

BOOK 26
January 8, 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. 4th Street, Burlington, Kansas, at 4:00 p.m. Wednesday, January 8, 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 checked="" type="checkbox"/> Maxi Berryman | <input checked="" type="checkbox"/> Cara Mays |
| <input type="checkbox"/> Lila Van Horn | <input checked="" 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 checked="" 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: Mike Skillman, Ronda Gilbert

Developer’s Agreement

Mayor Luke, “We have a quorum. The subject matter today is the continued review of the developer’s agreement. We have one that was received from Philip and one from Nathan. So, we’ll open the floor for any discussion that we want to start with.” Council Member Strawder, “If you want, I could explain what this is or whatever that I sent over.” Council Member Curtiss, “This one?” Council Member Strawder, “The stapled one, yes. So, basically at the last meeting, there was two sample agreements that we were going through. One was a privately, one was publicly financed. I took those two and kind of morphed them together. I followed the privately financed one, but there were a couple other revisions that I made. So, both of those examples were specifically for a residential housing subdivision. I removed some of that and made it so this is a -- they can be used for residential housing, commercial, or mixed-use. So pretty much any type of development that comes through. Then there were a couple items in the publicly financed one, that I thought just kind of laid out a little bit better. So, I mixed and matched them. As far as the financing on this one goes how I combined the two was in the definitions there’s publicly financing but in here I added a little caveat.

“So, under 2.2, on the second page, Privately Financed Development: developer acknowledges that the entire cost of developing the subdivision, including infrastructure and improvements, will be privately financed. Unless otherwise approved by the governing body, was what I put in there, the city shall have no obligation to provide financial assistance for the project. So that allows that kind of individuality on the subdivision as a, you know if there is something that is negotiated back and forth, it allows that kind of caveat. Outside of that, there is a couple of items in here that would need to be kind of decided on meaning the allotment of times, kind of in section four, section five, section six. There’s a couple of items in here. So, 4.1 insert timeline of how long until-- how long the agreement is good for prior to the start of construction. So basically, to convert this over a little bit to my daily job, whenever we approve of a project, approve a subdivision or sewer, they have up to one year to get started. The agreement in place, permit, and everything is good for up to one year and then after it started, it’s good for two years and that’s set by the state. So, there’s a timeline in there but it’s not like you have 30 days you have to get it done and--.”

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Mike Skillman, "But it keeps things moving." Council Member Strawder, "It keeps stuff moving." Council Member Curtiss, "So, they have, you said a year to get started?" Council Member Strawder, "That's what it is where I work at." Council Member Curtiss, "Where you work. And then after that's all—it's two years after that?" Council Member Strawder, "It's two years. So, what happens is basically it's two years but you have to like--he can ask for an extension." Council Member Curtiss, "Yeah, that's what I was going to say if something happens or whatever." Council Member Strawder, "But with putting that year or six months or nine months or whatever the allotment would be, allows for enough time for them to get the rest of their ducks in a row. Financing is a lot of times what is the holdup to get the financing done, the scheduling done with the contractor, and get going. 12 months I think is normally pretty standard on a lot of that stuff just because there's a lot of stuff that can happen. But it also avoids, an instance where it's 2020 and we are talking about a development, it goes in hiatus, and in 2024 they come back and they're like, well we want to still do the exact, you know."

Council Member Curtiss, "Right, understandable, things do happen." Council Member Ernst, "But is this something that we should have put out as far as, you know, from the very start saying it should be a year, you know, or I mean is that something that should all be agreed upon?" Council Member Curtiss, "I think so." Council Member Strawder, "Yeah, that I definitely would agree to. I mean, here's your allotment of time that way everybody's working on the same timeline on that because again (inaudible) developments enough to say our intent is to get out there in 30 days and it's 90 days later. As far as the inspection goes, there's another little item on there. So, under Section 2.6, so inspection and testing: developer agrees to allow the city, then I inserted, 'or assigns,' to inspect and test. That means, I know last time we were talking about, if there would be a city employee doing inspection or contract person, third party, or whatever, I think that covers all of it. It's somebody inspecting on behalf of the city. Essentially, is how that would read."

Council Member Ernst, "I know in the one that, I think Philip drew up the other one, you know, it kind of specifies in there that the developer agrees to hire a mutually agreed upon independent inspector. And I assume that would be something that would be agreed upon with the city." Council Member Strawder, "That would still be allowable through the revisions that I made to this. My concern with how that's written is on some items it's not that simple. You're starting to run up against state statute or KDHE requirements and stuff like that. So, like on sewer lines, water lines, and stuff it's an inspector but it's an inspector that's---. Essentially, it's the engineer that does the drawing. Somebody is inspecting from that engineering company is essentially how it works, so that can get a little bit messy if you want to do it exactly how it's written there." Council Member Curtiss, "But it says agrees to hire a mutually agreed upon independent. So, we would have to agree with it anyway."

Council Member Strawder, "With how that's written and what I'm trying to say is that I could foresee that getting a little bit messy, it may not. And the reason why is because you're dealing with KDHE requirements or state statutes that indicate who the inspector has to be or whatever. This also if the city goes out and comes under contract with an entity, an engineering company, whomever to complete all of the inspections, what if the developer doesn't like that inspector type of thing? So, to me, that could get a little bit messy on how that's written to where if you just say the city or assigns, it means the city or somebody on the city's behalf. The negotiations getting up to that can be whatever." Council Member Ernst, "But in the one that you drew up, it makes it sound like the city is going out to get this inspector or, I guess I want to say, pay for it. Whereas the other one it sounds like the developer is actually going to be the one." Council Member Curtiss, "So, who usually does that?"

Mike Skillman, "Generally, like Nathan said, the engineering group will have an inspection group that's almost third party or part of their group. Just like if you designed it, it's your project to make sure that they bring it to the city as you designed it. So, they usually put one of their people out there, somebody they trust, and it costs a fee to the developer, whoever, to make that happen. But they make sure that it's put into spec and they also know what they're looking at because that's what they do for a

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living. You know what I mean? If the city takes on some of that themselves then they actually fall under liability that it was done right also, if they inspect it themselves. You see what I'm saying? So, if I have the engineering group, it all comes back on them. They're the ones designed, they're the ones that done everything, they made sure it got put in the ground right or whatever happens. It's all on them. Not on you guys, not even on the developer. It's on the engineer because he's the one that designed everything." City Clerk Brown, "But that still falls under the developer because the developer is the one who hires the engineer." Mike Skillman, "Exactly." City Clerk Brown, "I get what you're saying." Council Member Curtiss, "Okay."

Council Member Strawder, "Yeah, and also with it being allow the city or assigns also allows for instances where again I'm looking at more all-inclusive type things, instances, but the city itself wants to go out and inspect something above and beyond maybe what the state requires and stuff like that. That would be my hesitation again with how that is and at the developer's expense is that the city says no we want to go out and inspect something that's above and beyond type of thing. So yes, most of the inspection especially if it's a contract inspector or inspection that's being contracted out type of thing, that'll all fall under the cost of the development. By not itemizing it kind of like that in there that is really pigeonholing on what it could be because you can also get into a situation where the city wants to do an additional inspection for whatever the scenario might be and then the city is trying to hold the developer to where you have to pay it because that's how it is in the agreement type of thing. That's not always the case on that." Mike Skillman, "Basically, it's like you hire an inspector that somebody else has to pay for. Now, if the--again, if the engineer is taking care of it like they should because their responsibility, if you feel like they're not doing it, well, the city can always hire another deal to have them checked if you want. But generally, that would fall under, you know, the city would pay for it for the fact that they want to make sure that Jim Bob over here is doing his job. But if he's not doing his job well then you go back, you know, the engineer is the one that comes and is holding the deal."

Council Member Curtiss, "Okay. I've never gone through building any of this kind of stuff so I have no idea." Mike Skillman, "I haven't either." Council Member Curtiss, "Yeah right. But if like Mike Abendroth was going to finance everything, does he have an engineer?" Mayor Luke, "He would have to." Council Member Strawder, "He would have to." Council Member Curtiss, "You have to have an engineer." Mayor Luke, "It has to be drawn and signed and sealed and delivered." Mike Skillman, "To hook up to any city utility, correct?" Mayor Luke indicated yes. Mike Skillman, "Okay, so that's mandatory for any city. Well, I take that back. New Strawn doesn't because they're below the criteria of the state that the population wise that they..." Council Member Curtiss, "Well okay." Ronda Gilbert, "That's an insurance policy for you guys." Council Member Curtiss, "Okay, I'm learning all kinds of things." Council Member Strawder, "Also with the inspection stuff. What's kind of normal, this is how it was just in Wichita whenever I was working down there and how it is where I work now, is anything privately financed you have the engineer's inspector that's out there. We call it something unique, that's not inspector, but it's a representative for the engineer. But we also have our own engineering or our own inspection group within that's county employees and what they do is they go out and they're not out there 100% of the time. They drive around to the different jobs to make sure the inspectors are out there and actually inspecting. That work isn't being done outside of it. They're making sure that the signed drawings are there. They're answering any questions. So, there's-- whenever you indicate inspector, there's several different categories of them."

Mike Skillman, "And that's kind of where your department heads would come in." Council Member Curtiss, "Okay, that's what I was wondering." Mike Skillman, "Because they should know if the valve is being put on right, if the line is being strung up right on the poles, you see what I'm getting at? They should know that part to make sure--" City Clerk Brown, "But we don't have any true inspectors either. Yeah, so, I mean they are inspected like, is the sewer line hooked up right? But inspection? I mean, do we need to be careful there saying they are inspectors when they're not really qualified inspectors."

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Mike Skillman, "I wouldn't think so." Council Member Strawder, "No, because there's, I mean, as I said inspector is just your verifying--." Mike Skillman, "He's just verifying, he still represents the city, he's just kind of your representation, you know. And if he feels like he doesn't know enough about then he ought to be telling you to get somebody down here to--." Council Member Curtiss, "Because he doesn't think it's done right." City Clerk Brown, "We would probably have to hire if it's above and beyond like what you were saying." Council Member Strawder, "Well yeah." City Clerk Brown, "We would have to hire separately." Council Member Strawder, "But I think by indicating agrees to allow the city or assigns to inspect that basically is saying that the developer can't say this is my private property, get off of here type of thing is all it's doing. They are allowing the city to come up or somebody on the city's behalf to come in and do an inspection." Mike Skillman, "Again, the city still has control because you still hold the permits. Like I told you last time, you know, so if the developer starts going wild you can pretty much say well either you do it by the book or you're not going to get, you know, occupancy or whatever. I can't think of the right word now. So, the city always has--."

Council Member Curtiss, "Okay so the electric wire electrical wiring, okay, once that's done, then the developer contacts the inspector to come and inspect it?" Mayor Luke, "No, it's inspected all along the process." Council Member Curtiss, "All along? So that inspector is there pretty much as it's being done?" Mike Skillman, "On a big project, they literally, there will be a guy that lives there." Mayor Luke, "They could even have a trailer there that they're working out of." Mike Skillman, "Yes." Council Member Curtiss, "Okay." Council Member Ernst, "But Alan would also go out and look to see how it's coming along, correct?" Mike Skillman, "Oh, he is more than welcome to always come look." Mayor Luke "He is welcome but he doesn't have any authority to do anything." Council Member Ernst, "But if he thinks that there's an issue couldn't he ask that inspector?" Mayor Luke, "He can ask the inspector but he can't inspect it and say you did this wrong or you didn't tighten that plug the correct amount, you know."

Mike Skillman, "But I'll be honest with you, most inspectors like the city guy to be right there. They want them to see what's going on." Council Member Curtiss, "I would think so." Mike Skillman, "They want to work together. They don't want -- they're not like you know running out here wild. You know, because it's also their job, not only to follow the prints and if there's a discrepancy, well, guess what? We have to sit down and figure out between the engineer and everybody, you know, hey, maybe this line came in and it's not matching up like it's supposed to. Well, we need to have a talk, you know? And it's not all going to happen right in the field. It's going to happen in the field, on the phone, and but that's where the city would be involved. Everybody be involved in certain situations like that." Zoning Clerk Hugunin, "I mean really similar to the new jail project." Council Member Curtiss, "Okay." Zoning Clerk Hugunin, "Real similar." Council Member Berryman, "Nathan I have a question. On 6.2 default by city. It said the developer may provide written notice. Shouldn't it say must provide written notice? It's 6.2 the word may, changing it to must provide written notice."

Council Member Strawder, "Okay. That's one of those I read it the same way as --." Council Member Berryman, "Well may means you can, you don't have to." Council Member Berryman, "Yeah we can go through and make sure your may's and shall's and that type of stuff--." Council Member Berryman, "And should that be within a certain amount of days to as opposed like if the developer sees something that the city hasn't done, they don't wait two or three weeks for it." Council Member Strawder, "Yeah, so that would be one where there's a bracket and insert number. So, the bottom line of 6.2, there's a couple other ones there. That's something that I think we need to discuss to see what length of time or if we're going to leave it open-ended like this and identify that length of time at every project." Council Member Berryman, "Yeah and I think that's always good you know to put time frames on things for both parties." Mayor Luke, "Right, I guess my question is, what responsibility is the city going to have that would lead to them going into default? Because TORT law will take over most everything."

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Council Member Strawder, "It's basically just that if the city isn't abiding by the agreement, I mean, is basically what 6.2 says." Mayor Luke, "But basically, as far as the city, since the developer is doing all of the infrastructure, as long we are issuing the permits and letting them proceed and not stopping them from doing their job, and we're working with the inspector, there's not a whole heck of a lot of the city is going to be involved with." Mike Skillman, "True but there are situations I can tell you where somebody gets to where they don't want to work, you know what I mean? And that's kind of where I believe, you know, it gives the developer, hey, we need to talk about this, you know, and bring it to the attention within so many days." Mayor Luke, "Oh, I have no problem with them bringing it to the city's attention in four or five days or whatever--." Mike Skillman, "Yeah." Mayor Luke, "Whatever is decided upon but if it ends up being six days, now you've set the precedent because now they have the right through some legal process. I know it's going to be a hang-up for Philip, that I can guarantee because he and I have had a couple or three discussions about it because there's no ordering, there's no parts we have to do. We will be there to inspect when the inspectors need some assistance or when we drive through to just look at things, and Jimmy will issue that permit. When things are done and the inspector signs off on it, we then assume the responsibility of operation and maintenance. I'm having a difficult time coming up with what obligations default we're looking at, trying to protect."

Council Member Ernst, "Well, even the agreement that Philip has drawn up it does, you know, basically say that the city agrees to support the development in a timely manner. It doesn't list specific days or anything but I think that that section, I mean, maybe the 6.2 that Nathan brought in, maybe it can be, you know, maybe the two can be combined somehow or worded kind of in between what Philip has and in between what Nathans has. As far as number of days, I don't know." Council Member Strawder, "So, I mean on that--." Council Member Curtiss, "I just look at it as something for the developer to if something isn't performed the way it should be by the city, the developer has an out there. Something to say to this city. I mean we've got default by the developer and I think--I just don't see no problem with it." Mike Skillman, "Well any good contracts should be balanced both ways where if somebody fails on one side, you know what I mean, they have recourse on the other." Council Member Curtiss, "Right and I guess that's what I'm trying to say." Mike Skillman, "That's really what this is." Council Member Curtiss, "Yeah." Mike Skillman, "And I'm not saying like five days, you know, you don't--but it ought to be taken care of within 30 days." Council Member Curtiss, "And I can't think of-- well like I said, I don't know what I'm talking about but I can't think of anything. You know as long as everything is going according to the way it should be going. We're not going to have any kind of a --." Mike Skillman, "The chances of that happening are very, very slim. The only thing that brought it up was that I have been in situations where we had a person, that wasn't the city council, but this person representing the city, you know, hey, we're needing these numbers for calculations, you know what I mean? We need to know what this pump is putting out and we just de-daddled and de-daddled type a deal, right? Well, then it kind of gives us like hey you have 30 days. We have written notice to the city council. Then the city council goes, why haven't you got them the numbers? Oh, well, you know, and then it's all taken--. That's kind of how--."

Council Member Curtiss, "Well yeah." Mike Skillman, "It gives them a deal to write a letter. Hey, we need this stuff because you're holding us up. That's where a lot of that falls in you know. Because a lot of what the engineer will do is he will need numbers from the city, he will need to know where the lines are located, what the depths are, and all this stuff. They'll go do some checking also, but a lot of his preliminary stuff will come from the city, you know, what's out there, what do you have, what size are your lift stations, what's this, what's this, what's this? And then he can do some calculations saying, well it's going to be big enough, it's not going to be enough, I need this line, we're going to need that line. Now, let's see what's in the ground for sure to make sure. You see that's kind of how the process goes. But that's -- it's just there for backup for the developer but I've never seen it go clear in my dealings clear into any kind of legal stuff. It's more just like writing a letter to get them off their ass." Council Member Curtiss, "Okay." Mike Skillman, "But it wasn't the city council. It was their representative that wasn't following through. But it was taken care of. So, it just gives you, hey, we are going to write a letter

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to get this taken care of. Most of the time you don't have to do that because you make a phone call. You know, you say, hey can you help me out a little bit?"

Mayor Luke, "Especially in a small town." Mike Skillman, "Yes." Council Member Curtiss, "So I mean I don't have a big hang-up at all with that being in there. Not at all." Council Member Strawder, "Yeah, to me, kind of like what Mike said, any agreement's going to have--both sides need to be bringing something and both sides need to be held accountable by having something like this in here that it's, I mean, it's the surety that the city's going to uphold their portion of the agreement also. So, where that also, where I've seen it come into play, is there's for whatever reason something happens and then building permits aren't issued and even though the developer has everything complete for whatever reason this city is holding up a permit of some kind even though there's nothing, there's no other action for the developer to do. And again, that's the last resort because you're going to be coming out there, you're going to be talking to the city staff, you're going to be talking to the mayor, you're going to be talking to the council. It's kind of that last resort type of thing is how I would read the 6.2."

Council Member Ernst, "But should we set a number of days, like 30 days?" Council Member Ernst, "I would be in favor of that, yeah." Council Member Curtiss, "I think so. I mean it needs to be done and the sooner the better. I mean, you're holding things up otherwise." Council Member Ernst, "And I do feel like it, you know, in relation to the agreement that Philip has drawn up where it talks about the city responsibilities and such, I think it all kind of falls into that same category that, you know, the city is going to promptly issue permits and stuff. The city agrees to work with the inspector, we're going to do reviews, and such in a timely manner. I think all of that, you know, kind of falls into this 6.2 category." Council Member Mays, "Which if you look at section 3, the responsibilities of the city, it's basically saying what we are saying there, that we're going to do it, right?" Council Member Strawder, "Right." Council Member Mays, "Which is basically what Philip has but they're pretty much exactly the same they are just worded different." Council Member Strawder, "And again, if you read 6.2 in its entirety, in the event the city fails to perform its obligations under this agreement the developer may provide written notice of such default. If the city fails to cure the default, so that right there indicates that the developer has to be talking to the city first, and has to be providing a written notice saying this is--you're not holding up your part of the deal. We have this signed legal document. It allows them to either try to cure the default or that's how it's stated in here. But I do agree with the 30 days as indicated. So, I'm going to mark that in there."

Council Member Ernst, "Is that something that you would also think sounds reasonable, Mike? 30 days?" Mike Skillman, "Yeah, that's reasonable. I mean most of the time it's never going to happen but if it gets to that point of the 30 days and it needs to be brought to somebody's attention, you know. But it's like I agree with Stan, the chance of it going there is slim but yet still need to have a—as a developer you still want to have a little bit of coverage basically what it is, a little bit of a security knowing that you have another option if something fails to go down. You know what I mean? That's all it really is." Council Member Strawder, "So looking back through here because there's, as I said, there's a couple different spots in the agreement where there is a timeline that could be inserted. So are you guys fine if we kind of where to look at those throughout the agreement." Mayor Luke, "Can I ask you one question first? What are taking ownership of where it says, maintenance and ownership?" Council Member Ernst, "Where is that at?" Council Member Mays, "Here." Council Member Strawder, "The public utilities. After the sewer is in the ground and signed off on by the city, the sewers become property of the city, the water lines, the streets, and all of that."

Mayor Luke, "I always thought the easements are on private property and infrastructure is installed in the private property. I guess we just need to make sure that everybody understands that the only thing that we're taking ownership of is the pipe and wires." Mike Skillman, "Yeah, because you'll still have an easement that allows you to service your--" Multiple people talking at once. Zoning Clerk Hugunin, "—whether it's a utility easement or an alley easement." Mayor Luke, "It's just to make sure that somebody

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doesn't think that we are taking over ownership of the easement land." Mike Skillman, "That you have to go mow or something. Yeah, I get it. But that's where just an easement you're allowing to go through their property, they still have to maintain it." Mayor Luke, "They have to do all of that." Mike Skillman, "Then once you take ownership, you're taking ownership of all the hard utilities that are under the ground. You're not taking ownership of the ground, you know, you take ownership of the piping and the electrical and anything that's buried or up above or whatever. That's what you take ownership of. The infrastructure part, not the land. Unless you have a lift station which you already own that land in order to put the lifts, you know what I'm getting at. And say you put a development in and we have to lift station in, that land would be deeded out for that and the city would end up with that land right there where that lift station is because they would have to have that to maintain it and do that type stuff."

City Clerk Brown, "Then they still have to allow too, remember that like from the water, from the pit to the house is private, they would be responsible for that. We would only be responsible for up to that." Council Member Mays, "Which I think when it says, maintenance of public infrastructure I think the public work--." Council Member Strawder, "Yeah, it's only the public infrastructure." Council Member Ernst, "I think that Philip uses common infrastructure instead of public." Council Member Strawder, "I've always heard it referred to as public. I always hear there's public infrastructure and private infrastructure. I'm not sure what the definition of common would be." Mike Skillman, "Common could mean everything." Council Member Curtiss, "Are you talking about Philip's, the last paragraph?" Council Member Ernst, "Yeah." Council Member Curtiss, "That's what I've been looking at and I've been trying to figure that out; If this is what you're talking about." Council Member Ernst, "Yeah, when I say Philip's." Council Member Curtiss, "Yeah, this one." Council Member Ernst, "Yeah." Council Member Curtiss, "Is that what you were referring to Stan? Something like that?"

Mayor Luke, "Yeah, whether we need a definition, just to make sure that everybody understands what it is that the city will be owning and what obligations the homeowner or property owner still has." Mike Skillman, "And what you currently have now you know the city owns all the mains and then the owners go from the house to the main, they're responsible for all that and that's basically what it would fall back to." Zoning Clerk Hugunin, "We've got that pretty well covered in our zoning regs and city code on easements and utilities." Council Member Strawder, "Yeah, so section one definition 1.4 public improvements, all infrastructure to be constructed within the subdivision, completing streets, sidewalks, water lines, sewer systems, storm drainage, street lighting, and other public utilities or facilities as described in Exhibit B. This is really, I mean, it's already kind of defined what the definition of public infrastructure is, and then by default, you would go back to whatever the common definition of it is. As I said, you have, I've always referred to it as public infrastructure or private infrastructure. Private infrastructure is oftentimes from the water meter to the house from the connection point of the sewer to the house that type of stuff. That is where Jimmy is indicating a lot of that is already defined in our subdivision regs and stuff like that. Jimmy, do you know, is there anything about the maintenance period after the project acceptance?"

Mike Skillman, "Generally it's one one-year warranty period." Council Member Curtiss, "So there's-- that's something." Zoning Clerk Hugunin, "I don't know if we have anything like that. I'd have to look. I don't know if we have anything like that in subdivision regulations. I'm not sure." Council Member Strawder, "Okay, I know some people go with the one year depending on what it is. Ours at our work we go longer than that, but it's really a mixture of stuff. But that would be something I think in 2.7 we would need to identify insert a number of years in the middle there. So, developers shall want the public improvements against the defects in materials and workmanship for a period of blank years after finally acceptance by the city. The developers shall promptly repair any defects that arise during this period." Council Member Ernst, "I think in Philip's I think they used two years. Some somewhere in here I saw--." Mayor Luke, "Bottom of the first page. Performance security and a period of two years."

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Council Member Strawder, "And again, oftentimes that's being done by maintenance bond where if they don't get it done, then you pull the bond." Mayor Luke, "He and I talked and it's whatever type of security he wants to have whether it's a maintenance bond, whether it's something else. We're not going to restrict it to just a specific type. He can pick and choose what'll work for him and where he can get his financing and have it available for two years and that's it." Council Member Strawder, "Yeah. So, the next spot where there'd be something timeline-wise is section 4.1 commencement of construction, developer agrees to commence construction of the public improvements but then, insert timeline days following the approval of final engineering plans by the city. This is where I'd recommend the one year. So, 365 days. The next item down completion of the public improvements, developer shall complete all public improvements within insert timeline months of commencement of construction unless an extension is granted. I would recommend 24 months, two years. So, they have a year to get started and two years of construction."

Mayor Luke, "So, that's 24 months after the commencement of construction." Council Member Strawder, "Yes, so you're totally from the time of the agreement, it's three years." Mayor Luke, "Yeah, three years." Council Member Strawder, "As I said, that's kind of standard for KDHE on their stuff." Council Member Curtiss, "Okay. So that's public improvements, right? Within 24 months. That's the sidewalks and all that kind of stuff." Mayor Luke, "If they want sidewalks. It's a matter of it doesn't mean-." Council Member Curtiss, "Yeah, I looked at the definition." Multiple people talking at once. Council Member Curtiss, "No, all the houses have to be built and stuff like that. It's just public improvements." Zoning Clerk Hugunin, "Everything considered construction is either one of those. I just call it groundwork." Mayor Luke, "Yeah." Council Member Curtiss, "Okay." Council Member Strawder, "Let's see, I think the next one will be section 5.2, insurance. Developer shall procure and maintain insurance coverage, at its own expense, in the following amounts, general liability insurance of not less than insert amount. And I think this would be probably reflective of city ordinance if we have a city ordinance on anything like that."

Mike Skillman, "It used to be a million but that won't even touch it anymore. I think it's I want to say that most of my minimum ones are like two to five million of general liability coverage. I think, I carry 10 or something like that, but I have to for a certain contractor. But anyway, you need to be more than a million, you probably need to be at least two to five." Council Member Strawder, "And maybe what the best approach is here is to leave this. So that that's determined by project." Council Member Curtiss, "Yeah, that's what I was thinking." Council Member Strawder, "So, if you're doing a single lot versus 25 lots." Mike Skillman, "Very true. Yeah, if you were doing a single lot, they would be a little pissed that they have to put five million dollars up to do one little house." Council Member Curtiss, "Right yeah. If you're doing a whole project it would have to be different there." Council Member Strawder, "Okay. So, default by developer, in the event developer fails to perform any obligation under this agreement, the city- may provide written notice of such default. If developer fails to cure the default within X number of days, the city may take any or all the following actions. My recommendation will be 30 days. It's the same amount for both parties."

Mike Skillman, "Be the same as a city." Council Member Strawder, "And the following actions would be stop-work order, withhold issuance of building permits, withhold payment of public improvements, that's if applicable, take legal actions, complete improvements at the developer's expense, that would be a very extreme stance, enforcement of the maintenance bond or other security. So basically, they complete the improvements at the developer's expense, withhold payments for public improvements, and I would even indicate most likely take legal action to enforce the terms of this agreement, those would really be applicable if the city was providing any type of funding for that. So, basically, on privately financed stuff it doesn't become the city's property until the end. So, until the city approves it and it's important to remember that developments go sideways, it's not uncommon for a development to start and then funding falls apart or whatever. Privately financed that's just one of those things there isn't much recourse the city

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can do on that. But if the city is putting up specials or anything like that then they can say, no, we're putting money up. This will be completed is essentially what a lot of that takes. And I think that was about it. The one thing that I did not include on this on the exhibits, and I don't know if it's really needed or not, because how it's written in here the public financing option would be a separate agreement. But the publicly financed template that we have included in Exhibit C, which indicates all of the payment stuff. I intentionally left that off because more often they're not, this would be a privately financed but allows for the opportunity that if the city wants to provide, you know, there would be that instance.”

Council Member Curtiss, “Now, this template, is this like what you were talking about the last time we met? It can be used both ways for public and private?” Council Member Strawder, “Yeah, so I looked at it and tried to combine the two. The problem with combining the two and keeping everything in both of them was, is that there is certain stuff if you are doing a publicly financed project where the city and by publicly financed, I mean the City of Burlington is putting forth funds, there's going to be more agreements, there's going to be more steps along the way. Oftentimes on your developments, like what the intent is here, it's going to be privately financed. Your publicly financed are going to be either like the TIF Districts or specials or something like that. So that's where I inserted unless otherwise approved by the governing body, I think is how I wrote it in there. Yeah. Unless otherwise approved by the governing body, the city shall have no obligation to provide financial assistance of the project. So that right there tells the developer that if you want the city to, you know, provide any type of funding or whatever that has to be approved by the city. And it was kind of my understanding that's where some of the previous developments maybe ran into issues where a developer was saying no the city needs to provide this and that. This clearly indicates that it's theirs unless the city agrees to it type of thing. So, there shouldn't be any prenotation that the city is going to be providing a bunch of money. I don't know if I indicated, I think I did, but this was revised to not just be a residential privately financed residential housing. It was revised to indicate in there it's a residential housing or commercial or mix use type of thing.”

Council Member Curtiss, “Okay.” Council Member Strawder, “Which I think that covers basically the bulk of everything.” Council Member Curtiss, “So, what Philip has given us here, is all of that covered in this? Because I haven't had time to look at it and see, you know, is this here. I really don't know what to say right now.” Council Member Strawder, “It may look a little different but it's still-- this is written in the way that it's vague enough that it still covers, if that makes sense. So, like the thing with the inspector, the inspection, you know, word for word, it differs on the agreements, but it still allows for that type of thing.” Mayor Luke, “On concept it's the same.” Council Member Ernst, “Yeah.” Council Member Strawder, “Yeah, essentially.” Council Member Strawder, “The verbiage is different but the concept of what needs to be accomplished is basically the same thing.” Council Member Curtiss, “This is more...” Council Member Mays, “Condensed?” Council Member Curtiss, “Yeah condensed.” Mayor Luke, “You can get it too condensed.” Council member Curtiss, “This one is easier for me to understand, I guess, than this one.” Council Member Mays, “Yeah, I agree.” Mike Skillman, “Well, it's because it's itemized out on what we are talking about here.” Council Member Curtiss, “Yeah.”

Council Member Ernst, “Well, I wonder I mean if we agree that they're pretty much similar if we could, you know, have Philip look at the one that Nathan brought you know and just to make sure everything is--” Council Member Strawder, “Yeah and tweak it in the legal ways that he needs--” Council Member Curtiss, “That it needs to be.” Council Member Strawder, “I am far from being a lawyer.” Council Member Curtiss, “Yeah.” Council Member Ernst, “Because yeah, I mean I agree that I've looked at Philip's a few times today and it seems to me like you know, the wording, you know, everything seems covered in both to me.” Council Member Curtiss, “That's good. But I think this one is still easier to understand for me.” Council Member Ernst, “Oh yeah. I agree, the way it's broken down, I agree.” Mayor Luke, “It's got the headings and stuff in it.” Council Member Curtiss, “Right.” Mayor Luke, “The other doesn't.” Council Member Ernst, “I know, Mike, you haven't had much of an opportunity to look at the one probably that—

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well either one of them possibly.” Mike Skillman, “Well, this one here is based off of the ones I brought in.” Council Member Curtiss, “Right because I was looking at those too it and a lot of those are the same.” Council Member Strawder, “Yeah, a lot of it was I liked maybe a little bit how one of the sections was written in the publicly financed, maybe more so than how it was written in the privately. So those were the types of changes other than two or three other ones which was--.” Mike Skillman, “But the two basic agreements were almost identical. There were a lot of certain words in those--.” Council Member Curtiss, “Yeah that’s right.” Mike Skillman, “Financing areas mainly.”

Council Member Ernst, “So with that said and with this agreement, is this something you would agree, like if you were to develop something here in Burlington, that you would be willing to sign with the city?” Mike Skillman, “Oh 100%, because it's very simple --but you can understand it. You know what I mean? Everybody knows where they stand and it gives everybody a level playing field, you know. And surely at the end of the day, we want to be successful no different than you do. So, it's a partnership and all this does is say, hey, we're going to work together. This is our guidelines because we want at the end of the day, we all want to be able to say, hey, we did that. Because it is, it's not the developer doing it, it's a community doing it. Truly it is. So, anybody that thinks it's just one dude coming in here that's making all this happen, totally missed the boat. It's you guys. It's the rest of the people who work for the city that help, you know, make part of this happen whether it's the Chamber of Commerce, whether it's accounting, whether it's – it’s a community type situation to make these things happen. Zoning and all that other stuff that has to happen, you know, it literally is a community deal. That's where if we're working together then it makes it a whole lot easier for everybody else to jump on board and want to be part of it. And that's pretty much all this does. Hey, we're going to play nice and we are going to play fair and we're going to try to make this happen.”

Council Member Curtiss, “So what do you think there Mr. Mayor?” Mayor Luke, “So basically what we need to do is meet well Philip will be here in town tomorrow night for court. I can maybe catch him before court and we can run through some stuff with him and say mesh this together. So that everybody understands it and make sure that everything is covered and come up with one single document.” Council Member Curtiss, “On this type of document.” Council Member Mays, “We like the way this is formatted. Have him look over and --.” Council Member Curtiss, “Yes.” Mayor Luke, “Dot the I’s and cross the T’s, spell the words right. Okay, anything else we need to review on this then?” Council member Curtiss, “No.” Mayor Luke, “If no, everybody approve?”

Mayor Luke declared the meeting adjourned.

_____ Anne C. Brown, City Clerk