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February 6, 2012

Durango City Council:

Christina Rinderle (Durango Mayor)
Sweetie Marbury (Durango City Council)
Doug Lyon (Durango City Council)
Paul Broderick (Durango City Council)
Dick White (Durango City Council)

cc: **Durango City Management Staff**

Ronald LeBlanc (Durango City Manager)
Greg Hoch (Durango City Planning Director)

General Public:

Bill Roberts, *The Durango Herald*
Other interested members of the public

**RE: Crader Property Annexation Aggregate Decision Complex, Feb 7th Council Agenda
Aggregated Decision Elements: —**

Crader Property Annexation
Initial Zoning/Rezoning/Re-subdivision (potential land uses)
Wilson Gulch Road: Responsibility, timing and financing of construction

Public Request for:

Disaggregation and delinking of decision elements for proper analysis of impacts
(currently muddled together; no local economic or community impact analysis
has been done beyond the potential demand side estimates of EPS Consulting)

Continuance on all three decision elements
(for proper public review, understanding, involvement and examination of impacts)

Dear Durango City Council Members:

Re: Published agenda for the City Council meeting, February 7th, 2012, involving the Crader Property Annexation Decision: I have thoroughly studied all related meeting minutes and recordings, publicly available documents, newspaper articles and EPS consultant reports; and I have had two lengthy telephone discussions with the EPS authors on technical details regarding leakage estimates and potential sales tax revenue recovery, their sources, assumptions and computation methods from the models in their report. I am as informed on this major decision as much as any City Councilor and member of the community could be; that is, who is privy only to what is publicly available.

I write this on behalf of myself, as a local professional analyst and business consultant, who is not retained by any party or reimbursed for this volunteer work related to the decision under discussion. Further, my volunteer work is on behalf of and in the interest of the Durango public, our local community, and local businesses, who are at this point largely unaware of the scope and potential impacts of this decision, both short term and long term, from everything that has been presented to the public formally by the City and through the public media. And it is on behalf of a growing group of alarmed Durango citizens and local business owners who have coalesced recently forming a group called "Keep Durango Local," specifically to bring awareness to and challenge various elements of this decision. With this representation, I make a formal request for the City Council to take the following action on February 7th for the reasons stated below:

DO NOT APPROVE the annexation as it is proposed at this point (which is not necessarily to mean we are requesting a final denial decision on February 7th). This especially relates to its form as an aggregate decision with interlinked and complex decision elements having a range of different impacts, none of which have been adequately analyzed for potential impact on the health of our community and the local Durango economy.

CONTINUE CONSIDERATION: Instead, in the interest of a yet largely uninformed Durango public, who are literally just waking up to what is going on, and the future health of our community, continue consideration of the proposal **until a later date**. This decision has no need to be rushed and the continuance date should be far enough out to perform a proper and full impact analysis noted below, and to give the public proper time to get informed, press the City for a more complete analysis, and respond to the proposal based on a full understanding of its potential costs and impacts.

We are aware from the meeting documentation that this will affect the timing of the existing contract terms of the property sale between the Crader family and the Southern Ute Growth Fund's corporate entity; perhaps even be a deal breaker. So what? If their mutual agreement is solid, two lawyers can talk to each other and figure out how to deal with it; any contract can be modified or renegotiated. It is not the City's purpose to ensure consummation of private contracts; it is the City's purpose to make decisions in the best interest of the public they represent.

I am aware that we are a community and lots of high quality work has been done by the parties involved, which I acknowledge and respect, to ensure a well planned development with excellent process steps. However, that process and the subsequent work left open a gaping hole in the analysis, about which City officials to this day do not seem aware or care of its importance. In all the related documents to date, discussion of, request for, or production of an overall impact assessment on the community of Durango at large is entirely lacking regarding the large scale regional retail development under consideration by the City on behalf of private property owners and developer, the Crader family and the Southern Ute Tribe Growth Fund. This includes the Grandview Area Plan, which was adopted as an amendment/addendum to the City's Comprehensive Plan through a planning process that began over 10 years ago and adopted in final version in 2004. The world is rapidly changing economically and environmentally; regardless of the dreams of the property owners and the desire of City officials for evermore sales tax revenue, the entire concept of a planned regional retail complex development with all the ramifications of big box stores for Durango needs to be rethought.

Nowhere could I find any community-wide economic impact analysis or even expressed concern; or any mega environmental impact analysis, such as our contribution to climate change with such development. That is because the planning and decision process is narrowly focused on local or nearby site impacts, standard engineering analyses, utility and other city services, and merely land use patterns of the contiguous and immediately surrounding areas and property owners. As the decision approaches, even in the last Study Session meeting of January 10th, the stakeholders in this decision are considered to be: the City, the County, the property owners, and the developer, with perhaps surrounding property owners to be notified "so there are no surprises come February 7th decision meeting." At best, a few "gut feeling" comments were tossed around by City staff and Councilors about potential effects on existing sales; none of it based on any data or proper analysis. This all leads to the following rationale for our request:

Just consideration for public involvement: WHEREAS, to move this decision forward just as the public is waking up to it and its implications and huge ramifications, would be a travesty to authentic public involvement. To rush a decision and bring quick legal closure to head off possible dissent would be a great disservice to the public and a dereliction of public duty.

Magnitude of the decision and its structure: WHEREAS, with regard to its scope, magnitude and impact, the Crader decision will have the most far reaching and long term impacts on the community of Durango than that of any other recent public decision. This is a huge decision.

Further, the decision is structured as an aggregate decision complex, with multiple decision elements, each of which has different criteria, impacts and exposure to those impacts, thus muddling the implications of the decision, including road financing and risk. For example, the October 18th meeting agenda documentation and minutes regarding the annexation links the Wilson Gulch Road responsibility and financing to the annexation: “Resolution as to the responsibility for, financing of, and the timing of the construction of the physical street improvements for the Wilson Gulch Road extension/connection must be satisfactorily resolved prior to finalization of the annexation and recording of the annexation and subdivision plats.” Why?

And, with the size of the Crader property eventually to be developed in one form or another, 160 acres overall, and the financial growth interests being the primary focus of the Southern Ute Tribe Growth Fund, the current 37 acre proposal opens the door in lock-step fashion to a development regime on out into the future that magnifies all impacts of the first phase now under consideration.

No city-wide impact analysis: WHEREAS, the relevant documents and related meeting minutes nowhere address the concerns raised and offer no community wide impact analysis. Said documents include: the Grandview Area Plan, An Element of the Durango Comprehensive Plan, dated January 2004; Crader Annexation Narrative (Annexation/Initial Zoning/Concept Plan/Subdivision), dated June 23, 2011, revised August 11, 2011; Crader Annexation Impact Report, prepared by Russell Planning & Engineering, dated June 23, 2011; City of Durango Planning Commission Report, Project # 11-133, dated August 29, 2011; Resolution No. R-2011, Acceptance of Annexation Petition, dated October 18, 2011; all four Economic & Planning Systems (EPS) retail demand analysis and financing options reports (August 24, October 14, November 17, 2011, and January 6, 2012); all related meeting notes and recordings and continuances.

In particular, the noted Russell Engineering “Crader Annexation Impact Report,” the document which “is intended to meet the requirements from the Colorado State Statutes... for an annexation impact report,” spelled out in the report, is a standard engineering and planning document that examines laws, rules and regulations; public services and serviceability; local infrastructure improvements; local parks and schools; and impacts on related special districts. All of these items are only relevant to the property under consideration, contiguous and surrounding areas. It is not intended to, and in fact does not contain any analysis of city wide economic or environmental impacts.

Lack of public transparency: WHEREAS, on the surface the process holds apparent transparency with public open meetings, sharing of documents and so forth, and may all be clear to detailed planning staff, it does not amount to authentic public transparency in several ways, including its presentation and media reporting. For example, regarding stakeholders and their relationships, the interests of the Southern Ute Indian Tribe that motivates this development are

nowhere readily visible, but hidden behind obscure acronym references. The Planning Commission August 29th project document notes only the Crader entities and the corporation “GRVP, LLC represented by Russell Engineering” as their agent. The September 6th documentation states: “This is a request from GRVP, LLC, agent for Crader Properties...” The meeting notes related to the October 18th petition resolution states: “This is a Public Hearing to consider a request from GRVP, LLC, agent for Crader Properties, LLC and Rowean and Kim Crader (collectively hereinafter the Craders) and collectively represented by Russell Planning & Engineering.” They do not note that this GRVP is a Southern Ute Tribe corporation that intends to purchase the property from the Craders and develop it in the interests of the Tribe Growth Fund. What are the goal and interests of the Growth Fund regarding development?

Regarding Regional Retail (aka Big Box Store) Sales potential: In the October 14th EPS “Leakage Report” (“City of Durango and La Plata County Retail Market Analysis”), no source or documentation or description of methodology is offered for the most crucial column of numbers in the report: Local Capture Pct of Expenditures (upon which the ubiquitously quoted \$40 million leakage figure is based), which are simply stated in the narrative as “estimated.” In a subsequent lengthy discussion with the reports authors, I expressed concern about this and the uncertainty regarding these estimates. To their credit, these concerns were addressed with an additional section on “Inflow and Outflow Estimation” in an updated version of the report, dated and made available at the end of the day by City staff three days ago, Friday February 3rd. Yet, the report is the basis analysis of the decision to be made tomorrow, Tuesday February 7th; how is the public supposed to be aware, with a chance to digest any of this before the decisions?

Regarding Potential Sales Tax Revenue to the City: In the January 6th EPS report (“Wilson Gulch Road Evaluation of Public Financing Alternatives”) model estimates of potential sales tax revenue to the City are graphed in Figure 2, showing just over \$500,000 per year based on an assumed initial 50,000 square feet of development for the first five years. Yet it is nowhere clear how that number was arrived at (again, I determined the methodology with another lengthy phone call to EPS). Further, only in a foot note to the graph is the obscure (to the lay public) statement: “Sales transfers, which would reduce the estimates shown, are not included in these estimates. Under current conditions, approximately 50 percent of sales are estimated to be transfers...” What is a “sales transfer” to the lay public? Why that’s what is known in the media as “cannibalization” of sales from existing Durango businesses. ***Expect half of all sales from this initial development to come out of existing Durango businesses for some time, according to this report!*** Again, to their credit, EPS updated the report with more clear methodology, with a new version put out by the City as with the report above, at the end of the day Friday, February 3rd.

However, the model now assumes that initial development will be *115,000 square feet* (instead of 50,000), consisting of a new grocery store (50,000 sq ft) and “ancillary” (box store, e.g. possible Target Corporation) area of 65,000 square feet. This major change, ***increasing the assumed initial development by 230%***, certainly makes the revenue stream seem less risky. It is also a demonstration of how widely uncertain all of this analysis is. The late timing of such a major change destroys any notion of *authentic public transparency* when the decision is four days after a weekend release! This comes on the heels of a major change in financing mechanism from that of the three earlier reports (see Financing below).

Lack of public involvement: WHEREAS, my comments about transparency above fit here as well; and only a few comments by City officials have been made regarding the general understanding, interest and input from the public — unless one is a public meeting junky, they

would not know what the City's assumptions are about potential public concern, or the importance (or lack of) they play in the decision process. I could find one statement in the October 18th documentation: "The Planning Commission heard this request for annexation, initial zoning, resubdivision, and Phase One PD Conceptual Plan at its meeting on August 29, 2011. Following the public hearing, *during which there was minimal public comment, all favorable to the project*, the Planning Commission voted 3-0 to recommend approval of the annexation, initial zoning, and resubdivision... and approval of the PD Conceptual Plan to the Council..."

I listened to the recording of the entire January 10th Work Session meeting, where EPS presented their last report on the road financing, and found no comments made about public involvement or concern. Yet, I personally launched my concerns with a letter to Councilor Dick White, and cc's to other City Councilors and officials and interested members of the public on December 19th. As well, it generated an email thread discourse with several exchanges following. I also know that others have been expressing concern over time about big box retail development. But during the meeting, the stakeholders were described only as the City, County, and the property owners and developer — these are private entities and government administrative units, and it does not include the public as a stakeholder. Closely paraphrasing from the meeting discussion: "Several players are all working toward the same end with the same vision. All want the same end results; it's win/win with the Cragers, Growth Fund, City and County. We needed to figure out how to fund the road, which we now have; which clears us for annexation. Inherent in the timeframe we are working with is the real estate contract executed by the Cragers and Three Springs a year ago. Action by the City is essential for them to reach their contract obligation. We need everyone to have full understanding because we will need Council to act at the February 7th meeting. We need to do a bit more outreach to property owners in the immediate vicinity so they are not caught by surprise."

Although there was some discussion in this meeting about potential cannibalization and where that would come from and what might happen with the remaining Crader property, one million square feet potential development over the next two or three decades, the impacts were simply tossed off as insignificant — based on nothing other than "I think" gut feeling and an ideology favoring mass regional retail development. "I think this community will adapt. Local business needs to adjust what they sell. You don't stand in front of a freight train. We haven't seen major drops in retail over the period since Walmart moved in. Public concern was overblown." Based on what impact analysis? Nothing!

Shifting Financing and Economic Assumptions: WHEREAS, significant modifications to model assumptions were just released end of day Friday before the Tuesday meeting, as noted above (230% increase in assumed initial build-out), affecting amount and timing of sales tax revenue forecasts and hence reduced sense of risk; the methodology of financing has also shifted with no explanation provided. The August 19th Planning Commission report identifies "4 workable options for financing the [Wilson Gulch] Road, referencing the August 24th EPS report "Public Financing Options for the City of Durango": 1. General Improvement District (GID); 2. Special Improvement District (SID); 3. Public Improvement Fee (PIF); 4. Enhanced Sales Tax Incentive Program (ESTIP). The November 17th EPS report "Evaluation of Public Financing Options" works through their criteria and rationale, recommending the "financial mechanism for this project, a Title 32 Metropolitan District... [and debt-servicing revenue stream a combination of] an impact fee and replacement PIF (where a portion of the sales tax rate is dedicated

specifically to the new district).” Debt can then be issued based on these forms of revenue, “serviced by impact fees and the PIF;” and EPS recommends for “optimal debt structure... a private placement partnering with the Growth Fund” as the “most efficient, least costly alternative,” because the current bond market sees such investments as too risky based on land value alone as collateral.

Then in their January 6th report “Wilson Gulch Road Evaluation of Public Financing Alternatives,” presented to City Council at the January 10th Work Session, after backing their analysis by recapping their earlier market analysis methodology, they recommend a yet different financing alternative not part of the earlier options... with no explanation for the completely new approach. The list of four options is now: 1. PIF; 2. ESTIP; 3. Impact Fees; 4. Set Aside. There recommendation is that: “*The City create a one-cent set-aside and use this revenue to support a Certificate of Participation (COP) bond issue.*” Does the public have any clue as to what is going on? Do they have any time to digest these changes and what they mean before this major decision is to be made?

What this all means in plain English is this: The current bond market investors are not interested (without a significant interest premium penalty) in loaning money for such a road development project based on either the land value (land values have been going down) or on prospective (forecast) revenue from the retail development (many have gone bust) because they perceive it as too risky; but evidently the City does not, especially now that the build-out assumptions and sales forecasts have been increased dramatically and the financing mechanism has changed to a “partnership.” A “set-aside” sounds better than a “sale tax subsidy;” and a “Certificate of Participation” sounds better than an “Impact Fee and Public Improvement Fee” they charge the Tribe.

The City will subsidize the Southern Ute Tribe Growth Fund by one and a half million dollars interest, borrowing \$3 million from the Tribe to build the road on their behalf; and pay for that by “setting aside” 1¢ out of its 3¢ sales tax revenue stream from the new big box store development to pay back the principal and interest. Payments won’t commence until the big boxes are built and revenues start; however, interest will accrue from the beginning. The Southern Ute Tribe, however, is not comfortable with the risk unless the City mortgages its City Hall, Police Station and other properties as collateral to back the loan from the Tribe to build the road for the Tribe’s development activities and allow the Craders to consummate the real estate sales agreement between the Craders and the Tribe.

The reason it seems “cheaper” to go this route is because the City will get a lower interest rate for the privilege of borrowing money from the Tribe to build the road on behalf of the Crader-Tribe land deal and Tribe’s development vision — as long as they are willing to risk public property on the Tribes behalf. EPS states under evaluation criteria in their modified financing proposal (January 6th “Wilson Gulch” report; unless it’s changed last Friday, which I haven’t had time to read in detail): “Protection of City Interests: Cost and revenues are central concerns to the City. The COP option provides one of the least expensive options for the City in terms of interest rates.” However, stated elsewhere in the report, they note there is a risk to the City of losing its property to a private corporation owned by the Tribe: “If the City should choose not to appropriate the annual payment, the City will lose the collateral.” The benefit is based on the presumed “capture of \$40 millions leakage,” as reported in *The Durango Herald*; but the actual EPS report estimates at best an 80% recovery of that.

All this is interlinked with the annexation decision and the rezoning and resubdivision of the Craders' properties. Question: Why is the City paying for the road development anyway? The Grandview Area Plan states: "It is recommended that a new fee be established for the Grandview Area Plan in order to pay for major road improvements needed for new development and redevelopment in the Grandview area. The City should develop a new street impact fee that is appropriate to provide for future roads in the Grandview area." (p71) "The major street impact fee is assessed on all new development or change of use and applicants... The purpose of the impact fees is to assure that increased costs to improve and maintain the City's road system is associated born by new development. The fees are assessed and collected according to a schedule adopted by the Council." (pA4-5) "[The City goals include] analyzing new funding mechanisms that enable the City to recoup the costs of annexation and the provision of services." (pB1-2)

Risk? So, what's to worry? What is the risk to the City? No one really knows, because no one has done an impact analysis based on different scenarios. Suppose there is a severe drop in sales or the full build out doesn't happen; the "leakage capture" is way lower than expected; the cannibalization wipes out other Durango businesses; and thus to hold onto the public's properties that the City mortgaged, they would have to pull revenue from other sources. Not likely? Prominent economists and financial experts, when interviewed, speak of "when" not "if" there is another economic crash because there have been no structural fixes that address the causes of the 2008 crash; and that it is manifesting in Europe, which could spill over into the rest of the world.

Richard Wolff, author of several books, including *Capitalism Hits the Fan: The Global Economic Meltdown and What to Do About It*, states (DemocracyNow.org, 12/2/2011): "All the steps taken over the last few years to try to cope with this crisis of our capitalist system haven't worked, and so we're now again on the brink of a crisis, and again public money and public institutions are bailing out a private banking system and a private enterprise system that is not working and is not solving its own problems. The fundamental question you've got to deal with is an economic system that isn't working... You've got to take big steps that change the way this economic system works, or find a new system... It's as though we have a dysfunctional economic system coupled to a now dysfunctional political system, and instead of fixing each other, these two systems are making each other in a kind of a spiral downturn."

Nomi Prins, a former investment banker turned journalist, in response to the question, Has anything changed since the 2008 crash? says (DemocracyNow.org, 12/14/2011): "With respect to how banking operates, it's only gotten worse. The fact is that these banks, that were big before the subprime component of what is now a global crisis, are bigger than they were. They have more derivatives exposures than they did. They are taking more risks than they did. They are getting away with more than they did. And they are doing it with more reliance on federal subsidies than they did before what happened in 2008. So everything, by every standard, with respect to risk and coddling of Wall Street, is worse than it was before 2008."

DO NOT APPROVE this annexation; CONTINUE CONSIDERATION until a later date!

Sincerely,



Eric Root, PhD
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