents itself is the public perception that a decision on the road right-of-way is a precursor and certainly an indicator of the subsequent decision on the zoning. And even if as a Council, we separate the two in time and thought, the public is going to see them linked and I think quite reasonably so. Your point about the extension of Horizon all the way to First Street is well taken. Although, from the documents I've seen that may not be an issue in this case. But I have the wonderful privilege of having been through at least two hearings on this piece of property in my 12 years, if not more, and have found that they were extremely contentious. I think it would be appropriate for Council to have a little discussion on how much we want, whether the majority, to put the cart before the horse on this issue knowing that the history of this parcel is the entire the Northridge neighborhood will show up to talk about what they think should be there, because that is what they have done every time so far. I don't want to load the gun and I think Council needs to consider that. I understand completely, Dr. Merkel, your dilemma of where to go from here. I don't see an easy solution. I think the Council needs to discuss this issue before we proceed. We want to be fair to you. I think we also want to be fair to the residents that are going to be talking about this later. That is my suggestion.

Dr. Merkel: Mrs. Mayor and members of the Council. I appreciate all the discussion that has gone on before because it has saved me a lot of words. However, I would like to say it in my own words, I am a resident of 23 years in Grand Junction. I think I am almost a native. I am not sure what the qualifications are but I think I am almost there. I know what is fit for the community. I know what the community needs in the medical area. I am a physician, a surgeon and like many fellow physicians in this community, as our community has grown, so has our needs for additional medical facilities, offices, a place to do surgery, out-patient surgery, a new kind of surgery. And so over 2-1/2 years ago I got this vision. Here I am 2-1/2 years later, life and career still working on this project. And work we have done, yes. Three architects, 2 developers, financiers, engineering, 3 major meetings with Northridge residents, 9 minor meetings with Northridge residents all on my own efforts. I have also met with the other surrounding neighbors on other parcels of

property. I have discussed, and massaged this whole interrelationship of not only Sage Court people, but Northridge people ad nauseum. I know them all personally. I respect them. I don't live there. I am proceeding as though I was one of their own neighbors, as I am that sensitive to their needs. If anybody is in the audience from that neighborhood I think they will tell you they know me. Now, as we proceeded in our developmental steps we had a preliminary conference with the planning department, preliminary. One of your astute staff, Michael Drollinger, spotted our first glitch, our first flaw. He is the one who spotted the vacated right-of way. On a road that goes in front of Mesa View I Retirement Home, it heads directly to my property and stops at my property line. It looks like it was going to the property. It was aligned to go to the property. It stops right at the property line. It is a public road. It says to me that road was meant to go into the Northridge property. Now what the glitch was, if you can see the yellow, that is the existing road today. What I have colored in red or pink there, is a little sliver of land that was vacated by virtue of a motion, second and vote by City Council in 1990 to vacate that little sliver of land there because what you see in the dark outline, the parcel, flip the page, you'll see what was planned for that area and that was a duplicate retirement home that now exists on 12th Street called the Atrium. But that is where it was intended. Now part of the planning of that was the platting, but not recordation of the road that continues beyond that yellow line. The road that enters my land. Now because the pink part was vacated but the road was not recorded, that killed any right-of-way into my land at that point. Now I hear a lot of discussion about attaching my request for solution to this problem to rezoning of the land. Let me point out to you that the land is currently zoned for residential. I can develop residential on the land without rezoning. If you'll look at your current proposed zoning for the growth plan, we are up to, you know, over 20 dwellings per acre. Now I am not saying that my intention is to develop highly residential there, but if I did want to, there are going to be a lot of residents, a lot of cars. The only other access for those people to get out of that neighborhood is off of First Street which is the current main entrance and egress out of Northridge, First Street. So if you think there is a problem now at First Street there would be a major problem if that was my only access in and out of my Northridge property. Now the issue of the residents being concerned about roads connecting from First Street and 7th Street has all ready been addressed. That is not the intention here. In fact it is just the opposite. It is to bring the road and access that was all ready built into the property and development that you had in mind and then end it in a parking lot. The second extension of the access into the Northridge would be extended from First Street to service the residential part of my project. So you have access both off of, ideally off of 7th, that is what I am requesting, and off of First to divide the traffic into two roadways. Not having them all dependent upon exit out of First Street. So, I feel that I cannot go ahead with this project any further until I get this right-of-way settled. No matter whether I go for the rezone on the combo commercial/residential or whether I pursue residential, which it is currently zoned for, I need to settle this problem before I take one further step. Mind you, we have all ready calmed down the

developmental process. We have spent a lot of money on this project already. Michael Drollinger is the one, as I said, who picked up on it. It wasn't in my title work. I knew nothing about this vacation. Now I simply ask, and I am out of my element down here, but I simply ask the simple question. I know Dan was present at the time, what is the singular reason why this was vacated in the first place? If you could just give me a simple answer, what was the reason? I want to know the reason. Then we'll look for the solution. But what was the reason?

Dan Wilson: I've read the minutes. I've read the record. The answer is, I am assuming, that the development on the west was far enough along in the mind's eye of the then project, that this was a necessary step to get to it. This process went along, and it has happened before, for the vacation will occur during the public land use process, as one of the items on the checklist and the two were not connected. Certainly looking back on it, one could construct an argument that said the vacation should have been first read, published and held waiting to see if it got finally platted. Then when the final plat got recorded, the vacation's effective and everything is coordinated. It didn't happen that way. My assumption is that those two properties got pulled apart. That is a guess.

Dr. Merkel: Is it possible now in looking for a solution to go back and make that process complete by having, since the road didn't get recorded, the new road, that would now state that the vacation was invalid?

Dan Wilson: That is a fair question. The problem is too much time. What's happened is a matter of law under the State Statutes that once the vacating ordinance is effective, the land that was vacated, the title to it, has now vested in the owner of the property to the white where Mesa View I is, so that person now owns the property. There was a period of time, unfortunately it was in 1990, when the Council could have said, "Oops. Stop." I think it could have undone the vacation. Six, seven years later, title has vested and that's why I think only the third option that I mentioned which is the Council saying for a public purpose, although incidentally benefiting a private purpose, we can do this. It is complicated by the fact that even at residential development today there are technically two possible access, and Michael or David you help me if the Dr. doesn't know. Certainly this is the one that is most obvious because the existing residence come in here, but what we have discussed in years past was a second theoretical, I'm not saying it makes good planning sense, but from a legal perspective, an access which was the new Sage Court. I think it was North Acres, I can't remember the name of it, that extended this way across the canal and is primarily originally thought to be another access to part of Northridge at the northeast, but does physically connect to this piece of this ground. So in theory you could do this in a residential context. I am not saying it makes good planning, but from a legal perspective still two legal accesses. What it does is complicates our, the Council's ability, to make a finding that this third access is necessary for the public good and that is why I backed into the

notion that if it were strictly a residential subdivision, no matter the density, two accesses arguably legally is sufficient. All be it not the best plan. When you convert to a different use, as you describe, and you end up having really two different traffic patterns, one which goes this way and that is the access, and one that goes only this way, if the Council or the community were to say, "Yeah, it's private, but there is a public good because of medical facilities", then I think you could justify that third alternative. That was my logic.

Dr. Merkel: Which is the third alternative?

Dan Wilson: Condemnation.

Dr. Merkel: The comment about the North Acres - Dave could you point to that new North Acres Road that crosses the canal - that would service only the existing Northridge as we know it today. We need an access - where I pointed out - near the Mesa View I. Without that access, I can not move forward period. The facility that is being envisioned is for three major buildings. One would be a 60,000 square foot medical office building. Another a 30,000 square foot office building to the left on the rendering and then to the far right would be a surgical center that would be 20 to 30,000 square feet by the time all the amenities are added to it. So we are talking about a substantial component here to the whole medical system in this whole region. The access in and out of here is very important and if this access in and out of this is not proper for all that traffic to go through the existing Northridge exit as we show here on this diagram, to put a road up from the medical facility up through what we call the "draw" is just inappropriate. There is a sewer in there. It's a bog. It's just not the place for a roadway. So I don't want people in the room to think that since the Northridge spur is up there that that represents some way of egress out of the medical facility up to Northridge, er North Acres. It is just not appropriate. So again my focus tonight is to request a solution to this problem of an inappropriate vacation of the right-of-way to my property. That is what I am asking the Council to solve. That is my focus.

Janet Terry: One question, but I need to make a statement first. I empathize and agree with the concerns that Reford indicated earlier, Dr. Merkel. I have heard this proposal and acted only as a sponge, if you will, and advised Dr. Merkel that that's all we could do and also I think I alerted all of Council to that discussion that you may be contacted. I also was concerned when I saw it on the agenda. Mr. Varley indicated and explained why and it was a kind of concerted effort to save some phone calls and some steps. At the same time, it is a real concern for the public process and making sure we don't endanger that process with this particular discussion. Can we, Mr. Attorney, get a written record of this discussion? I know we tape it, we don't typically save that. But can we get that written record to serve as an attachment with any process that does evolve from here?

Dan Wilson: Yes, ma'am. We can certainly get a transcript which we don't normally do. In these circumstances, I think that is an excellent suggestion.

Dr. Merkel: You mean of tonight's transcript?

Janet Terry/Dan Wilson: Yes.

Janet Terry: And make that available to any and all who are interested in hearing that since no one had been apprised of this discussion on a published basis.

Dan Wilson: Yes, ma'am.

Janet Terry: Second question. You indicated to us in your previous advice that this should be part of the land use process, this vacation. Is there any way of dealing with it, in and of itself, as a proposal from Dr. Merkel?... aside from the development?

Dan Wilson: Yes. Dr. Merkel could say to you, "Please condemn the piece of ground needed to provide access to my eastern boundary to 7th Street without any backdrop of a plan just to benefit that piece of ground."

Janet Terry: But does it have to be condemnation?

Dan Wilson: I'm open to ideas.

Mike Sutherland: Some questions may help us with that. One thing. Where does the existing roadway end that is paved and dedicated? Is any portion of what was vacated actually a paved street?

Dr. Merkel: Yes, I think it is because that road curves down to the garages that are behind Mesa View I, so the road has to go over that vacated part.

Mike Sutherland: The second question would be "Does Coulson & Coulson still own the property?"

Dr. Merkel: I don't know for sure. We've asked them to grant an easement and they wrote back and said "No." The reason they gave was that there would be too much noise to the residents because of the traffic. Well, our project is going to be a daytime project, daytime use project, not a night time use. My answer is they seem to get along fine over on 12th Street at the Atrium, the traffic through there. I can't imagine that traffic's going to be a big issue with this retirement home, but I'm sensitive to their concern. But so far Coulson has said no.

Mike Sutherland: So as far as you know, Coulson does still own this....

Dr. Merkel: Well, when I called them personally they said that the note had been sold at Wall Street and that they had to go back and

find out who owned the property. This is the letter that Coulson has sent, basically saying that at this time they are not willing to grant an easement.

Mike Sutherland: Thank you.

Jack Scott: Dr. Merkel, you said you knew most of the people in that area. What do they think of this. Would we have a crowd....

Dr. Merkel: So far I know there's going to be people that surface at the last minute, but so far I have the support of the neighbors.

Jack Scott: The majority?

Dr. Merkel: Yes. I have the support of, really... I've contacted... with the exception of down by the entrance to Northridge there, what's the name of that little subdivision?

Dan Wilson: Willowbrook?

Dr. Merkel: Willowbrook. With the exception of Willowbrook, I have personally contacted people that are around the perimeter of the park, plus we've had a major meeting at the Hilton with an ice cream social last summer where we had all three, four factions all together in the same room, presenting our master plan. It's been upgraded, it's changed a little bit, but... as I say, before I take another step to meet again with them to update them, I'm dead in the water unless I get this issue resolved. So that's what I'm asking ... to somehow find a way to reverse this.

Reford Theobald: Assuming Options 1 and 2 have been exhausted or abandoned and now the condemnation, Option 3 is the choice. I assume this is like any other condemnation. The property owner has the right to object and go through what could be an extensive process of negotiations or what not.

Dan Wilson: Correct. And it would be a typical condemnation. The only difference here from the norm would be, in the past and the norm is that, there's no question about the public purpose, it's for a road, it's for a new park, it's for, I guess, in theory, a pipeline that's vital to national security. There's no question about public purpose... The difference here is you have the question of is it public or is it private. And that's where our recitals and our rationale would be more detailed because that would be an objection of the property owner if the property owner wanted to object. Now, Option 2... I didn't know how far Option 2 had gone. And remember, always, to get to Option 3 you have to conclude that you cannot reach, having exercised good faith negotiations, a purchase. And it may be that there is more room under Option 2 to acquire the dedicated road right-of-way and easement, whatever might be efficient. So maybe that's a possibility of good Council consent. Sometimes people will have a different attitude. It's just depending on who's talking to them, so we might pursue Option 2 if there was Council direction to do so.

Mike Sutherland: I would like to see the issue resolved. You're perspective of whatever gets developed out there, whether it's homes with this proposal, or whether it sits there empty and the City buys it for a park twenty years from now. I think there needs to be road there, and it was an oversight. So I would like to see Council direct Staff to look into ownership's or the other issues that are involved with that, and see what Staff can come up with over the next two weeks or so, and not keep them on hold any longer than necessary. But I think we do need to pursue trying to get the owners to give back what was dedicated at one time to the City.

Janet Terry: And I tend to agree. I think if this parcel was landlocked because of previous Council action, possibly we can pursue resolving that issue just for the purposes of the parcel and access to the parcel regardless of the ownership or the use as Councilman Sutherland indicated. And I don't know if the rest of Council concurs with that.

Jack Scott: I think we should correct the mistake. I would sure like to see... look at Option 2 before we go any further.

Janet Terry: That's what we're talking about.

Reford Theobald: Landlocked may not be the right term, but between Coulson & Coulson's flip flopping on what they want to do with that property, and then obviously, as the City, didn't catch this combination of missing one and acting on the other, I think that would be

Dan Wilson: Let me restate the direction. See if I have it. One would be perhaps contact Coulson & Coulson to see if there's a willingness to sell under some terms. Just because we'd want to go through that step anyway. If not, I would take another look at because when I was looking at the question of public purpose, incidental private benefit, and said to you "I think Option 3 has not been done much, but it might work," I was assuming that it was based on a project specific that had some greater good as far as medial facilities and the needs of the community. Councilmember Sutherland has sort of peeked my thinking which is "Well, from a purely planning perspective, irrespective of the land use, is the access to the east necessary?" I need to see if there's any cases that direct...and so I can certainly do that when we come back to Council.

Janet Terry: And you would research that as a so-called Step 3?

Dan Wilson: Oh, I'll.. I would do that concurrent with 2 because it's not that difficult to go back and take another look at the cases while we see whether or not there's any interest in doing a deal.

Mark Achen: There's some variations on this, as well. The plan that included the right-of-way vacation anticipated this same property owner granting additional right-of-way which was never granted. And so there was to have been an exchange. So there would have been,

under the City's approval, a development of the property to the west that Dr. Merkel now has. There is anticipated there will be a roadway through there, and the right-of-way vacation, you know, the alignment of that may make better or worse planning sense, but it seems to me there's a couple of alternatives. One is to reacquire that which was vacated. Another is to acquire what was supposed to have been dedicated in lieu of the vacation.

Dr. Merkel: There was indeed a road.

Mark Achen: It doesn't show on there, but you could color another section in there that would show... the dilemma now is what exists as right-of-way today comes to a point at the property line. And there's a triangle to the north that would accomplish the alignment that is proposed in the plan that is to be considered.

Reford Theobald: So one can argue that when we vacated the orange, they should also have dedicated that triangle to the north, and so that was not completed, and so they owe us..

Mark Achen: Using Mike's analysis of this, the City's planning for the development of this property clearly was based on a property strong preference for access of that property to the east via 7th Street as opposed to something extending all the way from 1st Street to access this property. And that was... previous Councils and Planning Commissions deliberated over them very heavily about what was the right way to provide access for the development of this property, whether it was residential or some other use.

Dr. Merkel: Did I hear that a two-week time frame would be appropriate to get an answer?

Janet Terry: I don't know.

Jack Scott: We'll give it a college try.

Mike Sutherland: I guess what I was asking... we see what we can dig up in two weeks simply because we'd be back in a workshop..

Dr. Merkel: Who would I call to find out... Dan or Mike or....?

Janet Terry: Mr. Wilson will be your contact.

Dr. Merkel: Thank you very much for your time.

Janet Terry: Thank you, Dr. Merkel.