

Email from Harris to Hartman, Jan 14, 2014. See following message from Hartman to Harris, 20140123 Hartman to Harris, addressing this. The issue is not public involvement in private contracts but using public funding without public comment—R. Hartman

harrislaw@comcast.net

Jan 14 (13 days ago)

to me, Don, Michael, FHVHA, rschlimme, nmbearhug, dickpenny, gpark952, genmeek100, jamesw, j, johnjbritt, kbgrabeklis lamb, rita, FHVHARoger, selvaf, acuaoma

Hello Roger,

I am sorry I was not clearer, but the question which caught me by surprise. I could have given a more detailed explanation with prior preparation. However, I believe I focused on the main issue which is the constitutional rights of landowners not to have city officials change the rules on them in the middle of their project, and the potential liability which can occur if a councilor "helps" citizens who do not care for a particular proposed development.

My main point was that Councilors have to be very careful advocating for constituents in zoning matters when a particular project is specifically in the works and applications are pending. I mentioned the lawsuit involving the property where ABQ Uptown is now located which cost the City well over \$10 million because, Vickie Perea, I am told, the City Councilor for Uptown at the time, was able to get the Sector Plan amended, which had the effect, and perhaps the purpose, of blocking a specific development that the people in the area did not support. I am attaching the New Mexico Supreme Court Opinion which states that the City Council acts like a panel of judges, not a legislative body, when dealing with zoning issues affecting a certain parcel of property, especially when "down zoning" it over the objection of the property owner. The Supreme Court was clearly offended by how the Council got involved to use its zoning power to block a specific project. At paragraph 33, the Court said:

"Quasi-judicial zoning matters are not politics-as-usual as far as the municipal governing body is concerned. In such proceedings, the council does not sit as a mini-legislature, as it functions in most matters, but instead must act like a judicial body bound by 'ethical standards comparable to those that govern a court in performing the same function.'"

"Ethical standards" includes the prohibition on ex parte contacts, where judges are prohibited from talking with parties about the case outside of the courtroom. Similarly, if we sense a zoning issue is getting heated and could result in an appeal, the Councilors are normally advised by their attorneys to back off.

I also mentioned the procurement code issue to point out that procurement decisions have a narrower range of policy issues that can be addressed at the Council level, as the issue tends to focus on whether the procurement code was complied with rather than if the Council likes the over arching policy issues surrounding the contract.

I hope this clarifies matters. I understand that the developer and the neighborhood leaders are having discussions. I hope they go well.

Sincerely,

Don Harris