

Doorack Update January 4, 2017

WHEN CITY COUNCIL AND MAYOR DECIDE TO OPEN ALL THE DOORACK RECORDS THEY REALLY MEANT "SORT OF OPEN SOME OF THE RECORDS."

The emails tell the story. After the City Council voted on November 7, 2016 4-4 with Mayor Bob Nation breaking the tie to release **all the records**, votes, minutes of secret Executive Session meetings, emails, correspondence, leases, lawyer opinions and bills I filed a Missouri Open Records Sunshine request.

The 315 pages of material did not include anything from 2016. This struck me as odd since there was a vote to release the records and I knew from conversations with elected officials the matter had been on secret Executive Session agendas in 2016.

So I filed a second Sunshine Request on 12/06 for records just dealing with Doorack in 2016.

I reported in Newsletter #257 on December 26, 2016 that i knew the city did not send me all the records from 2016, since I had some that were not provided by the Sunshine Request. We will let the emails now speak for themselves.

From: John Hoffmann [mailto:johnhoffmann@charter.net]
Sent: Wednesday, December 28, 2016 8:22 PM
To: 'Amanda Miller'
Cc: 'Vickie Hass'; 'Bob Nation'; 'Mike Geisel'
Subject: RE: SSL-836

12/28/16

Amanda since you offered at the end of your email, I'll take you up on that "let me know if there is anything else I can do for you."

The Missouri Open Records (Sunshine) Request I sent to the city on December 6 asked for anything including minutes, votes, correspondence and emails dealing with the Doorack property in 2016. I picked up what you said were the requested documents and paid for the city's time to compile them.

On November 7, 2016 at the start of the regular City Council meeting Mayor Nation announced a vote had been taken to release all documents, correspondence, votes in regular or Executive Session concerning the Doorack Property and the lease. He said there was a 4-4 vote and he broke the tie by voting yes for the release.

After the meeting City Clerk Vickie Hass verbally told me the vote by councilperson. However a written document including the vote per councilperson was not release or posted on the city's website. The same information of the vote was not included in the documents released to me after my fee payment.

On 11/23/16 an email was sent to all councilpersons concerning a new appraisal of the Doorack property by Robert Dodge giving a worth of the property at \$400,000. I know this occurred because it was shared with me by a recipient.

This was not included in the material you provided me after my December 6, 2016 Sunshine Request, despite a vote to release all Doorack records, votes, minutes and emails. You did send me an Executive Session vote in September of 2016 where a motion in Executive Session for a new appraisal on the Doorack Property was voted down. However you never sent me anything about a new appraisal that was completed in November.

This means any emails to and from Mr. Dodge and any contract with the city and Mr. Dodge and any vote by the council to hire Mr. Dodge, any price quote for his work, any report of his actual appraisal and any bill was not included with my Sunshine request of December 6, 2016.

There are at least two items missing from my request and there clearly could be many more. Could be please provide the additional material that I know about and any other material that would fall under my original request that was not provided.

John Hoffmann
13309 Manor Hill Rd
St. Louis, MO 63131

HERE ARE THE RESPONSES TO THE EMAIL:

From: Chris Graville [mailto:cbg@gravillelaw.com]
Sent: Friday, December 30, 2016 3:08 PM
To: John Hoffmann
Cc: Mike Geisel; Vickie Hass; Bob Nation
Subject: Follow up to sunshine request

Dear Mr. Hoffmann,

I have been asked by the City Administrator to look into your follow up request to your original sunshine request dated December 6, 2016. After reviewing what was previously provided to you it appears that you are correct that information that should have been provided was unintentionally omitted. The custodian of records for the city will be forwarding that information via electronic message, at no cost to you, as soon as it is available.

With regards to the appraisal that you have identified as being in your possession, that record cannot be released by the custodian of records at this time because the City Council has not authorized it to be released. This appraisal remains a closed record pursuant to 610.021(2) RSMo until its release is authorized by the City Council or the record is required to be released, as set forth in 610.021(2) RSMo.

Sincerely,

Christopher B. Graville
The Graville Law Firm, LLC

You would think that once they voted to release "all records connected with the Doorack Lease" that vote would include records in the future. But it did not. The City Council and staff of Chesterfield still is trying to hide information connected to the Doorack Scandal.

You might think it would be in their best interest to be as open as possible to try and win back some public trust.

From: Vickie Hass [mailto:VHass@chesterfield.mo.us]
Sent: Friday, December 30, 2016 4:40 PM
To: John Hoffmann
Subject: RE: Follow up to sunshine request

Mr. Hoffmann,

I have attached the following items in response to your follow up request to your original sunshine request dated December 6, 2016:

Contract for Appraisal Services
Property Boundary Survey
Property Description
9/19/16 Executive Session Minutes (redacted)
10/19/16 Executive Session Minutes (redacted)
11/7/16 Executive Session Minutes (redacted)

Vickie Hass
City Clerk
690 Chesterfield Pkwy W
Chesterfield, MO 63017-0760

I also have to wonder how the City staff missed six records when researching my original request.

Here are the minutes of the September 19, 2016 Secret Executive Session of the Chesterfield City Council concerning the Doorack Property, In this document current City Attorney Chris Graville admits that former city attorney Rob Heggie mislead the City Council with bad legal advice.

City of Chesterfield
MINUTES – Executive Session (closed meeting)

Monday, September 19, 2016

A motion was made by Councilmember Flachsbart, seconded by Councilmember Nations, to go into EXECUTIVE SESSION (closed meeting), as provided by RSMO 610.021 (1) for the purpose of discussing legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys and RSMO 610.021 (2) for the purpose of discussing the lease, purchase or sale of real estate between the City's representatives and its attorneys. A roll call vote was taken, with the following results: AYES – DeGroot, Flachsbart, Nations, DeCampi, Hurt, McGuinness and Tilman. NAYS – None. Mayor Nation declared the motion passed unanimously. The meeting was called to order by Mayor Bob Nation at 6:02 p.m. Also in attendance were Interim City Attorney Chris Graville and City Administrator Mike Geisel.

Councilmember Logan was absent.

Doorack Lease Mr. Graville reminded Council that on March 17, 2009 the City approved the assignment of Chesterfield Valley, Inc.'s ("CVI") interest in a ten year lease for the Doorack Brickyard Property (the "Property") at a rate of \$6,500 per month, with a purchase option of one million dollars. The option to purchase vested in 2016 and is available through the end of the term of the lease in 2019. The question posed to Mr. Graville was whether the City has any options to "get out of" the lease. This question has been asked previously and prior legal counsel had provided the City with multiple legal opinions regarding its 3 options. Mr. Graville stated that he has gathered and reviewed all available records (City records, prior legal counsel records and public records) related to the City's lease and sublease of the Property, and put the information into binders for Council to review. Mr. Graville continued by stating that a good deal of this information should be public record, but has not been treated as such to this point, and some of the information is confidential communication between the former City Attorney and City staff. Council needs to review this material and determine whether to compile the public information and release it or wait for a request under the Sunshine Law. Council will also need to vote under Resolution No. 303 whether or not to release the confidential information to the public. In order to avoid the potential of this confidential information getting out prior to a vote, Mr. Graville requested the binders be kept in the City Clerk's office and members of Council review the information on-site at City Hall.

The primary question posed to Mr. Graville and prior legal counsel was whether the ten year obligation for rent payments by the City violates the Missouri Constitution. Because of the representations made by the City and the language of Section seven of the Agreement for the Assignment and Assumption of Lease, the City's obligations are legally enforceable. Essentially, Article VI, sections 26(a)-26(f) of the Missouri Constitution sets forth limitations of a government entity incurring debt in relation to its annual revenue. The City can incur debt beyond the City's annual revenue if it has sufficient reserve funds to cover the entire cost of the lease. The sublease between the

City and CVI clearly represents that the City has sufficient revenues and reserves to cover all of the lease payments.

Mr. Graville summarized a communication between the City's prior legal counsel and the attorney for the Doorack's, prior to negotiating the lease and sublease. When the attorney for the Doorack's expressed uncertainty as to how the lease could be binding if annual budget appropriations were not made, the City's prior legal counsel directed the attorney for the Doorack's to the Missouri Supreme Court case in which the Court stated that the total obligation of multi-year indebtedness is measured against a government entity's annual revenues and reserve funds. The City's prior legal counsel stated in an email to the attorney for the Doorack's: "Multi-year contracts are allowed if the City has enough fund reserves to cover all of the lease payments. Chesterfield has sufficient reserves and can certify that if needed."

Mr. Graville indicated that the City's prior legal counsel had provided the City with multiple legal opinions regarding its options in getting out of the lease; but at no point in time was there a direct reference that the City Attorney instructed the attorney for the Doorack's on how to make the lease binding over a ten year period.

Mr. Graville referred to a letter regarding the lease for the Property, dated March 11, 2009. This letter was sent to Council by former City Attorney Rob Heggie as directed by former City Administrator Mike Herring. Mr. Graville stated there were two items of concern in this letter and informed the Mayor and Council that, although the letter indicates an appraisal was commissioned for the purchase of the Property, Mr. Tom 4 McReynolds, the appraiser referred to in the letter, has confirmed that neither he nor anyone in his office performed an appraisal of the Property. The second item of concern is that Mr. Heggie also states in this letter: ". . . the City may, at any time, cancel the assignment of the lease and all rights therein by indicating its intention to Sachs that it wants to end the lease . . .". Mr. Graville stated that this letter was presented to Council, and if Council based their decision on the information contained therein, it becomes a question of whether Council got sound legal advice in signing the lease[Recess to attend regularly scheduled City Council meeting. Executive Session re-convened at 7:42 p.m. Councilmember Flachsbart left during the recess.]

Mr. Graville informed Council that the City can attempt to restart negotiations of a buyout of the lease with CVI and the Doorack's. Council should also consider a vote, in open session, on whether or not they desire to exercise their purchase option. Section four of the Agreement for Assignment and Assumption of Lease allows the City to notify CVI as to its desire to exercise the now available option to purchase the Property. In the event that the City declines the purchase option, the City is required to give CVI notice which allows them to assume back the lease. Although CVI is not obligated to accept the

reassignment of the lease, this action will at least give CVI the legal option to assume the lease.

Extensive discussion ensued regarding the potential value of the Property. Mr. Geisel suggested, in the absence of a clear understanding of the Property's value, if Council has any interest in purchasing the Property, he would recommend having a professional appraisal performed right away, stating that the appraisal process would take approximately 60 days to complete.

Councilmember DeGroot made a motion, seconded by Councilmember Nations, to approve up to \$5,000 for appraisal of the Property. A roll call vote was taken with the following results: Ayes – Nations. Nays – McGuinness, DeGroot, DeCampi, Tilman and Hurt. Mayor Nation declared the motion failed.

There being no further business to discuss, the meeting was adjourned by Mayor Nation at 9:02 p.m.

Respectfully submitted:
Mike Geisel Vickie Hass
City Administrator City Clerk

The next closed secret Executive Session dealing with the Doorack Property was on October 5. We received no minutes from that meeting. Despite the November 7th vote to release all Doorack documents that one remains hidden. The next minutes we received were from October 19, 2106.

City of Chesterfield
MINUTES – Executive Session (closed meeting)
Wednesday, October 19, 2016

A motion was made by Councilmember Logan, seconded by Councilmember Flachsbart, to go into Executive Session (closed meeting), as provided by RSMO 610.021 (1) for the purpose of discussing legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys and RSMO 610.021 (2) for the purpose of discussing the lease, purchase or sale of real estate between the City's representatives and its attorneys. A roll call vote was taken, with the following results: Ayes – DeGroot, McGuinness, Nations, Logan, Flachsbart, Hurt, Tilman and DeCampi. Nays – None. Mayor Nation declared the motion passed unanimously. The meeting was called to order by Mayor Bob Nation at 6:10 p.m. Also in attendance were Interim City Attorney Chris Graville and City Administrator Mike Geisel.

Doorack Lease

Mr. Graville stated that this is a continuation of discussion held at the October 5 Executive Session. He suggested two possible options in moving toward a decision: consider re-negotiating with the Doorack's regarding purchasing the property at a reduced rate, or vote not to exercise the purchase option under the lease. Mr. Graville stated that an appraisal would require a minimum of 60 days to complete, and if purchase is a potential option, it may be a good idea to get an appraisal now so Council has a realistic awareness of its options. Mr. Geisel suggested, if Council should consider the purchase option, the owners might consider an early purchase and the potential for tax benefits associated with the sale of the property as being beneficial. When Doorack sells the property and realizes gains, a tax offset may be worth something to them. Discussion ensued regarding possible options. 3 Councilmember Flachsbart made a motion, seconded by Councilmember Nations, to authorize the transfer of General Fund – Fund Reserves up to \$4,000 for an appraisal. A roll call vote was taken with the following results: Ayes – DeGroot, Nations, Logan and Flachsbart. Nays – McGuinness, Tilman, DeCampi and Hurt. Mayor Nation voted “Aye” to break the tie and declare the motion passed.

There being no further business to discuss, the meeting was adjourned by Mayor Nation at 7:01 p.m.

Respectfully submitted:

Mike Geisel Vickie Hass
City Administrator City Clerk
APPROVED BY

City of Chesterfield

MINUTES – Executive Session (closed meeting)

Monday, November 7, 2016

A motion was made by Councilmember Logan, seconded by Councilmember Nations, to go into Executive Session (closed meeting), as provided by RSMO 610.021 (1) for the purpose of discussing legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys and RSMO 610.021 (2) for the purpose of discussing the lease, purchase or sale of real estate between the City's representatives and its attorneys. A roll call vote was taken, with the following results: Ayes – Tilman, Nations, Logan, DeGroot, DeCampi, Flachsbart, McGuinness and Hurt. Nays – None. Mayor Nation declared the motion passed unanimously.

The meeting was called to order by Mayor Bob Nation at 6:25 p.m. Also in attendance were City Administrator Mike Geisel and Interim City Attorney Chris Graville.

Doorack Lease – Release of Information

Interim City Attorney Chris Graville reminded Council that they had previously voted to release all legally mandated materials related to the Doorack lease, and those documents have since been made available to the public. He continued by stating that there is another volume of materials related to the Doorack lease that the City is not obligated to release to the public; however, Council has the option to release these documents, if they choose to do so.

Councilmember McGuinness made a motion, seconded by Councilmember DeCampi, to release all Doorack information to the public.

Some members of the Council stated that they would be supportive of releasing the information, but would prefer to wait until a decision is made regarding potential purchase of the property. Of specific concern were the prior appraisal and documents referencing the appraisal. The impact of the appraisal on any future negotiations was discussed. There was also concern expressed about releasing any privileged communications between the City and its legal counsel. Councilmember DeGroot expressed that an attorney's ability to communicate with the City would be impacted if the attorney had a belief that such communications were expected to be released publicly. Discussion ensued pertaining to "transparency" and "moving forward" versus the potential negative impact that releasing this information could have on the City's ability to potentially negotiate a reduced purchase price for the property. 2 Councilmember Flachsbart made a motion, seconded by Councilmember Nations, to call the question and vote on the motion. A roll call vote was taken with the following results: Ayes – Flachsbart, Hurt, Tilman, Nations, McGuinness, Logan and DeCampi. Nays – DeGroot. Mayor Nation declared the motion to call the question passed.

A roll call vote was taken on the motion to release all Doorack information to the public with the following results: Ayes – DeCampi, Hurt, Tilman and McGuinness. Nays – Nations, DeGroot, Logan and Flachsbart. Mayor Nation voted "Aye" to break the tie and declared the motion passed.

There being no further business to discuss, the meeting was adjourned by Mayor Nation at 6:57 p.m.

Respectfully submitted:

Mike Geisel Vickie Hass
City Administrator City Clerk

The motion was to "Release ALL Doorack information to the public." The City Council seems to be reluctant to abide by its own vote.