



Memorandum

Date: October 20, 2005

To: The Honorable Mayor and Members of the City Council

From: Dennis A. Barlow, City Attorney

Subject: Waiver of Confidentiality of Legal Opinion Regarding NBC Catalina Property

As the Council will recall, when it came to the attention of the City that NBC was anticipating selling the Catalina property, questions were raised both by members of the public as well as by Council members as to the extent, if any, of City control over such sale in light of the previously approved Development Agreement. As a result the Council authorized the retention of the law firm of Shute, Mihaly & Weinberger to look at a number of questions relative to this issue. The firm has now provided its opinion on this matter. Attached is a list of the 17 questions which were presented to the firm and a list of the documents provided to assist them in their review.

In matters such as this it should be expected that attorneys would differ in their opinions, however we are in agreement with nearly all of this document. The firm concludes that the purpose of a Development Agreement is to provide vested rights for NBC, and the City has very little power in regard to such transfers of property.

The new purchasers of the Catalina property, M. David Paul, have sent us an Estoppel Certificate concerning the Catalina Site. The Development Agreement requires staff to administratively issue an estoppel certificate once requested by a party to the Agreement. An Estoppel Certificate is a declaration, in this case signed by the City, which is used to verify the current status of an existing agreement for the benefit of a third party, in this case a lender, and that certain facts pertaining to the agreement are true. The Estoppel Certificate gives the lender an assurance that the agreement is in full force and effect, and that the new purchaser/old owner is not in default of any of the obligations under the agreement. This document is normally used by real estate professionals, owners of commercial or multi-residential property, or others knowledgeable in the real estate field. Once all the paperwork is in order, and pursuant to the opinion from outside counsel, the City has no legal reason not to assure the lender that the Development Agreement is in force and the parties are currently in compliance.

Correspondence from attorneys to their clients are normally confidential unless the confidentiality is waived by the client. Should the Council wish to make public this opinion by outside counsel, it must do so by majority vote.