

**BOOK 26**  
**January 29, 2025**

**BURLINGTON CITY COUNCIL SPECIAL SESSION 1-8-2025**

City of Burlington Governing Body met in Special Session at City Hall’s address, 1013 N. 4<sup>th</sup> Street, Burlington, Kansas, at 4:00 p.m. Wednesday, January 29, 2025. Mayor Luke called the meeting to order.

**THE PLEDGE OF ALLEGIANCE**

**ROLL CALL:**  Stan Luke, Mayor

Council Members present:

|                                                                            |                                          |                                                  |
|----------------------------------------------------------------------------|------------------------------------------|--------------------------------------------------|
| <input checked="" type="checkbox"/> Jerilyn Curtiss (President of Council) | <input type="checkbox"/> Maxi Berryman   | <input checked="" type="checkbox"/> Cara Mays    |
| <input checked="" type="checkbox"/> Lila Van Horn                          | <input type="checkbox"/> Nathan Strawder | <input checked="" type="checkbox"/> Martin Ernst |

Superintendents Present:

|                                                       |                                                           |                                                 |
|-------------------------------------------------------|-----------------------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Kevin Boyce (Parks)          | <input type="checkbox"/> Alan Schneider (Electric)        | <input type="checkbox"/> Mark Davidson (Street) |
| <input type="checkbox"/> Doug Jones (Chief of Police) | <input type="checkbox"/> Danny Hawkins (Water/Wastewater) |                                                 |

Also Present:

|                                                             |                                                                         |
|-------------------------------------------------------------|-------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> Anne Brown (City Clerk) | <input type="checkbox"/> Mary Mader (Executive Admin. Assistant)        |
| <input type="checkbox"/> Philip Wright (City Attorney)      | <input checked="" type="checkbox"/> Jimmy Hugunin (Zoning/Grants Clerk) |
| <input type="checkbox"/> Kerri Weltha (Deputy City Clerk)   |                                                                         |

**Media Present:**

**VISITORS:** Paul Abendroth, Mike Abendroth

**Developer’s Agreement**

Mayor Luke, “Today’s special meeting is for the discussion of the developer’s agreement. Hopefully, we are getting close to the last of these special meetings. You have before you a draft agreement that our legal counsel has put together after discussions with respect to what we have had in the rest of our meetings and a verification with council members. At this time what I would like to do is, Nathan is absent, and we have received an email from him and I would like to have it read into the record. Anne.”

City Clerk Brown read Council Member Strawder’s email. It is as follows:

‘It is my understanding from the last council meeting discussion the agreement that in general everyone was in agreement with the revisions presented at that time. The only remaining step was a final review by the attorney to verify its legality. Why is the agreement now being revised beyond what was discussed during the meeting? These discussions should be held in public forum and not conducted on an individual basis in a private setting such as a phone call.’ And below are his comments. ‘So, recital in section 1.3, these changes seem to redefine the scope of development covered under this agreement. During prior council meetings, the agreement was intended to encompass various types of developments rather than being restricted to a single type. This shift appears to contradict previous discussions. Does this imply that separate agreements will now be required for other types of developments such as commercial or mixed-use projects? Or does this type of developments not require a developer’s agreement? It is important to note that a developer’s agreement, as referred to here, pertains solely to infrastructure and stormwater, water, sewer, etc., which remains consistent regardless of the development type. Could you clarify the reasons behind this change? Section 1.5, I believe that remains the explicit definition of public financing could result in ambiguity regarding what constitutes public financing. Current city ordinance allows for merchants like special assessments, TIF districts, and similar methods. However, past council meetings have highlighted confusion about whether these types of funding fall under the umbrella of public financing. Additionally, the existing definitions specifically references programs offered by the city. Could this lead to further confusion if funding, grants, or programs, are provided by the county or other public entities? Wouldn’t ensuring clarity on these points help prevent misinterpretation in the future? Section 2.6, I believe there are several issues with the proposed changes. This type of requirement does not align with standard inspection practices for privately financed projects and could potentially increase cost for developers by a significant amount. Development projects typically involve various types of inspections, including

**BOOK 26**  
**January 29, 2025**

construction, observation, soil testing, pipe alignment, pressure testing, pavement inspections, final acceptance, and warranting inspections to name a few. Many of these inspections are mandated by jurisdictions beyond the city, county, state, and federal with specific requirements on timing and who can perform them. As written and proposed changes would require a developer to hire a third-party inspector responsibility for all inspections. Additionally, it grants the city the authority to mandate additional work or inspections beyond what is typically required or specified by current specifications. From my experience, when a governing body seeks additional oversight on a project essentially acting on behalf of the city, the associated costs are usually covered by the city or shared with the developer through the cost-share agreement. As written, I believe this requirement would discourage privately financed development within the city. Section 2.7, at the last council meeting it was discussed and agreed that the warranty period should be two years following final acceptance. Section 2.8 completion and performance guarantee should only be required for a portion of the funding utilizing public financing. It should not be applicable to private financed portions or fully privately financed developments including this will all but completely eliminate the possibility of privately financed development in the city just as the agreement has.

‘Section 4.1 at the last council meeting it was discussed and agreed that the construction of the public improvements should be commenced within one year following approval of final engineering plan by the city. Section 4.2 at the last council meeting it was discussed and agreed that the construction of the public improvements should be completed within two years of the commencement of construction unless an extension is granted by the city. Section 4.3 it is standard practice and often required by jurisdictions beyond the city, county, state, federal, for the design engineer to provide a letter of acceptance and submit to the appropriate jurisdiction. Once all necessary documentation, test results, letters, etc. has been provided the city conducts a final inspection and grants final approval, and are such revisions necessary or warranted the final review is in essence a final inspection. Section 6.2 at the last council meeting all council members discussed and agreed that this section is not only welcome but ensured that the city is required to act in good faith. Without this section, the agreement becomes one-sided and fails to outline any possible actions a developer can take if the city does not uphold its obligations removing this requirement would likely discourage privately financed developers within the city.’

Mayor Luke, “Let the record show that is the complete and whole email received from Nathan. You have before you the draft that Nathan was referring to with the different sections. My question is to you, are there comments and concerns or agreements or whatever you wish to say with respect to the proposed agreement and the comments?”

Council Member Ernst, “I agree with him as far as some of the time frames and stuff.” Mayor Luke, “Well we discussed it, let’s put it that way, because we cannot make final commitments except in the council meeting. Now we can end up using those timelines, that’s not a problem, it’s just that it was not voted on and approved, it was discussed.” Council Member Ernst, “Okay.” Council Member Curtiss, “But sections 2.7, 4.1, and 4.2 are all things that we discussed and you know.” Mayor Luke, “Mutually agreed upon.” Council Member Mays, “I’ll go with my notes, just I compared--. So, I hadn’t really read through Nathan’s. I do agree on the 1.3, the development of residential, like I thought we had also talked about only having this one as an initial one, that’s why we were including it as residential and commercial.” Council Member Curtiss, “Okay, what’s mixed-use? What does that mean?” Council Member Ernst, “Would it be like an apartment complex?” Mike Abendroth, “It’s where you combined different zoning sectors, we can have residential, commercial, or industrial.” Mayor Luke, “All in the same parcel.”

Council Member Curtiss, “Okay, at the meeting before we asked would this also apply to publicly. I remember asking that and I never really got an answer.” Mayor Luke, “To publicly financed?” Council Member Curtiss, “Yes.” Mayor Luke, “It would be the same description.” Council Member Curtiss, “Okay, but at one time Nathan said something about a template or something and you could change it. Is that what he’s...?” Mayor Luke, “Yeah, what he did in his--.” Council Member Curtiss, “Because he never answered my question.” Mayor Luke, “He was looking at making this a one document fits all. So that you could take

**BOOK 26**  
**January 29, 2025**

and take it from a privately to a publicly to a residential to a commercial to an industrial and just by so to speak crossing out the ones that didn't apply. Instead, this is now just as presented now is just for residential, private, financed. Yes. Because my question is, what is the definition of a commercial subdivision?" Mike Abendroth, "You should have that definition in Jimmy's book." Mayor Luke, "Yeah, I know. And it's not the same definition. It isn't the same as a residential. We have an industrial park that's not been utilized, but we have an industrial park that's platted and ready to go as far as that's concerned. I don't know where we will ever have a legitimate commercial subdivision. Residential, yes. Commercial, I'm not sure. Commercial's not going to want to be--." Council Member Mays, "And we may not, but I just think I thought we were just having the one document to start with and then we were going to...." Mayor Luke, "And go from there." Council Member Mays, "I don't remember ever talking about just making it residential. I didn't have it in my notes, so that was mine. I don't remember wanting to take that out. So that one. I agree with him on the date ones. The 2.8, so we put in this, a finance part, and I thought the whole reason we were so hung up on this was taking that out. So why are we now putting back requiring a percentage? I didn't have that one."

Mayor Luke, "This was where we were discussing a, at the time he called it a maintenance agreement, where if there's something happens to what has been installed over the completion of the project if something is damaged, that would be the obligation and responsibility of the developer to restore any damaged infrastructure back to the original." Council Member Mays, "I mean I understand that. I don't remember ever talking about requiring a percentage down and I think when we ask them to say you know that if they failed to perform an obligation or do anything we're going to hold them accountable so why are we now--?" City Clerk Brown, "That's where the bond comes into, I think this is just giving them options of which way to go." Mayor Luke, "Because there's different costs associated with all of those. And some may be easier, I don't know, to obtain than others, I don't know." Council Member Mays, "I just thought that was the whole hang-up so now we're going to require them to put a percentage of the estimated cost down beforehand?"

Council Member Van Horn, "Well it's a choice, 1, 2, or 3." Council Member Mays, "Well yeah I know." City Clerk Brown, "And it says 'or' after the end of them so it's not that we're requiring a percentage down it's one or two or three, their choice." Council Member Mays, "I will say I agree with Nathan there was like a lot of in here that I don't remember like the third-party inspector that was never mentioned so why--? I will agree with Nathan on that and I will say I'm sorry because I did not read his email beforehand but I went through what Philip had sent me and it does seem like we I thought we talked about what we were going to do and then all of a sudden Philips putting a lot of-- where's the third-party inspector coming from? I didn't have that beforehand but I agree with it." Council Member Curtiss, "The third-party inspector you agree with?" Council Member Mays, "No, I don't think we should." City Clerk Brown, "Mike Skillman is the one that had brought that up when he was talking at one point in the last one." Council Member Mays, "He had said that most developers have an inspector and not necessarily...." City Clerk Brown, "Yeah but he commented that it was usually a third party." Council Member Van Horn, "Well the first time he came and talked to us he did say that." City Clerk Brown, "Is that when it was, the first one?" Council Member Van Horn, "Yes." City Clerk Brown, "Okay." Council Member Mays, "Normally it would be like the engineering firm that did the design. Which to me is not a much...to me is what we have beforehand." Mayor Luke, "Well he may have worded as a third party--." Council Member Mays, "It just had that developer agrees to inspect and test all of it because now what Nathan is saying he's seen if we're getting a third-party inspector is the city going--. Are we going to have to be responsible for something?" Mayor Luke, "Not if there's a third party or--."

Council Member Mays, "Well, he says from my experience acting on behalf of the city associated costs which are usually covered by the city or shared with the developer. Whereas before it just sounds like the developer is responsible for this." City Clerk Brown, "That's the way it should be." Council Member Curtiss, "I question a lot of that addition on that one." Council Member Mays, "Because before it said developer agrees to inspect and test all public improvements during construction, any deficiency identified

**BOOK 26**  
**January 29, 2025**

by the city must be corrected by the developer at the developer's expense.” Council Member Curtiss, “Right.” Mayor Luke, “Okay, and who is this inspector that's going to do it for the developer.” Council Member Mays, “I mean the way I understood it was it's who that developer gets. That's usually the engineer that's on there.” Mayor Luke, “Yeah.”

Council Member Ernst, “And that would be a third-party though.” Council Member Mays, “Right.” Council Member Van Horn, “That would be a third-party inspector because it's not the developer that's doing the inspecting.” Council Member Ernst, “Right.” Mayor Luke, “It's not the developer and it's not the city but it's an individual organization or company.” Council Member Curtiss, “Okay it says it has to be a-. Okay, the developer selection of the third-party inspector must be approved by the city.” Council Member Van Horn, “In other words they can't just call the brother.” Council Member Curtiss, “Right.” Council Member Mays, “Right.” Council Member Curtiss, “In addition the developer shall allow access to the project by city employees at all times for inspection and we talked about that. Third-party inspector should report to the city is required to address any proficiency we talked about that, right?”

Mayor Luke, “Yeah.” Council Member Curtiss, “Must be corrected by the developer at the developer's expense. So why--? Okay, all of that is things we talked about.” City Clerk Brown, “Correct.” Council Member Curtiss, “In our meeting. So now what did Nathan say?” Council Member Ernst, “I don't understand his part where he says from my experience when a governing body seeks additional oversight of a project essentially acting on behalf of the city the associated costs are usually covered by the city or shared with the developer through a cost share agreement. I mean I don't...” Mayor Luke, “I haven't figured out what additional--.” Council Member Ernst, “I don't understand what he is--.” Council Member Curtiss, “Well, I questioned, I just have that last sentence in that paragraph at the top additionally it grants the city the authority to mandate additional work or inspections beyond what is typically required or specified by the current specifications. Well, if the inspector person or the inspector says that it needs to be corrected, then it needs to be corrected. I don't understand what Nathan is saying in all of that. Because a developer would not want something that's not--.” Council Member Mays, “Yeah.” City Clerk Brown, “Correct.” Council Member Curtiss, “Yeah.” Mayor Luke, “Yeah, because that puts them at risk.”

Council Member Curtiss, “Right, so that I did not understand. So, I don't have that much of a problem now with 2.6 putting that additional in there. I don't think it's to the detriment of the builder nor to the detriment of the city. I think it just better explains it maybe.” Council Member Mays, “Okay, yeah, I'm good with that. And then my last one would be my other one was taking out 6.2. I did have in my notes that I thought we were leaving that in if we were going to ask the developer to hold them to standard and expectations, we should do the same as the city. I did have that one in there.” Mayor Luke, “Okay. The key issue on that is in 1970 the state legislature established the Tort Claims Act which identifies what a city can be sued for and what they cannot be sued for and it establishes all the rules and regulations associated with that particular piece of, I'll use, suability for non-performance because there are certain things that the state statute allows and there's certain things that they don't and if you include any other claims capabilities then you have altered the state legislation on the Kansas Tort Act which is inadmissible and governmental immunity and the re-establishment of suitable capabilities. So, I look at it only on a basis of that it would go against a portion of the state's legislated Tort Claims Act if we put in anything in there on default because that Claims Act gives anybody and everybody a full description and definition of what it is that's there.”

Council Member Curtiss, “So 6.2, default by the city, is already in state statute?” Mayor Luke, “Yes, the Tort Claims Act of 1979 because it's the enactment of the Kansas Tort Claims Act. KTCA in 1979 ended more than a decade of sparring between the judicial and legislative branches of state government or the issue of governmental immunity. Supreme Court rendered five decisions between 69 and 79 on the issue of governmental immunity, four of which the governmental either partially or completely, and several of these court opinions have countered or negated by legislative action reestablishing government immunity either for the state or for municipalities.” Council Member Curtiss, “Is there anything that is in the state statute about default, default by a developer?” Mayor Luke, “There's all kinds of things about everything because it goes all the way into caps on damages at the scope of liability, city employees, state employees,

**BOOK 26**  
**January 29, 2025**

all the townships, elected officials, non-elected officials, health providers, and the different ways that they can be. And that does not say, if you want to use a word, it doesn't say specifically for default of this or default of that, it will be determined by the Supreme Court as to whether the city is at fault." Council Member Curtiss, "But I said default of the developer." Mayor Luke, "There's nothing on the developer in there. It's what others can go against municipalities in the state." Council Member Curtiss, "Okay, so there's nothing that says anything as far as--."

City Clerk Brown, "I think that's covered in that, where it's talking about the coverage, the percentage if there's something lacking, that's what these are put up for, to give some options to be able to go back. If you read, let's see, like the performance bond issued by surety approved by the city in an amount equal to estimated principal cost of the project covering all requirements improvements installed by the developers required by the final plat to completion. So that's just kind of covering to make sure and get everything gets done. So, I think that's where that comes into play. Am I correct?" Council Member Curtiss, "So then why do we have to have this other one in here?" City Clerk Brown, "For the city? Which one?" Council Member Curtiss, "The one by the developer." Council Member Ernst, "The 6.1." Council Member Curtiss, "Yeah. If it's covered by 2.8. I mean, I don't understand the difference between the two. But of course, you know I don't understand a lot about any of this. I want this to be something that's going to be accepted by the city and by the developer. And I don't know where we're at. I really don't right now."

Mayor Luke, "Well, I don't think anybody's going to know until we get it into final form because right now--." Council Member Mays, "I thought we were close. I thought that's what we were supposed to be doing and no offense. I'm like that's what we're supposed to be doing. Now we have this huge email from Nathan that's questioning a whole bunch of things. We get it a day before I mean like we're supposed to agree on it." Mayor Luke, "He just submitted it last night." Council Member Mays, "No, I'm saying Nathan and Philip, I mean we get this a day before and we're supposed to all like all of a sudden look through it again and say I thought we were towards the end. Again, I feel like Philip has changed things. I think Nathan's bringing up more things that weren't--, and I feel like if we question anything you already have your answers to the things that we're looking at and questioning them. So, I feel like we're just--, we're not getting anywhere. I don't know what more I can say. I thought we were supposed to be pretty final form for council to get to but we're obviously not."

Mayor Luke, "Well, I don't have all the answers I just--." Council Member Mays, "Okay, well, I mean like this tort agreement was never brought up. Why would that have--? Where was that when we questioned that wasn't brought up." Mayor Luke, "The city stuff wasn't in there until the last copy of the--." Council Member Mays, "That's been in the original the first one that Nathan ever got." City Clerk Brown, "Can we go through this and say what we agree on and what we don't agree on at least do that?" Mayor Luke, "Well, first off you indicated that we needed to do it for commercial as well as--." Council Member Mays, "Those are just my notes that I thought we had talked about. I'm just bringing up what I had in mind so maybe--. I'm glad going down through there." Council Member Curtiss, "Commercial and mixed-use whatever that is?" Mayor Luke, "Well mixed-use is a combination of let's say it would be a shopping mall with an apartment building on the same parcel." City Clerk Brown, "I don't know if you can do that. I don't think you can spot zone. I'm going to get Jimmy in here on that."

Council Member Ernst, "I think the ones that Nathan had talked about the public and the private financing." Council Member Mays, "Right." Mayor Luke, "Yeah." Council Member Ernst, "And I think that that was supposed to encompass all of like the commercial, the mixed-use, and such because more of that looks like the bigger projects let's say 50-million-dollar project, that would be more like a public, could possibly, be public financed. I believe that what we have here is just for private financing, is that correct?" Mayor Luke, "This document of Philip, yes. It's just for residential." Council Member Mays, "But I think residential versus private funding is different, is it not?" Mayor Luke, "Well residential can be either publicly funded or privately funded." Council Member Ernst, "So it is for both?" Mayor Luke, "This one is just for our specific project now, a residential privately--." Council Member Mays, "I don't want to do that. I thought we were getting something--." Council Member Curtiss, "This is just for privately funded."

**BOOK 26**  
**January 29, 2025**

Mayor Luke, "Privately funded." Council Member Mays, "Correct." Council Member Curtiss, "And I thought like you did that we were having one that was both, that could be used for both, or I maybe did not understand correctly when he was saying that." Mayor Luke, "Well, if you have a template then you would be able to go in and say alright this and change stuff on the template and say now it's a public, now it's a private."

Zoning Clerk Hugunin, "Essentially, you're going to have kind of the same thing but if somebody comes in and they're doing a commercial development of some sort which we don't do a lot of commercial developments. I mean if somebody's going to do a commercial thing it's going to be what you might slot down there where one stop was, that's not going to need a developer's agreement because that's already a developed property." Council Member Curtiss, "It's not?" Zoning Clerk Hugunin, "It's already developed." Council Member Curtiss, "Okay." Council Member Mays, "But I thought we were getting this so in five years and somebody wants to put in the commercial I'm not doing this again." Zoning Clerk Hugunin, "But essentially all-- I can't see a reason we'd ever be doing a commercial developer's agreement." Council Member Curtiss, "What's a mixed-use?" Zoning Clerk Hugunin, "Mixed-use? Let me -- I have been gone." Mayor Luke, "That's all it says is a mixed-use." Council member Curtiss, "It just says mixed-use. It's right here." Zoning Clerk Hugunin, "Well we don't have anything-- we do and that would be 75 HWY, that is a mixed-use because that is zoned and I don't know how you want to look at it but it's a zoned commercial residential. So, which means somebody tears the house down, just like they did, they put a pizza hut there. Pizza Hut closes down, it sits there empty forever, somebody could put a house there. So, we can't devalue the use of that property but there's not any other mixed use around here. Basically, if somebody wants to do something, they're going to have to buy the property and have it rezoned. So, but I can't see anything that we would have that, and I may be wrong, I can't see anything we would have here in the future, that would be a commercial or industrial use. They would just be rezoned. Because if somebody comes in here, they buy a plot of ground--."

Mike Abendroth, "And then your notification and your--" Zoning Clerk Hugunin, "Yeah, they're not going to subdivide the property. That makes sense? Like the housing authority was talking about that corner out there by the Christian Church. If they bought that it's no different than these apartments over here. They didn't break up a lot, they bought a parcel and put their buildings on it. So that doesn't need to be subdivided. It doesn't need a developer's agreement. So, is that making sense? And it'd be the same way out there with Rhonda if she was going to put in apartments. She's not saying I'm going to put an apartment over here a lot two and another one on lot three and we're going to subdivide it. She wasn't going to subdivide it. It's just going to be that five-acre track." Mike Abendroth, "Well, and we turned that into a special housing district to the county level because she came to us to request a special housing district permit in there. So, she can do whatever she wants out there on that little corner."

Council Member Curtiss, "Okay." Council Member Mays, "But I'm just saying the development of a residential housing subdivision on the property described in exhibit A. Why not just say the development of a commercial or a resident? Why not cover both in the document? Why only say residential?" Zoning Clerk Hugunin, "Well, I'm having trouble trying to figure out what a commercial development would be." Mike Abendroth, "Shopping mall?" Zoning Clerk Hugunin, "But they're allowed by our zoning regs as long as it's commercial property. Anything commercial is going to be in a commercially zoned property." Council Member Mays, "Okay." Zoning Clerk Hugunin, "And if it's not commercially zoned, they're going to come through and do the process to get rezoned. And that's only going to happen because you can't spot zone, we can't go over by the school and say, hey, we're going to make commercial property over here. It doesn't work that way. That's called spot zoning and that's illegal. There has to be another commercial property adjacent to it or abutting it."

Council Member Mays, "So then let's say Mike comes in and he wants to buy something and he's going to have to get it rezoned before we even attempt to do a developer's agreement with him if he wanted to put something commercial." Zoning Clerk Hugunin, "Right." Council Member Mays, "Right. So then this

**BOOK 26**  
**January 29, 2025**

wouldn't apply. Okay. Got it. Perfect. Got it. Okay. That was explained much better." Zoning Clerk Hugunin, "The way to look at this is when you're talking a subdivision or you're, I mean, a housing development, anything, you're looking at somebody like Mike, he's going to go in there and he's going to divide these up into lots. They are going to have to have the plat, everything. That's, I think, what this needs to be for." Mike Abendroth, "Which you guys have seen, I've submitted to you." Zoning Clerk Hugunin, "Yeah, that's what this is going to be for. This isn't going to be for somebody who wanted to put a gas station in." Council Member Mays, "Right." Zoning Clerk Hugunin, "Because, I mean, if they come to me and they say, we're going to put a gas station right here, I'm going to tell them, no, it's not zoned for it. You can't do it." Council Member Mays, "Perfect, okay."

Council Member Curtiss, "So then we--." Zoning Clerk Hugunin, "And we don't have a lot of mixed-use either. I don't know what the mixed-use would be because it can't, unless it's down 75, that's the only thing. And you can't go over here and put in a house and then say, yeah, we're going to put a little grocery store here or something. That's mixed-use, and we don't do a lot of that." City Clerk Brown, "And you can't do it on the same piece of property either, right?" Zoning Clerk Hugunin, "Right." Council Member Curtiss, "So we're okay with taking out commercial and mixed-use, correct?" Council Member Mays, "Yes." Council Member Curtiss, "So the way we have it here--." Mayor Luke, "Is residential." Council Member Curtiss, "It's residential. So that, we're okay with that." Zoning Clerk Hugunin, "And if something does pop up and they need it, then we've got this form. And we can change things and talk about it as far as the commercial development. But, I mean, like Forte, you know, what was that? Andrews or whatever it was when they first built. That didn't need a development agreement because that was already a plotted piece of ground. It was a section, not broken into lots, it was just a parcel. So that didn't have to be developed."

Mayor Luke, "Same way with Walmart." Zoning Clerk Hugunin, "Yeah, Walmart, well, yeah, it was already zoned for it. I mean, it was lots, but they bought the lots and put it in. But that was already developed." Mayor Luke, "Yeah, and it didn't require any developers' agreement." Zoning Clerk Hugunin, "Right, because when we're talking development, we're talking--." Mayor Luke, "Start from scratch." Council Member Curtiss, "Infrastructure." Zoning Clerk Hugunin, "On our end, it's infrastructure. We don't care how many houses he's putting out there. We don't need a final cost on how much each house is. We're just looking at water, sewer, electric, streets, and stormwater, stuff like that." Council Member Curtiss, "Okay." Council Member Mays, "And I think I remember though when the hotel people were coming in and talking, we had asked if would we need a developer's agreement on that." Zoning Clerk Hugunin, "And it depends on how that ground is, how they were going to break it up. That's what I told them. If he's already going to have, well I'm just going to survey off a lot right here. He can do a lot split so many times and he's fine. I mean people do it all the time like where I bought my house, those were lot splits. We didn't have to do an agreement. So yeah. So, like the hotel out there, no that wouldn't have needed one." Council Member Mays, "Perfect." Zoning Clerk Hugunin, "Unless he was going to do something where he was going to put a bunch of things in, but if he breaks a piece of ground off and says that's what it is."

Council Member Mays, "Got it. Perfect. So, we're good on 1.3. Everybody?" Everyone agreed. Council Member Van Horn, "So I had a question about 1.4 and that is in that list of things is sidewalks. There are a lot of places in town that don't have sidewalks. Are sidewalks required and if they aren't why is that on the list?" Mayor Luke, "They are not required. It's the same thing that you don't see electric system in there. You don't see electric distribution system in there." Council Member Van Horn, "I see electric distribution." Mayor Luke, "No, well in the new one that was because we added it after the new one after the first one. But the sidewalks are an option." Zoning Clerk Hugunin, "And the only thing with the sidewalk is if somebody is putting a sidewalk in, we have to make sure it's ADA." Mayor Luke, "Yeah." Zoning Clerk Hugunin, "That's it." Council Member Van Horn, "So this doesn't say that those things have to be." Zoning Clerk Hugunin, "No, it's just kind of saying what public improvements are." Mayor Luke, "Yeah." Zoning Clerk Hugunin, "That's all. That's everything that's a public improvement." Council Member Van Horn, "Okay. Alright. I just didn't want to say that you've had to put a sidewalk in when two blocks down and they don't have sidewalks and nobody can do the expense of the sidewalk."

**BOOK 26**  
**January 29, 2025**

Zoning Clerk Hugunin, "This isn't going to be part of that but I mean at the same time somebody wants to put a sidewalk in and we've got the sidewalk cost-share program." Council Member Van Horn, "Gotcha." Council Member Curtiss, "Now, 1.5." Council Member Van Horn, "I don't have a 1.5." City Clerk Brown, "That's Nathan's." Council Member Van Horn, "Nathan. Oh, all right. We're going through that. I thought that was taken out to get rid of the confusion because of that talk about what was and wasn't public and private financing." Mayor Luke, "Public financing and private financing are two separate things." Council Member Van Horn, "Right." Council Member Curtiss, "But both 1.4 and 1.5 are talking about--." Mayor Luke, "Public improvements. Public improvements is what infrastructure can or has to be there and public financing is who pays for what. You can't call a sidewalk or you can't call a street a private improvement because it's going to be under the city's control which is a public business. We're not a private business." Zoning Clerk Hugunin, "Same with the water and sewer." Mayor Luke, "Zenden is a private business. City of Burlington is a public business." Council Member Curtiss, "So 1.5 needs to stay in there?" Several people agreed it doesn't need to be there.

Council Member Mays, "And Nathan pretty much was like I don't--he kind of--what I'm reading is I think there was confusion about it and if we need to put it in there to clarify what public financing is, special assessments, that kind of stuff. I don't think it needs to be in there." Council Member Mays, "Okay so we're good with that what he said there to take that out, correct?" Mayor Luke, "Leave it removed, yes." Council Member Curtiss, "Alright now, 2.6." Council Member Mays, "I'm okay with that, the third party." Council Member Mays, "Oh yeah, we've already discussed that. Moving on and we have a whole other page but some of that won't be too bad. 2.7 is just the number of years that we just have talked about in the past." Council Member Van Horn, "And I think they left that open so that we could put what we want to." Council Member Curtiss, "Finalize it, yeah." Zoning Clerk Hugunin, "I think that was going to stay open until you guys are actually doing something and put the time on it." Council Member Mays, "Right, but we all kind of all agreed what we're thinking." Mayor Luke, "Yeah because if we're having to extend infrastructure from half a mile away that may change the timeline of the developer to do what's on his property. So that time will be longer than somebody that's got everything right next door."

Council Member Curtiss, "Okay, so we're good with that timeline. Now it's 2.8 okay. That's the percentage or bond." Council Member Van Horn, "Three choices." Mayor Luke, "Well, actually there's probably five or six choices." Council Member Mays, "I think this is my biggest hang-up and so we've just read through point 2.8 and see if it—if you understand it." Mayor Luke, "The only thing I see with that is that there has to be some mechanism that once the developer is gone from the site and there is a method of getting any repairs or maintenance done to what was installed within a timeline. That timeline we decide whether it's one year or two years or six months or whatever that if something fails during that time then it is the developer's responsibility to fix it. If that happens two years down the road and we set one year it's our responsibility to fix it." Council Member Van Horn, "Are we down to something besides 2.8 now and I just missed it?" Mayor Luke, "No, that's all in the same arena and I'm not sure that the verbiage that's called there is correct. I mean a performance bond is different than a maintenance bond which is different than an escrow account which is different than letter of credit. I mean they're all different things and it's only a matter of ensuring that there's a way to recover an incident however it's damaged during a time frame that's the responsibility of the developer."

Zoning Clerk Hugunin, "And this isn't talking about anything structural that they built?" Mayor Luke, "Nope." Council Member Mays, "No." Zoning Clerk Hugunin, "It's all on the infrastructure." Council Member Mays, "Right, so like if something happens to the sewer, we're going to put a timeline on it and a year, and Mike's responsible for that?" Council Member Van Horn, "Well, for example, if they put the sewer line in and it wasn't heavy enough pipe and it crushed within a certain length of time then because that was his deal, he should be responsible for. It's not just like if somebody ran a backhoe through it and broke it then he has to pay for it that's not the same." Mike Abendroth, "But if the third-party inspector that everybody agrees on inspected and passes it and says it meets everything that takes the liability off of me."



**BOOK 26**  
**January 29, 2025**

It's the inspector." Council Member Van Horn, "Right." Mayor Luke, "Correct." Mike Abendroth, "So there's no timeline established." Zoning Clerk Hugunin, "That's what would be determined." Council Member Curtiss, "That's to be determined at the time." Mike Abendroth, "If the inspector says yes it's done to the way the site plan says it meets the specs for that pipe or whatever whether it be schedule 40 SS 35 whatever it is for sewer line if that inspector says yes that is correct it's done right signs off on it. That's his bond company." Council Member Curtiss, "That's under him." Mike Abendroth, "That's under him not me." Zoning Clerk Hugunin, "What's going to happen is the developer is going to have a copy of the final inspection report that says this is okay no problem, an issue was found here but it was fixed. We'll have the same thing. So if it's out of that scope that's where we'll have to look at it." Council Member Curtiss, "Okay, that I understand." Zoning Clerk Hugunin, "And that's only covering it on the public side of it. That's not covering something somebody built a house and they buy a lot from Mike and they build their own house not using him and they run a sewer line. If it runs uphill from the house that's not on him, it's not on us, and it's not on the inspector, that's on the landowner."

Council Member Curtiss, "Okay so that I understand." Mayor Luke, "If the concrete truck drives over the sewer line and breaks it that's a contractor that's doing the concrete work." Mike Abendroth, "Sewer lines are going to be eight or nine foot deep. It would have to be a good-sized truck." Mayor Luke, "Yeah I know yeah it's just an example." Council Member Mays, "2.8 looks okay for you?" Council Member Ernst, "What are the percentages though?" Council Member Curtiss, "It was initially 10%, wasn't it?" Mayor Luke, "It was 15%. We were looking at three to five." Zoning Clerk Hugunin, "I think the industry standard on a lot of these different things performance bond surety bond, I mean a lot of anymore are around two to three percent, some of them are at five, it depends on who you go through." Mayor Luke, "Yeah." Mike Abendroth, "Are you 2.7 or 2.8?" Mayor Luke, "2.8." Mike Abendroth, "I mean 2.7 you go back up there and it says developer shall warrant public improvements against defects and material workmanship it says nothing about the inspections it was signed off by the third party and inspected it said it was okay. If they're not going to stand behind their inspectors then they have an inspector? So we can hire an inspector, he can come out and say yeah that looks good and when it collapses you call me and they say well you guys signed off on it you approved it we use the inspector it was okay then."

Council Member Van Horn, "So, you think we need to put some wordage in there that says--." Mike Abendroth, "If you're going to utilize third-party inspectors, they need to be the ones liable for it." Mayor Luke, "Right." Council Member Van Horn, "Yeah I would agree with that." Council Member Curtiss, "I agree with that, that needs to be corrected." Mike Abendroth, "—bond companies and insurance companies." Council Member Van Horn, "So, that just needs to say inspection companies shall warrant the public improvement, would that work? Is everybody okay with that?" Mike Abendroth, "And number of years state of Kansas says I have to warranty your house for one year." Zoning Clerk Hugunin, "Yeah. I think that's what we talked about with one year on that." Mike Abendroth, "Yeah, that's standard." Council Member Mays, "I have two years." Mike Abendroth, "And that's probably a state statute, which would be hard to push anything—(inaudible)."

Council Member Curtiss, "Okay." Mike Abendroth, "I guess on 2.8 my question is developer agrees to provide city one of the following one two or three. Is this using public money or privately funded?" Council Member Ernst, "This is only for private." Council Member Mays, "That's private. 2.8 is private." Mike Abendroth, "So. someone has to give a percentage of the construction cost for the project?" Council Member Curtiss, "Just the infrastructure structure." Mayor Luke, "Just the public improvements." Council Member Van Horn, "Putting infrastructure in--." Mike Abendroth, "What kind of a timeframe does it get held? Is there interest paid on it for retaining an escrow account? If I give you \$50,000 to hold for two years, am I getting interest on it?" Mayor Luke, "I would guess first off that if you look at 2%, you might be, I mean, you could have a, I'll call it an insurance policy that you just paid the premium on, which might be what, \$5000 or \$10,000 for a year? Whatever that would be would be the same as having a cashier's check or an escrow account or something to form a guarantee that there is something available and it would be through an insurance policy."

**BOOK 26**  
**January 29, 2025**

Mike Abendroth, "But then again, are you going to have your inspectors have the same thing?" Mayor Luke, "I'm going to answer the question with yes." Mike Abendroth, "Which makes sense. They are going to be the one you're going to go back on saying you signed, you approved it." Council Member Curtiss, "Developer and the inspector?" Zoning Clerk Hugunin, "That's what it should be developer and inspector." Council Member Curtiss, "And the third-party inspectors. We put inspectors on 2.7." Mayor Luke, "Yeah. Because like I said there's other ways to do that versus money out of a pocket." Mike Abendroth, "Oh, I agree." Council Member Curtiss, "Okay so what about 2.8? Here I am again." Council Member Ernst, "Can we just say 2% so it's on the low end?" Mike Abendroth, "2% of the total cost of the project?" Council Member Curtiss, "No." Mayor Luke, "No the infrastructure." Council Member Mays, "This is just the infrastructure." Mike Abendroth, "It would still be a project." Zoning Clerk Hugunin, "And when he says project I get where he's coming from because I'm the same way when I read it the project is the infrastructure. That would be the project." Council Member Mays, "Gotcha." Mayor Luke, "It's not the completed housing." Mike Abendroth, "Number one says estimated cost of the infrastructure improvements and then it says or I would probably take or after improvements out and just go to line number two." Mayor Luke, "Just use number two?" Mike Abendroth, "Same way with number two." Mayor Luke, "I guess I could look at it to say that we could leave all three and you put a checkmark beside the which ever way it is that you're going."

Council Member Mays, "Alright, I'm fine with that too." Mike Abendroth, "Performance bond. I don't know if they'll issue a performance one for that one. That's interesting." Mayor Luke, "Yeah, I don't know if they would either." Council Member Mays, "But you have options." Mike Abendroth, "Right, but it's just not me. You're doing this for anybody and everybody." Council Member Mays, "I know. But as a developer, if you read that, you would look at that and go--." Mike Abendroth, "But I don't know if a performance bond would cover that." Mayor Luke, "I don't know either." Council Member Ernst, "Well, there's something that was originally talked about." Mayor Luke, "We talked about maintenance bonds and other bonds." Council Member Curtiss, "Maintenance bonds, those are different." Zoning Clerk Hugunin, "And if it's not covered, that is something that's easy enough to just strike out of there." Council Member Mays, "Right. Does it have to say performance bond? Can it just say bond?" Zoning Clerk Hugunin, "Bonded or bonds issued." Multiple people talking at once about types of bonds.

Mayor Luke, "There's so many different types of bonds available. I don't know which one would be available or which ones would not. And I don't know which one would be the most expensive or the least." City Clerk Brown, "Are G.O. bonds? We've dealt with them but that's a general obligation, which is public." Mike Abendroth, "But you got a public project." Mayor Luke, "Yeah." Zoning Clerk Hugunin, "And I do like on this that I'm not seeing what I've seen in some of them that were offered where they had to have the plat and everything approved before they did this. No, because that'd be backwards. Nobody's going to want to spend the money for a plat and then not agree with this." Mike Abendroth, "Kind of where we are at now." Zoning Clerk Hugunin, "But we haven't gone through all things on our side, you've gone through yours." Mike Abendroth, "All out of my checkbook." Zoning Clerk Hugunin, "Yeah, but you see what I'm saying. I mean right that's backwards this first and then everything should come after that. That's not in here, I like that." Mayor Luke, "Okay, we go to 3.1. Was there any questions or any concerns on?" Council Member Mays, "I didn't have any. Nathans doesn't, it looks like." Mayor Luke, "No, he had no comments on the three section."

Mike Abendroth, "3.2 city will provide reasonable inspections of the public improvements during construction to see that your compliant to city standards. Isn't that why you have a third-party inspector because you're putting liability back on the city there saying you will inspect it." Council Member Curtiss, "Okay, we did talk about--." Zoning Clerk Hugunin, "Well, it could be our normal inspections to the way I read it like making sure the sewer tap, right water meter, or stuff like that. That's probably what I think that's covering that part of it. And not saying we're going to inspect everything out here. But we're going to look --." City Clerk Brown, "Make sure the connections are correct." Zoning Clerk Hugunin, "And entrance. Just like we normally do on everything, the electrical stuff like that." Council Member Curtiss,

**BOOK 26**  
**January 29, 2025**

“And then that person could visit with your inspector and say this needs to be changed because it's not to code or whatever.” Mike Abendroth, “It’s not to the approved site plan.” Mayor Luke, “Yes. Site plan is the final word.” Council Member Curtiss, “Okay.” Mike Abendroth, “That’s what everybody agrees to.” Council Member Ernst, “I thought we were taking inspections out though, the reasonable inspection city will provide reasonable inspections.” Zoning Clerk Hugunin, “We have that in our zoning regs and city code. Basically, you've got Alan's an inspector. Danny's an inspector.” Mayor Luke, “Chris.” Zoning Clerk Hugunin, “Chris is too.” City Clerk Brown, “They don't have the official title of inspector.” Zoning Clerk Hugunin, “Right? We're not saying an inspector. We're just saying inspections and that's the normal stuff we do every day. Well, not every day, but in you know, that kind of almost every day they're doing some electrical or water.” Council Member Ernst, “Right. Yeah. I just didn't want there to be any--.”

City Clerk Brown, “Yeah, well, inspection.” Mayor Luke, “We'll work smith that a little bit.” Council Member Mays, “So then the next one, I think 4.3 Nathan had an issue with.” Zoning Clerk Hugunin, “I think that that would be pretty much your inspector is going to have a final completion of the inspection even on the public improvements.” Council Member Mays, “And I think that's what he’s saying the final review, it's a final inspection.” Zoning Clerk Hugunin, “--of the city and city shall conduct a final inspection. I think that could--.” Council Member Mays, “Go away?” Zoning Clerk Hugunin, “Because we're going to have our final acceptance when we get a review from the--.” Council Member Mays, “Which we originally had upon completion of the public improvements the developer shall notify the city, and the city shall conduct a final review, if the improvements aren't to our satisfactory the city will issue a formal acceptance letter. So, I think there was words added and he's saying I don't think we really need the that the developer shall provide the final inspection.”

Mike Abendroth, “Would the developer provide it or the inspector?” Mayor Luke, “The inspector would provide it.” Mike Abendroth, “It should say the developer will be provided a copy of the final inspection.” Mayor Luke, “Well, developer and the city.” Zoning Clerk Hugunin, “I would think it just be once final inspections have been approved, then we would issue the letter of acceptance.” Council Member Mays, “Yeah, right. I think we can go back. I think we can revert back to what we said originally.” Zoning Clerk Hugunin, “Because I mean, the city is going to be the one that does the final acceptance.” Council Member Mays, “Right.” Zoning Clerk Hugunin, “We're going to be the final because it's going to go. If Mike has his own inspector out there, there can be multiple inspectors, but we're going to get all that reporting. It's going to be the city that's going to make that final determination.” Mayor Luke, “I'm quite sure KDHE and others will have their say.” Zoning Clerk Hugunin, “Yeah, there's going to be a review on this no matter what, probably state KDHE is going to have a review on the water and sewer anyways.”

Council Member Mays, “So I think 4.3 we could just say upon completion, the developer notifies us if its satisfactory the city will issue a formal letter.” Mayor Luke, “Well, the inspector shall notify the developer and the city.” Zoning Clerk Hugunin, “Yes.” Council Member Mays, “Okay, do we need to add that?” Mayor Luke, “Well, it was just changing that the developer shall notify the city. I'm just saying the inspector shall notify the developer and the city.” Council Member Curtiss, “So we're saying the inspector shall notify the developer and the city.” Mike Abendroth, “And I kind of like provide the final inspection report to both parties. Once he signs off on this, both parties need to be in possession of the final report.” Council Member Curtiss, “Yeah.” City Clerk Brown, “So are we taking out the city shall conduct a final acceptance review or just that we're issuing the final letter of acceptance.” Mayor Luke, “Well if the improvements meet all the inspection requirements, then we have to issue a letter of acceptance but we don't do that until both parties have been identified as receiving the reports and verification that everything is correct.” Council Member Ernst, “So sentence two is going to say the inspector shall provide. Is that correct?” Mayor Luke, “Yeah.” Council Member Mays, “I’m good with that.” Council Member Curtiss, “The inspector shall notify the developer and the city.” Council Member Mays, “Right.”

**BOOK 26**  
**January 29, 2025**

Mike Abendroth, "You have engineer listed in there too. So, there's usually a conflict between an engineer and an inspector. Just they're both right if you ask them." Mayor Luke, "Okay, you're talking about in the third line?" Council Member Curtiss, "Yeah." Mike Abendroth, "So I mean, ultimately, that engineer is the one who's throwing it up and has stamped it. He's the one ultimately responsible for it." Mayor Luke, "Yep, I've been in that seat." Mike Abendroth, "So, get an inspector and engineer going at it over something but that's what the site plan is for and it's done the way the site plan is approved by the city. Then there's no question." Mayor Luke, "Right." Council Member Curtiss, "So we're okay with that." Mayor Luke, "Yeah, we'll get that section reworded." Council Member Curtiss, "Okay." Mayor Luke, "What do you normally carry Mike with respect to liability insurance?" Mike Abendroth, "Two million. Yeah, a million dollars doesn't get you much anymore." Mayor Luke, "No." Council Member Ernst, "Well, I thought Mike, the other, last meeting was talking about five, I'm pretty sure." City Clerk Brown, "Yeah, I think he did too." Mike Abendroth, "Two million usually covers about everything that I do for my projects right now. He gets into a little bit bigger projects."

Council Member Mays, "And then 6.2 is the next one, which is that we're not held to anything which is the --." Council Member Curtiss, "The Tort." Council Member Mays, "Right. So, we'll take that out." Council Member Van Horn, "Well, it's already out." Mayor Luke, "Right." Council Member Van Horn, "He was unhappy that it was gone, right?" Mayor Luke, "Yeah." Council Member Van Horn, "Okay but we've already dealt with that. Yep. That was the end of it, wasn't it?" City Clerk Brown, "Yes." Mayor Luke, "Unless there's something on section 7 cannot be assigned without other's approval, cannot be amended, only by written agreement by both parties, shall be covered by the laws of the state of Kansas, this is the entirety of the agreement, and if it's found by legal means to be invalid or unenforceable, the remaining provisions shall remain in full force." Council Member Van Horn, "Sounds like a speak now or forever hold your peace." Mayor Luke, "Well, I guess the question, Mike is--."

Mike Abendroth, "5.2 there it says work comp insurance can combines with state law. Yeah. So, does that mean for every subcontractor that comes in there and has an employee, or what's...? Because as a developer, I'm not required to have work comp if I don't have more than, what, three employees?" Mayor Luke, "Is that what it is, three? I didn't know what that the --." Mike Abendroth, "So, if I have subcontractors come in, are they required to provide all that too?" Council Member Van Horn, "I say that comes under the heading of not your problem." Mayor Luke, "Oh yeah, it's his problem. It's his property, yeah. I look at it, whatever the law says who has to have it, they have to have it." Council Member Mays, "Do you ever require them to provide you their liability insurance?" Mike Abendroth, "Sure I do. I'm not talking about liability, work comp." Mayor Luke, "Yeah work comp. Because there's requirements, there's state law that has controlling interest over worker's compensation." City Clerk Brown, "So yes, if they have--." Mayor Luke, "Whatever, if the state laws requires that they have to have it, then they have to have it. If the state, like yourself--." Mike Abendroth, "--the legal definition issued by the state?" Mayor Luke, "Yeah." City Clerk Brown, "Correct." Mike Abendroth, "So, the back says developers shall provide proof of insurance to the same prior to commencement of construction. Which insurance? Work comp or liability?" City Clerk Brown, "All of it. Usually--."

Mayor Luke, "Any that's in place." Council Member Curtiss, "That's applicable to what you—what's required." Mayor Luke, "What's required by law." Council Member Curtiss, "So you said--." Mike Abendroth, "But each entity requires different contracts." City Clerk Brown, "You would have to provide yours and as you hire your subcontractors, then that would need to be provided as you're bringing those individuals in before they start." Mike Abendroth, "Okay, but keep in mind general liability this is on private property that burden will fall under me if anything happened, not city." Mayor Luke, "So what recourse do you have with other contractors?" Mike Abendroth, "Recourse as far as what?" Mayor Luke, "As far as any liability." Mike Abendroth, "Provide it or I'm not going to give you the job." Mayor Luke, "But I know you said it was on private property which it is--. Does not the workman's comp and other

**BOOK 26**  
**January 29, 2025**

insurance protect you as a private landowner with if they take out the insurance or bonds or whatever?" Mike Abendroth, "Not on general liability insurance, that property would cover me." Mayor Luke, "Okay that would cover you. And they would have to have their own to cover them." Mike Abendroth, "For their employees. Yes, correct." Mayor Luke, "Okay. So where--" Mike Abendroth, "But their general liability certificate is also provided to me before they go to work." Mayor Luke, "Right." Mike Abendroth, "So that proves to me that they do have a piece of paper with an effective date on it. Now whether it's valid or not you don't know unless you call the insurance company." City Clerk Brown, "It should have dates on it." Mike Abendroth, "They do, but a lot of them pay it month to month just to get that piece of paper and then the next bill is due." Mayor Luke, "It may or may not be there." Mike Abendroth, "Correct. Yeah, it's like auto insurance."

Mayor Luke, "Yeah, you have insurance to get your tag and then you cancel it." Mayor Luke, "30 days down the road after you have a nice new shiny tag you don't have insurance on your car." Mayor Luke, "Yep. I understand. How do you control that?" Mike Abendroth, "I guess if it comes to it they issue it and you call the insurance company and see if it's binding. It's the only thing you can do." Mayor Luke, "Every month?" Mike Abendroth, "That's one option because you can't make them pay it." Mayor Luke, "Can you make them have a, if they're going to be on the job site for six months, can you have them provide you with a certificate for the duration?" Mike Abendroth, "It's possible." Mayor Luke, "I mean I don't know if they have that or not." Mike Abendroth, "I don't know. I've never experienced that, so it's possible. A lot of it just depends on what contractor you get to." City Clerk Brown, "Well, hopefully, we have decent contractors around here that would honor. You would hope." Mike Abendroth, "You'd be surprised. I can tell you stories." Mayor Luke, "I used to have to carry five million dollars' worth of liability insurance." Mike Abendroth, "But I mean, if it gets to the point, they issue their certificates of insurance and something happens out there, they come back to me and I say, hey, this is what you give me, got the effective date on it, I had no control over what happened to you, once you give it to me. Welcome to the world of business."

Mayor Luke, "Yeah." Council Member Curtiss, "People can be so crappy." Mike Abendroth, "The key word there is people." Mayor Luke, "Yeah. If they were to do that, let's say, and let their liability expire and somebody was injured." Mike Abendroth, "You usually don't know until you need it." Mayor Luke, "Okay, and then what happens? Would you be at a loss or does that then have to be a court decision and they be held liable and responsible?" Mike Abendroth, "I don't know Stan. I've never gotten that far." Council Member Mays, "Don't you have to turn it in when you're doing your taxes" Mike Abendroth, "Turn what in?" Council Member Mays, "Their liability. For ours, we have to turn in anybody who's done work for us when we paid them." Mike Abendroth, "That's because you're issuing them 1099's." Council Member Mays, "Right," Mike Abendroth, "—Don't have to turn in liability--" Council Member Mays, "You're right, we do I guess you're right." Mike Abendroth, "—just your expenses."

Mayor Luke, "Because we're not looking at if there's a way to eliminate exposure, you know, I'm not doing a guarantee but there's no way we can." Mike Abendroth, "You can't. And what makes it worse is private property." Council Member Curtiss, "I want all people to be loyal." Mayor Luke, "It would be nice, wouldn't it?" Mike Abendroth, "I wouldn't expect it any time soon." Mayor Luke, "Is there any other major concerns Mike with the direction we're going?" Mike Abendroth, "I guess there was one back here 5.1. It's up to the extent of by negligence or misconduct of the city; I am kind of questioning what that definition entails when that was drawn up." Council Member Van Horn, "That sounds to me like--" City Clerk Brown, "Unless you can prove that they--" Council Member Van Horn, "--bad unless you can see that the city really screwed up and didn't take care of business in that case, then yes, you can, charge the city with whatever." City Clerk Brown, "Yeah." Mike Abendroth, "But you're wanting to omit that whole 5.1?" Many people said no.

**BOOK 26**  
**January 29, 2025**

People quietly talking (inaudible). Council Member Ernst, “And again, that one, 6.1, has a number of days. So, is this something, and I apologize if it's already been said, but is this something that is going to be on a case-by-case basis, or is this something that's going to be set in here?” Mayor Luke, “It's got to be case-by-case.” Council Member Ernst, “Okay.” Mayor Luke, “Because if there's an issue with FEMA or an issue with KDHE, you have no control over when they're going to respond. It may take them six months, and you can say in the agreement that it's 30 days, but they don't care. They still--.” Mike Abendroth, “And another big one is weather. So, you can't say you've got to be done in 15 days, and it's raining for 14 of them.” Mayor Luke, “Or you have to ice skate to get to work.” Council Member Curtiss, “And we talked about that, that the number of days that you put in there, there could be things that will counteract against that.” Mayor Luke, “No, it'd be workable days, not working days, but workable days.” Council Member Curtiss, “There's bound to be something that would come up that would stop some of it for a while.”

Mayor Luke, “Okay, under the Tort Claims Act, and I finally found it, the KSA 2015 supplement, 75-6103A states that the subject of the limitations of liability and immunity for each governmental entity shall be liable for damages caused by the neglect or wrongful act or omission of any of its employees. So, if an employee, as in that statement, talks about neglect and wrongful act or omission, then the liability can kick into play.” Council Member Van Horn, “Well, Cara, I don't know about you, but I feel better.” Council Member Mays, “I do too. Much better. Just a few minor word changes, I think-- right?” Council Member Curtiss, “I think so.” Mayor Luke, “And we will leave the timelines vacant. We've done the discussion a couple of times on it, but we'll leave that vacant until we get to the actual regular meeting and look at approving the document then we will insert the timelines.”

Mike Abendroth, “You could put 30 days on there and have it worded to file an extension.” Council Member Curtiss, “That sounds good.” City Clerk Brown, “I think there was something--.” Council Member Ernst, “I think so too.” Mayor Luke, “That's what we had talked about.” City Clerk Brown, “Okay number 4.2 has that unless an extension has been granted by the city in writing.” Mayor Luke, “Yeah but that could be that there could be six months or it could be twelve months it could be longer than 30 days, and basically the 30 days is addressing any grievances or something that needs to be corrected. But once again we can set that on ourselves but we can't set it on some outside organization. We made an application for something and it's been a year and a half and we still don't have an answer.” Council Member Ernst, “So the next steps right now are to make these few minor word changes and then it'll be brought up in regular city council.” Mayor Luke, “Yep.” Council Member Ernst, “And when do we think that that'll occur?” Mayor Luke, “Next meeting, a week from now. I will be in touch with Philip tomorrow.” Council Member Ernst, “Okay.” Mayor Luke, “And he would have had stuff out sooner but he was under the weather and sick he could hardly speak or I don't think he got out of bed for three days. I don't know what it was.”

Council Member Curtiss, “That's not that much to do.” Mayor Luke, “No.” Council Member Ernst, “So Mike, is this something you feel comfortable working with?” Mike Abendroth, “Yeah, if you guys can get it reworded and get the final draft on it, we read it one more time.” City Clerk Brown, “And something I noticed with Nathan's email, he kept saying last council meeting, these were not discussed in the council meeting. They were at the last special meeting on the developer's agreement is the only thing. I just didn't want anybody to come back and say, well, you said at the council... It didn't happen at the council meeting.” Council Member Curtiss, “That's true.” City Clerk Brown, “So I just wanted that clear for...” Mike Abendroth, “Do you record your council meetings?” Mayor Luke, “Yes.” Mike Abendroth, “So if you need to go back?” Mayor Luke, “We can go back to the special meetings too. They're all on record. That's the Kansas Open Records Act and Open Meetings Act. We have to do it all. Yep.” Council Member Curtiss, “Well thank you, Mike. Thank you so much.” Mayor Luke, “Okay. Alright is there anything else we need to bring up on it or do I get in touch with Philip tonight and interrupt his dinner? He always interrupts my lunch.” Mike Abendroth, “When you get the final rough draft finalized, get me a copy of it.” Mayor Luke, “Okay. You want my email or a hard copy?” Mike Abendroth, “Hard copy. I'll swing in a pick it up.”

**BOOK 26**  
**January 29, 2025**

Mayor Luke declared the meeting adjourned.

\_\_\_\_\_ Anne C. Brown, City Clerk