

A Regular Meeting of the City Council of the City of Hickory was held in the Council Chamber of the Municipal Building on Tuesday, February 7, 2017 at 7:00 p.m., with the following members present:

Brad Lail	Rudy Wright	Hank Guess
	Aldermen	David P. Zagaroli
Danny Seaver		Jill Patton

A quorum was present.

Also present were: Interim City Manager Andrea Surratt, City Manager Rodney Miller, Deputy City Attorney Arnita Dula, City Attorney John W. Crone, III, Deputy City Clerk Cari Burns and City Clerk Debbie D. Miller

- I. Mayor Wright called the meeting to order. All Council members were present except for Alderman Tarlton.
- II. Invocation by Rev. Whit Malone, Pastor, First Presbyterian Church
- III. Pledge of Allegiance
- IV. Special Presentations
  - A. Presentation of the Distinguished Budget Presentation Award for the Fiscal Year Beginning July 1, 2016. This is the twenty-second consecutive year the City has received this recognition.

Mayor Wright read and presented the Distinguished Budget Award for the fiscal year beginning July 1, 2016 to Budget Analyst Cameron McHargue, and Finance Officer Melissa Miller.

RESOLUTION NO. 17-06  
RESOLUTION OF THE HICKORY CITY COUNCIL  
HONORING THE HICKORY BUDGET OFFICE STAFF  
UPON RECEIPT OF THE DISTINGUISHED BUDGET PRESENTATION AWARD FOR  
THE FISCAL YEAR BEGINNING JULY 1, 2016

WHEREAS, the Government Finance Officers Association of the United States and Canada has bestowed upon the City of Hickory's Budget Office the Distinguished Budget Presentation Award for the twenty-second consecutive year; and

WHEREAS, this award is the highest form of recognition in governmental budgeting, representing a significant achievement by the City of Hickory, and reflecting the commitment of the City Council and Staff to meeting the highest principles of governmental budgeting; and

WHEREAS, in order to receive this budget award, the City of Hickory Budget Office satisfied nationally recognized guidelines for effective budget presentation that are designed to assess how well a City's budget serves as a policy document, a financial plan, an operations guide and a communications device.

NOW, THEREFORE, BE IT RESOLVED THAT the Hickory City Council hereby recognizes and honors the Budget Office Staff upon receipt of the DISTINGUISHED BUDGET PRESENTATION AWARD and its continuing efforts to improve the quality of budgeting and provide an excellent example for other governments throughout North America.

- V. Persons Requesting to Be Heard

Mayor Wright commented Council had seen the name tags, referring to the Catawba Springs residents, and they appreciated their interest in getting informed about what their government is about. He explained the rules of procedure. Except in connection with the public hearing the only time that people are entitled to speak was during this period of the meeting, "Persons Requesting to Be Heard", Item V. of the agenda. He pointed that out because there was an item later in the agenda in which he knew they were interested in. At that time he advised there would be no opportunity to speak because that was the protocol. He thought the citizens could understand why Council doesn't bend the rules on that. They could have people at various times during the meeting standing up and saying they would like to speak and you let so and so do it last week, so they hold to the protocol. He advised those wishing to speak would have an opportunity to express their concerns and wishes. He asked that people try to keep it within a three minute range, per person. However, they didn't want anyone to leave saying they had something urgent that would have effected a vote or the way an item was viewed by the Council. They bend that a little bit. He advised the citizens would hear that they call three minutes, six minutes, sometimes they call nine and twelve, once or twice more.

- A. Mr. Noah Geoghegan, 925 38<sup>th</sup> Avenue NE, advised City Council it had been brought to his attention earlier in the day that there was some grumblings about right-of-ways at the Catawba Springs Development. He was not sure what was on the agenda, he was reading it and trying to prepare. He advised he represented Lake Hickory Country Club Executive Committee, and he was the Board's Treasurer. They did not have an opinion either way on

the issue other than they believe there may be an assignment of interest to them originally when that area was developed that involved those public right-of-ways. That was all that he knew. He asked City Council, he wasn't sure as to where in the agenda that it would be discussed, but he asked City Council for time to do their due diligence if they do have an opinion on it or not, but they may have a vested interest in those right-of-ways, or easements.

Mayor Wright asked Mr. Geoghegan if he was asking for a continuance.

Mr. Geoghegan responded yes. Maybe until next month to talk about it so they could do their due diligence to see if they have any interest in those right-of-ways or not.

Mayor Wright advised Council would consider that when they get to that item on the agenda.

- B. Ms. Tina Travis, 1465 and 1481 Turtle Dove Road, Conover, NC advised City Council her property was opposite of where the right-of-ways were being mentioned. Her interest was that the property owners had a deeded right-of-way leading to those right-of-ways there. At the moment they are trying to get their driveway built so they can use those right-of-ways that are legally theirs. At the moment they are driving through her front yard to get to their property. She left this area open so they would have access to fire and ambulance, but with each owner of this property they tell her as they get the funds available they will put in their driveway. Each owner fails to do that. She doesn't close the area there because she doesn't want anybody to be hurt. She advised that was her interest in it and why she had come to see what everybody had to say as far as their standings on this issue.

Mayor Wright asked Ms. Travis if she lived opposite the right-of-ways. He had driven out there and wanted to clarify where she lived.

Ms. Travis had a map of her property and pointed out her property, L.D. Austin, and Vernon Tarlton's property. She advised he had a right-of-way that had been passed down from purchaser to purchaser to come out to that right-of-way additionally on the golf course side. Every owner says they will build their driveway when they get the money. They don't seem to be getting the money to get their driveways built and she can't close off her front yard without feeling bad about them getting fire or something. She pointed out their properties, Mr. Austin's, and her property which was on the dead end road. She advised the road actually ended in her first lot, 1465 Turtle Dove Road. She drives over part of 1465 Turtle Dove Road to get to her home and the area was her front yard. That is why she was interested in what was going to happen.

Mayor Wright asked if Council needed any clarification.

Alderman Zagaroli asked if he could look at the map.

Ms. Travis explained the properties locations to Alderman Zagaroli.

Staff displayed a map of the area on the screen.

Mayor Wright advised some of this was a little different than what they normally do, but Council wanted everyone to feel that they would have an opportunity to learn the issue upside down and backward.

Ms. Travis pointed out on the map displayed on the screen the properties that she owned. She pointed out where Turtle Dove Road ended at a big oak tree. She had discussed this with the State several times and they told her the same thing, the road ends there. They had several votes in the past with all of the area residents, folks on their road and neighboring roads, to not continue that road to always leave it a dead end neighborhood because they liked the neighborhood the way it is. She pointed out the trees and advised that part went through her front yard and was really close to the bedrooms in the front. It wasn't initially a driveway, it was just a yard. She mentioned that years ago when she was a child and Dr. Tolhurst bought the property he just needed it to come in and out because he couldn't afford to fix his driveway. They said okay, and he got insurance, and he and his wife began living there. When it got sold they were supposed to fix the driveway that was coming out at another location. She commented we are not here to fix their driveway. If they have a right-of-way they should use their right-of-way and not her front yard. She pointed out an area and advised it was brand new on any of the deeds. She pointed out an area that was in case of fires. They had a big fire several years ago and that was the only way they could get in. She advised that was fine and why they had left it open because they didn't want anybody hurt. She commented if he had an opportunity to get his own right-of-way that would be great. Every homeowner should be able to come and go as they please on their own property and not take anything from anybody else or their property. That was her interest in the whole thing.

Mayor Wright asked if anyone else wanted to be heard. No one else appeared.

Alderman Lail moved, seconded by Alderwoman Patton, to modify the order of the agenda and hear the section entitled "Petitions and Requests". He wanted Council to go ahead and hear it as there was a crowd present interested in it, and it might be convenient for them. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Lail seconded by Alderwoman Patton and the motion carried unanimously. Mayor Wright advised all members were present except for Alderman Tarlton who was absent for medical reasons.

At this point in the meeting Council moved to the section of the agenda "XI. New Business, Item C., Presentation of Petitions and Requests, Number 1. Presentation of Requests from Attorney Ellie Bradshaw and Attorney Dean Amos Pertaining to Unopened Rights-of-Way in Catawba Springs Subdivision". Minutes for this segment of the meeting appear under "Item XI. New Business Item C., Presentation of Petitions and Requests, Number 1", but occurred at this point in the meeting.

VI. Approval of Minutes

A. Regular Meeting of January 17, 2017

Alderman Seaver moved, seconded by Alderman Zagaroli that the Minutes of January 17, 2017 be approved. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Seaver seconded by Alderman Zagaroli and the motion carried unanimously.

VII. Reaffirmation and Ratification of Second Readings. Votes recorded on first reading will be reaffirmed and ratified on second reading unless Council Members change their votes and so indicate on second reading.

Alderwoman Patton moved, seconded by Alderman Seaver that the following be reaffirmed and ratified on second reading. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderwoman Patton seconded by Alderman Seaver and the motion carried unanimously.

A. Budget Revision Number 15. (First Reading Vote: Unanimous)

VIII. Consent Agenda: All items below are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests. In which event, the item will be removed from the Consent Agenda and considered under Item IX.

Alderman Lail moved, seconded by Alderman Seaver approval of the Consent Agenda. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderman Lail seconded by Alderman Seaver and the motion carried unanimously.

A. Approved on First Reading Acceptance of the Bid and Award of the Contract to Kelly-Creswell, Inc. in the Amount of \$144,380 for the Purchase of a Kelly-Creswell Model MV3-AL Truck Mounted Striper (Paint Truck).

Currently the Public Services Traffic Division uses a 1990 model paint truck to strip roadways on newly paved roads as well as refreshing old paint on existing pavement. The equipment on that unit is outdated, no longer working, and parts are difficult to find. This truck applies approximately 250,000 feet of lane striping a year. This equipment is being replaced as a component of the Public Services Traffic Division's normal capital budget. Staff recommends City Council's acceptance of the bid and award the contract to Kelly-Creswell, Inc. for the purchase of a Kelly-Creswell Model MV3-AL truck mounted striper (paint truck) in the amount of \$144,380.

B. Called for a Public Hearing – Consideration of Closing a Portion of 1<sup>st</sup> Street NE. (Authorize Public Hearing for March 7, 2017, at 7:00 p.m. in Council Chambers of the Julian G. Whitener Municipal Building).

RESOLUTION NO. 17-07  
RESOLUTION OF INTENT

A Resolution Declaring the Intention of the City Council of the City of Hickory  
to Consider the Closing of a portion of 1<sup>st</sup> Street NE

WHEREAS, G.S. 160A-299 authorizes the City Council of the City of Hickory to close public streets and alleys; and

WHEREAS, the City Council of the City of Hickory considers it advisable to conduct a public hearing for the purpose of giving consideration to the closing of a portion of 1<sup>ST</sup> Street NE, Hickory.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory that:

1. A Public Hearing will be held at 7:00 p.m. on the 7<sup>th</sup> day of March, 2017, in the Council Chamber of the Julian G. Whitener Municipal Building at 76 North Center Street, Hickory, North Carolina to consider a resolution closing of a portion of 1<sup>ST</sup> Street NE, Hickory.
2. The City Clerk is hereby directed to publish this Resolution of Intent once a week for four successive weeks in the *Hickory Daily Record*.
3. The City Clerk is further directed to transmit by registered or certified mail to each owner of property abutting upon that portion of said street a copy of this Resolution of Intent.
4. The City Clerk is further directed to cause adequate notices of this Resolution of Intent and the scheduled public hearing to be posted as required by G.S. 160A-299.

- C. Approved on First Reading a Community Appearance Grant for Non-Residential Property Owned by The Block 108, LLC Located at 108 South Center Street in the Amount of \$5,000.

City Council created the Community Appearance Grant program in 1999 to provide economic incentives for property owners to improve the general appearance of properties located within the City's designated Urban Revitalization Area. The Community Appearance Commission reviews applications for the grant program and forwards a recommendation of approval or denial to City Council. The grants are designed as a reimbursement grant in which the City of Hickory will match the applicant on a 50/50 basis. The maximum grant amount from the City of Hickory is \$5,000. The grant proposal requested involves the replacement of windows on the building's upper floor elevations. The applicant provided two bids for the replacement windows, which total \$12,400 and \$12,600. The request would qualify for a \$5,000 grant. The current tax value of the property is \$379,900. The value of the grant represents approximately 1.3 percent of the property's tax value. The application was reviewed by the Community Appearance Commission at its January 9, 2017 special called meeting. The Community Appearance Commission voted unanimously (7-0) to recommend funding of the grant application in the amount of \$5,000.

- D. Approved on First Reading a Community Appearance Grant for Non-Residential Property Owned by Rahe Bryce, LLC Located at 117 Government Avenue SW in the Amount of \$5,000.

City Council created the Community Appearance Grant program in 1999 to provide economic incentives for property owners to improve the general appearance of properties located within the City's designated Urban Revitalization Area. The Community Appearance Commission reviews applications for the grant program and forwards a recommendation of approval or denial to City Council. The grants are designed as a reimbursement grant in which the City of Hickory will match the applicant on a 50/50 basis. The maximum grant amount from the City of Hickory is \$5,000. The grant proposal requested involves the replacement of the building's storefront, which includes new windows, painting and repair of the existing metal storefront elevation, removal of wooden paneling, and new concrete footings for the window replacement. The applicant provided two bids for the replacement windows, which total \$31,700 and \$33,143. The request would qualify for a \$5,000 grant. The current tax value of the property is \$158,000. The value of the grant represents approximately three percent of the property's tax value. The application was reviewed by the Community Appearance Commission at its January 23, 2017 meeting. The Community Appearance Commission voted unanimously (6-0) to recommend funding of the grant application in the amount of \$5,000.

- E. Approved on First Reading a Landscape Incentive Grant for Non-Residential Property Owned by The Block 108, LLC Located at 108 South Center Street in the Amount of \$2,500.

City Council created the Landscape Incentive Grant program in 1999 to provide economic incentives for property owners to improve the general appearance of properties located within the City. The Community Appearance Commission reviews applications for the grant program and forwards a recommendation of approval or denial to City Council. The

grants are designed as a reimbursement grant in which the City of Hickory will match the applicant on a 50/50 basis. The maximum grant amount from the City of Hickory is \$2,500. The applicant's proposal involves the installation of planter boxes, and planting materials adjacent to the existing commercial building. The applicant provided two bids for the work listed which total \$8,900 and \$9,800. The request would qualify for a \$2,500 grant. The current tax value of the property is \$379,900. The value of the grant represents approximately .6 percent of the property's tax value. The application was reviewed by the Community Appearance Commission at its January 9, 2017 special called meeting. The Community Appearance Commission voted unanimously (7-0) to recommend funding of the grant application in the amount of \$2,500.

- F. Approved on First Reading a Landscape Incentive Grant for Non-Residential Property Owned by Century Furniture Located at 401 11<sup>th</sup> Street NW in the Amount of \$2,329.

City Council created the Landscape Incentive Grant program in 1999 to provide economic incentives for property owners to improve the general appearance of properties located within the City. The Community Appearance Commission reviews applications for the grant program and forwards a recommendation of approval or denial to City Council. The grants are designed as a reimbursement grant in which the City of Hickory will match the applicant on a 50/50 basis. The maximum grant amount from the City of Hickory is \$2,500. The applicant's proposal involves the installation of new plant materials in an open area adjacent to the manufacturing facility's parking deck. The applicant provided two bids for the work listed which total \$4,658 and \$5,969. The request would qualify for a \$2,329 grant. The current tax value of the property is \$1,796,800. The value of the grant represents approximately .1 percent of the property's tax value. The application was reviewed by the Community Appearance Commission at its January 9, 2017 special called meeting. The Community Appearance Commission voted unanimously (7-0) to recommend funding of the grant application in the amount of \$2,329.

- G. Approved Special Events Activities Application Downtown Hickory Farmers Market 2017, Sarah Taylor Wood, Manager, Hickory Farmers Market, April 15, 2017 through November 25, 2017, Wednesdays 8:30 a.m. to 3:30 p.m. and Saturdays, 6:30 a.m. to 2:30 p.m. (times include set-up and clean up), Union Square.

- H. Approved on First Reading the 2017 Loan Agreement with the National Museum of the United States Air Force under their Static Display Program of Loan of Aircraft to the City of Hickory.

The City has taken part in the US Air Force's Static Display Program for many years whereby certain aircraft are on loan to the City for display by the Hickory Aviation Museum. In return, the Hickory Aviation Museum agrees to maintain and ensure the preservation of said aircraft in good condition while furnishing the Air Force with photos for the aircraft to remain prepared for expedition and periodic inspection. There are no City budgetary requirements under this agreement. The Hickory Regional Airport currently has on loan two aircraft that fall under this agreement, an F-105B and T-33A. Staff recommends approval of the loan agreement for 2017.

- I. Approved on First Reading the Sale of City-Owned Property Located at 704 1<sup>st</sup> Avenue Place SE to Jackie Robinson in the Amount of \$1,800.

The City owns the property located at 704 1<sup>st</sup> Avenue Place SE. It was originally purchased as part of the East Hickory Redevelopment Plan through a tax foreclosure. The property is currently vacant. Mr. Jackie Robinson owns the property next to this lot and has approached the City to purchase the property with plans to add the property to his lot. City Council previously approved an offer of \$3,000 by Mr. Robinson to purchase the lot. During title research, it was learned that the property purchased by the City at the 2001 Catawba County tax foreclosure sale did not contain the full property shown on the GIS mapping system. The City of Hickory owns roughly a 64 x 165 foot lot directly adjacent to Mr. Robinson's property. The lot is approximately 60 percent of the size originally thought to be owned by the City. The recent appraisal, based on the larger property size, listed the value of the property at \$4,000. Mr. Robinson has offered \$3,000 for the property, and City Council approved that contract on January 3, 2017 after receiving no upset bids. Given that the actual amount of property purchased in the 2001 tax foreclosure sale is 60 percent of the total lot shown on the GIS, Mr. Robinson has offered \$1,800 to purchase the remainder of the property that is currently owned by the City. This offer is 60 percent of the previously accepted offer. Given the location of the property on a dead end gravel road, and in the immediate vicinity of a major thoroughfare (Tate Boulevard), it is unlikely there is significant development potential for the parcel. The upset bid process will allow any other interested party to bid on the property. Staff recommends that City Council adopt a resolution accepting the offer from Jackie Robinson for the sale of the vacant lot located at 704 1<sup>st</sup> Avenue SE and authorize staff to advertise for upset bids.

RESOLUTION NO. 17-08

RESOLUTION AUTHORIZING THE ADVERTISEMENT OF AN OFFER TO PURCHASE CERTAIN PROPERTY

WHEREAS, City Council of the City of Hickory desires to dispose of certain surplus properties of the City of Hickory.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL THAT:

1. The following described property is hereby declared to be surplus to the needs of the City of Hickory:  
  
704 1<sup>st</sup> Avenue Place SE, Hickory, PIN #3702-08-98-6449, recorded in Deed Book 2245 at Page 1676, Catawba County Registry.
  2. City Council has received an offer to purchase for the sum of \$1,800 for the property located at 704 1<sup>st</sup> Avenue Place SE, Hickory, North Carolina. The person making the offer must deposit with the City Clerk a sum equal to five percent (5%) of his or her offer in the form of cash or cashier's check.
  3. City Council proposes to accept the offer unless a qualifying upset bid shall be made.
  4. The City Clerk shall cause a notice of such offer to be published in accordance with G.S. 160A-269.
  5. Persons wishing to upset the offer must submit a sealed bid to the City Clerk within ten (10) days after publication of the notice. The person making the bid must deposit with the City Clerk a sum equal to five percent (5%) of his or her offer in the form of cash or cashier's check. At the conclusion of the ten (10) days, the City Clerk shall open the bids, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
  6. If a qualifying upset bid is received, the City Clerk is directed to re-advertise the offer at the increased upset bid amount, and to continue with this process until a ten (10) day period has passed without receipt of a qualifying upset bid.
- J. Approved the Proclamation for Arbor Day, April 22, 2017.
- K. Approved on First Reading Acceptance and Award of the Agreement with Willis Engineers, Inc., in the Amount of \$65,000 for Evaluation and Design of the Lenoir-Rhyne University Area Waterline Improvements Project.

The Public Utilities Department annually identifies infrastructure that is in need of replacement or rehabilitation, as appropriate, as a component of the department's sustainability program. This project will evaluate the necessary interconnections in this area to maximize the available water in the "F" Avenue water tank and design those interconnections for construction at a future date. This area has traditionally experienced low water volumes during high flow events and this property will correct that by creating access to a one million gallon water tank in close proximity. Public Utilities staff developed and disseminated a Request for Qualifications package and advertised on the City website. Seven engineering firms responded to the solicitation and two were interviewed. The responding firms were: Willis Engineers, Inc., McGill Associates, Freese and Nichols, Clayton Engineering, McKim & Creed Engineering, Wooten Engineering, and Hulsey McCormick & Wallace of North Carolina, LLC. Willis Engineers, Inc. has been selected as the best qualified firm with experience and availability. The funds for this project are budgeted in the Public Utilities Capital Budget for FY2016-2017. Staff recommends City Council's acceptance and award of the agreement with Willis Engineers, Inc. for the evaluation and design of the Lenoir-Rhyne University area waterline improvements project in the amount of \$65,000.

- L. Approved on First Reading Budget Revision Number 16.

ORDINANCE NO. 17-04  
BUDGET REVISION NUMBER 16

BE IT ORDAINED by the Governing Board of the City of Hickory that, pursuant to N.C. General Statute 159.15, the following revision be made to the annual budget ordinance for the fiscal year ending June 30, 2017.

SECTION 1. To amend the General Fund within the FY 2016-17 Budget Ordinance, the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Culture and Recreation	350	-
TOTAL	350	-

To provide for the above and to make an accounting correction to revenue sources, the General Fund revenues will be amended as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Sales and Services	350	-
Restricted Intergovernmental Revenues	-	15,000
Other Financing Sources	15,000	-
TOTAL	15,350	15,000

SECTION 2. To amend the Storm water Fund within the FY 2016-17 Budget Ordinance, the expenditures are to be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Environmental Protection	62,500	-
TOTAL	62,500	-

To match revenues to the above, the Storm water Fund revenues will be amended as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Restricted Intergovernmental Revenues	62,500	-
TOTAL	62,500	-

SECTION 3. Copies of the budget revision shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

- M. Approved on First Reading Acceptance of a Right-of-Way Dedication Non-Warranty Deed from OHM Holdings, L.L.C. (Transportation Insight) to the City of Hickory.

The new rights-of-way were created when OHM Holdings L.L.C. developed the former Lyerly Mill property into a campus for Transportation Insight located at 310 Main Avenue Way SE. The development of the campus included certain modifications of existing infrastructures and other areas of the property. These modifications created new rights-of-way. The Right-of-Way Dedication Non-Warranty Deeds proposes dedication of two new rights-of-way. One right-of-way consists of 463 square feet located at the intersection of Hwy 127 North and 1<sup>st</sup> Avenue SE. The area is adjacent to existing sidewalk and is used for pedestrian traffic to and from parking lot areas to the named streets. The second right-of-way consists of 9,534 square feet running along a portion of Main Avenue Way SE and curving around the corner of Main Avenue SE and running along a portion of Hwy 127 North. This new right-of-way is also being used as a sidewalk for pedestrian traffic. OHM is reserving an easement for the perpetual placement of a 10'x15" sign in 9,534 square foot right-of-way. Upon acceptance of the new rights-of-way, the City of Hickory will maintain them. Staff recommends Council accept the Right-of-Way Dedication Non-Warranty Deed from OHM Holdings, L.L.C. to the City of Hickory.

- IX. Items Removed from Consent Agenda – None

- X. Informational Item

- XI. New Business:

- A. Public Hearings

1. On January 25, 2017 the Petitioners, which originally petitioned the City to consider closing a 60' Right of Way off of Pinecrest Drive between Lot 91 and 92 Catawba Springs Development Section 2, shown on Plat Book 15 at Page 46 Catawba County Registry submitted a "Request for Withdrawal of Street Closing Petition". The City Clerk advertised for this public hearing in a newspaper having general circulation in the Hickory area on January 6, 13, and 20, 2017. The final advertisement scheduled for January 27, 2017 was canceled after receipt of the request for withdrawal was received. The City Clerk mailed a copy of the "Request for Withdrawal" to all abutting property owners on January 27, 2017.

Interim City Manager Andrea Surratt explained that the public hearing was removed by the petitioners themselves. Staff had just stated for the purposes of the meeting that this public hearing would not be held.

- B. Departmental Reports:

1. Approved on First and Second Reading a Contract with Design Workshop Inc. for Riverwalk and Budget Revision Number 17.

(a) The City of Hickory put forth a \$40 million dollar bond referendum for voter consideration in November 2014 that included \$25 million dollars in project funding for street, sidewalk, and related pedestrian and transportation improvements as well as \$15 million dollars for economic development. The referendum passed, and the City has begun work to plan for the projects. Three key project areas are being developed by the City of Hickory as part of this bond program, including the City Walk, the Riverwalk, Streetscape and Gateway improvements along several major corridors. The City solicited requests for qualifications, received nine solicitations, and conducted an interview process with the top three firms: HDR Engineering, Moffitt and Nichol, and Design Workshop. Design Workshop was the top firm in the interviews based upon staff analysis and feedback from the Riverwalk Subcommittee. Design Workshop has developed a program for design of the Riverwalk and has incorporated a significant level of structural design and an iconic walkway feature near the base of the Highway 321 Bridge that will distinguish this project from other more generic greenways. The timeline for design and permit approval to construct the Riverwalk is approximately 15 to 18 months. Staff recommends approval of the contract for Design Services and an associated Budget Amendment to Design Workshop in the total lump sum amount of \$798,564 for the Riverwalk project.

(b) Budget Revision Number 17.

Interim City Manager Andrea Surratt presented Council a contract with Design Services for the Riverwalk project. Over the last three months City Staff had worked through a process of soliciting request for qualifications. They received nine of those in late October timeframe at which time they selected three top firms and did interviews in early November along with the Bond Commission Subcommittee for Riverwalk and City Staff. Of those three, Design Workshop and team rose to the top in terms of their qualifications and their understanding and vision for the Riverwalk. She advised she was presenting Council with their proposal for design. She presented a PowerPoint presentation. She discussed the schedule of the bond program. The election was held in 2014, the 42 Bond Commission was appointed and they spent a year working through the bond program prioritization process, coming up with the projects, and developing the \$35.5 million dollars in bond projects. They did the RFQ's for three of the major projects, City Walk, Highway 321 Gateways and tonight Riverwalk. Of the Riverwalk they had three options for where the Riverwalk would meander along the riverfront. Riverwalk "Option 2" tried to create a hybrid between shoreline and upland Riverwalk experience. Although that was a discussion that they had prior to any geotech and prior to any permitting approval from Duke Energy. Those were preliminary discussions, sort of a wish list. They came up with those options. Freese Nichols at the time developed a general project budget of \$8.5 million dollars. She noted on her PowerPoint that Riverwalk "Option 1" was still a project that many felt like if there were additional monies more of a boardwalk experience along the water would be even more ideal, so that sort of sits on the bubble. She shared that with Council because they are moving into, with the approval of this contract, a very lengthy geotechnical analysis that will then reveal to us where the right place to put the Riverwalk structure is and what it might look like. What is the most stable structure, the most cost effective structure and the best experience? She advised it would not necessarily look like the photo it was just a schematic drawing. She commented you have to start somewhere and visualize. She referenced the Lackey project on the PowerPoint and advised it may be modified over time that was their first visual. We like to think that there is a generally great experience waiting for each of us at the Riverwalk and it will be something along the river. She showed a bird's eye view of Lake Hickory. She pointed out 321 Bridge. She advised Council to think of the Riverwalk extent as running from the base of the bridge near the water treatment plant, northeasterly up towards Geitner Park where the current Lackey project is being developed for. That full extent is almost a mile and it would include some connections back into the greenway trails, and the Boy Scout hut. Really some interaction with the entire large tract of the property that is such a great asset to the City of Hickory. She discussed some of the existing conditions. It was a rough trail, less formal than formal. That is what you would experience today in walking that property. This will be something much more substantial when it is developed as a

boardwalk. She displayed a photo which depicted the open space at the water treatment plant area. That would be what you see when you drive past the water treatment plant all the way to the river. She advised this was "Option 2". She pointed out the water treatment plant. A roadway would need to be built connecting a parking area near 12<sup>th</sup> Street Drive down to what they consider the open area. She pointed out the boardwalk portion of Riverwalk, that might be a little more of an iconic feature and different sections, depending upon the design continue all the way up to Geitner Park and the Lackey project. There are three proposed overlooks that will be slightly wider, maybe some seating and some additional space there for visitors to walk toward and sit and enjoy. They had spent a lot of time in contract negotiations just to be able to understand the extent of the geotech that is needed for this project. Because this group presented them with more of a vertical design, more of a bridge, not just a flat walkway, but something to look at visually it created a new experience that they had not anticipated and they wanted to be sure that they understood those designs and worked with them. They took their time to get to this point with Council. She knew they were in a hurry, as we are with all of these bond projects.

Interim City Manager Surratt advised Design Workshop was chiefly a landscape architecture firm but they do a lot of work across the country. The group they are working with is in Asheville. Rosales and Partners are a bridge architecture firm. Epstein is an engineering firm out of Chicago that does structures related to rivers, which is their key work. McGill Associates, a local engineering firm, will be doing all of the surveying, storm water and road design, and all of the permitting coordination with either DEQ and/or Duke Energy and the FERC process. Froehling and Robertson provide the geotech services and CCS does cost estimation. She advised that Design Workshop is a very stellar group to be doing this work. They understand the need to blend design into the natural landscape to create an experience for the user. It is not just about building a walkway it is about giving people a reason to go down to the riverfront and experience it not only on the shore but along the water, really just in its total usage. Rosales is really a national firm. All of these firms are really top notch. Rosales is special because they have developed a number of bridge structures across the country. The one that Council would be familiar with was the Liberty Bridge in Greenville, South Carolina. Selection of that firm years ago created a bridge that made that area a destination, Reedy River Falls. They feel that this particular setting at the base of the 321 bridge, has the same potential for Riverwalk. They will create a space where you want to go to it and it feels alive and there are a lot of people there as opposed to just some walkway somewhere that doesn't feel as inviting. Staff was super excited to be working with McGill. They are a local firm and they know their work ethic and they are very proud to partner with them on this.

Interim City Manager Surratt discussed the contract's highlights which included the Bond Commission being able to review the work done at 40 and 80 percent. They had worked with the Bond Commission all the way through these projects so they are right here locked step. This was their recommended firm as well so staff was excited to be able to arrive at the same conclusion. They feel like that they will know a lot more after this geotech analysis is done. When they get to 30 percent they will do a design at 30 percent and an estimate at probable cost and then they will know really what they are dealing with. This project, of all the projects they are working on, is the least known in terms of what is under the river, and what is in the hillside there. They want to be sure they have a project that is successful.

Interim City Manager discussed the budget. She advised the amount for this particular request was \$798,564 which was the total design contract for this firm team. The construction budget was \$4.5 million dollars, with a construction contingency built in, inspections, permits, and fees were identified there. She pointed out the \$6.5 million dollars was "Option 2" for a total project cost but they knew that there was also the "blue oval" as they called it or that area at the base of the bridge which creates an opportunity for us to make an experience once you arrive there. She didn't know what that would look like yet, but those funds are sitting out there for a possible use. They felt this was phase one budget of which the \$798,564 was for Council's approval of the design itself.

Interim City Manager discussed the schedule. They felt the project would take at least 15 months. They hope to design and get through the

permitting process, it could be as long as 18 months. Those were estimates. She commented she wished she could promise those to Council but it is a Federal process for permit review, that FERC license. Part of Design Workshop's goal would be to figure out how much of the project is in the FERC area which is close to the water and how much is not and proceed. McGill's responsibility would be as they move along through the 30, 60, and 90 that they are checking in with Duke Energy all the way so that it is not something that starts from scratch at the end of the design. The Bond Commission recommended this group. She advised Council they would like to have a first and second reading and a budget amendment in order for them, at the Staff level, to be able to give a notice to proceed to Design Workshop and their team and get them started. They are trying to plan this project in with all of the other projects and that would allow them a couple of extra weeks to get the work started and the geotech in particular. She asked if Council had any questions.

Alderman Seaver thanked the Bond Commission for all of their work. He knew it had been literally hundreds if not thousands of hours if you totaled it all up and the leadership of the two Assistant City Managers who had been inundated with extra to do and they do it with a smile. He thanked them for all their work.

Mayor Wright mentioned some of the other Staff, Kyle Butler and others. He asked who he was leaving out.

Interim City Manager Surratt commented Kevin Greer, Steve Miller, Rodney Miller, Arnita Dula, Brian Frazier, and Mack McLeod.

Alderman Seaver commented they have a good team.

Interim City Manager Surratt advised they meet every week. They are working with these projects and it is very much a team effort. They are able to bring to the table all of their specialty expertise and it is really great to work with that team.

Alderman Seaver commented on choosing the designs, was it pretty much unanimous among all of the members.

Interim City Manager Surratt responded yes, it really was. She had to share with the rest of her Staff team the importance of making sure this design is spectacular. They appreciate that, but she thought it was not something that they want to just shy away from. She thought the public expects an amazing experience at the Riverwalk. She had to do a little extra coaching.

Alderman Seaver commented maybe not hold on to that penny so hard.

Interim City Manager Surratt replied we have got to get the pennies spent in the right way and sometimes wow factor is an important piece too.

Mayor Wright commented there will be some of them watching those pennies.

Interim City Manager Surratt responded all of them.

City Attorney John Crone advised for the record Council should consider on first reading number one, (a), and then if that is approved consider number one, (a) on second reading and do the same with number one, (b).

Alderman Guess moved, seconded by Alderman Zagaroli approval of the contract with Design Workshop as stated in number one, (a).

Mayor Wright announced that the motion was made by Alderman Guess seconded by Alderman Zagaroli.

Alderman Lail questioned the permitting. He commented that permitting on this project is going to be substantial. You have got State, environmental and Federal.

Mayor Wright commented \$301,000.

Alderman Lail wanted to be clear that the contract included permits for construction.

Interim City Manager Surratt confirmed yes.

Alderman Lail commented whatever permits including the Federal Energy Regulatory Commission.

Interim City Manager Surratt responded that it definitely included all of that.

Alderman Lail advised they were not specifically mentioned. FERC was not mentioned. DWQ, and Army Corps were mentioned, but FERC was not mentioned by McGill in the contract. He advised in the contract at task 8.9.

Alderman Seaver commented maybe they were going to absorb those costs.

Alderman Lail thought it may be an oversight.

Interim City Manager Surratt commented they didn't type FERC, they just put Duke Energy, permitting of dock and shoreline clearing and stabilization and also Duke Energy construction. They didn't list FERC here but they have in all of the other discussions that they had. They will make sure that is abundantly clear. She advised Kyle Butler was on it. It had been their assumption all along.

Alderman Lail commented permits are a big deal.

Interim City Manager Surratt thanked Alderman Lail.

Mayor Wright asked for any other discussion, there was none. He took the vote for the motion which carried unanimously. He explained to visitors that City Council likes to have second readings on certain items and this is one of them. Generally they do that letting two weeks lapse between meetings. As Council they have had considerable discussion of this matter and they had been saying pedal to the metal, let's get stuff done, let's get ground broken, and let's get stuff out of the ground. They had decided that they are going to accommodate in this respect because they had pushed them so hard. Mayor Wright moved seconded by Alderwoman Patton approval on second reading Item (a). The motion carried unanimously.

Mayor Wright announced he moved, seconded by Alderwoman Patton and the motion carried unanimously.

Alderwoman Patton moved seconded by Alderman Seaver approval of Budget Revision Number 17. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderwoman Patton seconded by Alderman Seaver and the motion carried unanimously.

Mayor Wright moved seconded by Alderman Zagaroli approval on second reading Budget Revision Number 17. The motion carried unanimously.

Mayor Wright announced that he moved, seconded by Alderman Zagaroli and the motion carried unanimously.

ORDINANCE NO. 17-05  
BUDGET REVISION NUMBER 17

BE IT ORDAINED by the Governing Board of the City of Hickory that, pursuant to N.C. General Statutes 159.15 and 159.13.2, the following revision be made to the annual budget ordinance for the fiscal year ending June 30, 2017 and for the duration of the Project Ordinance noted herein.

SECTION 1. To amend the General Fund within the FY 2016-17 Budget Ordinance, the expenditures shall be changed as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Uses	798,564	-
TOTAL	798,564	-

To provide funding for the above, the General Fund revenues will be budgeted as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Sources	798,564	-
TOTAL	798,564	-

SECTION 2. To adopt Capital Project Ordinance #BR1001, "Riverwalk", the expenditures shall be established as follows for the duration of the life of the project.

FUNCTIONAL AREA	INCREASE	DECREASE
General Capital Projects	798,564	-
TOTAL	798,564	-

To provide funding for the above Capital Project, the revenues will be budgeted as follows:

FUNCTIONAL AREA	INCREASE	DECREASE
Other Financing Sources	798,564	-
TOTAL	798,564	-

SECTION 3. Copies of the budget revision shall be furnished to the Clerk of the Governing Board, and to the City Manager (Budget Officer) and the Finance Officer for their direction.

2. Appointments to Boards and Commissions

BOND IMPLEMENTATION COMMISSION

(Terms Expiring 2-1; 3 Year Terms) (Appointed by City Council)  
Ward 3 (Seaver Appoints)

VACANT

*Ex-Officio Members to Bond Implementation Commission  
(Appointed by Boards and Commissions)*

Business Development Committee reappointed Dana Chambers  
Catawba County Chamber of Commerce reappointed Will Locke  
Citizen's Advisory Committee reappointed Cliff Moone  
Community Relations Council reappointed Sandi Fotheringham  
Hickory International Council reappointed Hani Nassar  
Hickory Regional Planning Commission  
Historic Preservation Commission reappointed Ernie Sills  
University City Commission reappointed Ralph Griffith  
Youth Council reappointed Mikaela Simmons

COMMUNITY APPEARANCE COMMISSION

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)  
Ward 3 (Seaver Appoints)  
Ward 4 (Guess Appoints)

VACANT  
VACANT

COMMUNITY RELATIONS COUNCIL

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)  
Other Minority (Council Appoints)  
Other Minority (Council Appoints)  
Other Minority (Council Appoints)  
(Unexpired Term of Nancy Yang (resigned 1-18-17), term expires 6-30-2019)

VACANT  
VACANT  
VACANT

HICKORY REGIONAL PLANNING COMMISSION

(Terms Expiring 6-30; 3-Year Terms With Unlimited Appointments)  
(Appointed by City Council)  
Burke County (Mayor to Nominate)  
Ward 6 (Patton Appoints)  
(Unexpired Term of Shauna O'Brien (resigned 1-17-17), term expires 6-30-2019)

VACANT  
VACANT

Alderwoman Patton appointed Meg Locke as the Ward 6 Representative on the Hickory Regional Planning Commission.

INTERNATIONAL COUNCIL

(Appointed by Mayor with the Concurrence of City Council)  
(2) Positions

VACANT

LIBRARY ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)

Ward 4 (Guess Appoints)	VACANT
At-Large (Mayor Appoints)	VACANT

PUBLIC HOUSING AUTHORITY

(Terms Expiring 6-30; 5-Year Terms) (Appointed by the Mayor) Position 9	VACANT
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RECYCLING ADVISORY BOARD

(Terms Expiring 6-30; 3-Year Terms) (Appointed by City Council)	
Ward 3 (Seaver Appoints)	VACANT
Ward 4 (Guess Appoints)	VACANT
At-Large (Council Appoints)	VACANT

YOUTH COUNCIL

(Terms Expiring 6-30; 1-Year Terms) (Appointed by City Council)

St. Stephens High School Representatives	1 Position VACANT
At-Large Representatives	1 Position VACANT
Challenger High School Representative	1 Position VACANT

Alderwoman Patton moved seconded by Alderman Guess approval of the above nomination. The motion carried unanimously.

Mayor Wright announced that the motion was made by Alderwoman Patton seconded by Alderman Guess and the motion carried unanimously.

C. Presentation of Petitions and Requests

1. Presentation of Requests from Attorney Ellie Bradshaw and Attorney Dean Amos Pertaining to Unopened Rights-of-Way in Catawba Springs Subdivision.

Interim City Manager Andrea Surratt advised City Council there were two resolutions for Council's consideration. One for withdrawal of dedication for four in particular rights-of-way in Catawba Springs. The second resolution by a different attorney submitting the same type of wording but with a section that includes sort of a disclaimer. She would let that attorney explain the difference there. They were slightly different. She advised the requests before Council was to consider these types of approaches for removing the rights-of-way from the City and from its ability to be developed into a street in the future. The item that Council would have had as a public hearing tonight was a street closure request, which would not be heard, the applicants had withdrawn that request for closure and had taken a different route, and this was the route they had chosen to take. She asked Ellie Bradshaw, Attorney for the Homeowner's Association for Catawba Springs to the podium to present.

Attorney Ellie Bradshaw advised City Council she represented the Catawba Springs Property Owners Association. She advised she was here tonight not to talk about withdrawing right-of-ways. The request before Council was simply that Council confirm that these rights-of-way, and there were four of them, are not on the official City street plan. That included the current street plan and the plan that the City had submitted to the Greater Hickory MPO for future development. That is all that they were asking. These rights-of-way were created when Catawba Springs was created in the 1970's. They were stub streets, short 60' rights-of-way in between lots that were there, in all likelihood, for future expansion of the subdivision by the original developers. That had not happened. Those rights-of-way had been undeveloped and unused since the 1970's. North Carolina law says that if there are rights-of-way on a plat, and there is an offer of dedication to the City, unless those rights-of-way are actually opened and used by the public within 15 years of the date of their dedication, then the developer who offered those for dedication has the right to withdraw them. If you wait 30 years, if they have been opened at the time, it is just not 15 years, it has to be at the time you make that request that those streets have not been open. The original developer here was Catawba Springs Property Development. They were a corporation that dissolved in 1992. They sold their last lot. The statute also says that when the developer who dedicated the rights-of-way was a corporation and no longer in existence, those rights to withdraw the streets belong to the lot owners on either side of the right-of-way. But the statute also says before those lot owners can do that, they have got to come to the City, or the State, and confirm that those rights-of-way are not on the official street plan and are not part of the future street plan. That was why they were here tonight, for the sole purpose of getting confirmation that those rights-of-way are not on the street plan. Before they made this request she contacted the City and asked that question. To make sure that she knew before they made the request because they are either on it or they are not. These streets are not on the current street plan or the plans for future expansion. Under the

statute the City is required, when a request is made, to confirm whether they are on the plan or not on the plan. That is what this was about. They had heard from some other folks who are concerned about rights-of-way in that area, Lake Hickory Country Club. She stated that Lake Hickory Country Club was not involved in any of these rights-of-way. There was nothing that leads to their property, and the lady who lives on Turtle Dove. She advised she had not searched title on Turtle Dove Road and she did not know what the rights-of-way were on that road. She said if you looked at the GIS you saw two black lines in the area where she was pointing, and those indicate, according to the County records, there is a right-of-way there. She advised that was all she could tell them about that. She reiterated the only matter before Council was whether these unopened rights-of-way, four in total, are on the City's official street plan, and they are not. She advised she would be glad to answer any questions. She thanked Council.

Interim City Manager Andrea Surratt asked Attorney Dean Amos to the podium to present the second resolution.

Attorney Dean Amos advised Attorney Dawn Hexemer, a new partner in his firm effective this year, would discuss what Attorney Bradshaw had talked about, as well as their proposed alternate resolution.

Attorney Dawn Hexemer mentioned she was an Attorney with the Law Offices of Amos and Kapral. She and Attorney Amos were present on behalf of, and representing Mr. Vernon Tarlton, who could not be present for medical reasons. They also represent Mr. James Grogan, aka Dan Grogan, and Mr. L.D. Austin, all of whom are abutting property owners. They own property which abuts three out of four of the rights-of-way at issue tonight and they depend on these rights-of-way in order to access Pinecrest Drive NE. She stated Council may recall, as Mrs. Surratt mentioned, that there was a similar request previously to close one of these rights-of-way. That was brought under a different statute. That was brought under Section 160A.299 of the General Statutes. That was subsequently withdrawn by the petitioners though not before a great deal of public comment on both sides which had become a contentious subject. The subject now before Council was a fast track manner with regards to now four rights-of-way in Catawba Springs pursuant to a different statute. She addressed each of these rights-of-way. Based solely on the draft resolution, which Attorney Bradshaw had submitted, this request was apparently being made by the Catawba Springs Property Owners Association. However, as Attorney Bradshaw had just said, the Property Owners Association was not the declarant of these rights-of-way. The dedicator of the rights-of-way was the Catawba Springs Development Company. In other words their position was that the Property Owners Association was not the party vested with the right to pursue this withdrawal of dedication. Therefore they believed that Council must decline Attorney Bradshaw's request. Furthermore as she would explain, the circumstances with respect to each of the rights-of-way are important here. She commented they had been lumped together in one swift action when the interest of each vary. In fact, these four rights-of-way weren't even dedicated concurrently, there were three different plat maps that depict the four rights-of-way. One of their contentions that applied global to all four rights-of-way was the City accepted these dedications upon its annexation of Catawba Springs Subdivision in 1987. They also contend that at the time of annexation three of these rights-of-way were specifically included in order to comply with the City's Subdivision Code for connectivity. If abandoned by the City that connectivity will cease to exist. They believe that the City's intentions for the platted rights-of-way was for access to these large neighboring tracts for future development.

Attorney Hexemer discussed right-of-way designated as number one on Exhibit "A" to the proposed resolution. For reference this right-of-way is currently adjoined by property owned by Christine and James Hulley; Helen Howe; and LD Austin and Dan Grogan. This right-of-way was uniquely situated from the other three that in 1999 City Council voted to abandon seven feet of the width of this right-of-way narrowing it to 53 feet in width upon the request of an abutting property owner whose house encroaches upon the right-of-way. Mr. Grogan and Mr. Austin jointly own a 17 acre parcel of property which abuts the right-of-way at the end opposite of Pinecrest Drive NE. Right-of-way number one is the sole means of access to Mr. Austin and Mr. Grogan's property. Without access through the right-of-way their property will effectively be landlocked. Therefore with respect to right-of-way number one on Exhibit "A" their position was that the Catawba Springs Property Owners Association lacks authority to seek a resolution from the City relative to that right-of-way. It was also their position that the City accepted the remaining 53 feet of width of that right-of-way by virtue of the actions it took in 1999, if not by the prior annexation. The City implicitly accepted the right-of-way by its actions and it cannot now be withdrawn. It was their belief that this right-of-way was necessary for ingress and egress to Mr. Austin and Mr. Grogan's property, so this right-of-way cannot now be closed.

Attorney Hexemer discussed right-of-way number three on Exhibit "A", Mr. Austin and Mr. Griffin jointly own a 20 acre parcel of property abutting the right-of-way at the end opposite of Pinecrest Drive NE. The other adjoining property owners are Ellen and Scott Minch, and Andrew and Susan Piotrowski. Similar to the circumstance with right-of-way number one, Mr. Austin, and Mr. Griffin rely upon right-of-way number three for ingress and egress to their property from Pinecrest Drive NE. Furthermore right-of-way number three had been used by members of the public and had been partially improved, though admittedly not to full City street standards. For example Mr. Glenn Allen Killian, who was present, uses this right-of-way and had used it on many occasions over many years in order to gain access to land that he owns which adjoins the property that Mr. Austin and Mr. Griffin own. While right-of-way number three may not be part of the City's official street plan it had been improved, and had been used by members of the public. Furthermore of the two properties which abut right-of-way number three, one of them she mentioned was owned by Mr. and Mrs. Minch. Mrs. Minch serves as one of the members of the Board of the Catawba Springs Property Owners Association according to their website. The initiative by the Property Owners Association to have right-of-way number three abandoned certainly calls into question the motivation in the parties behind this. It seems to benefit only a few adjoining property owners.

Attorney Hexemer discussed right-of-way number four. She advised they had not been retained to represent a party with an interest in right-of-way number two. There are four abutting properties. They are owned by Edward and Rebecca Bond; Robert and Anne Wonsick; Vernon Tarlton; and L.D. Austin and Larry Griffin. Mr. Tarlton owns one of the abutting properties which was spoken to earlier regarding the proximity to Turtle Dove. Mr. Austin and Mr. Griffin's 20 acre parcel that she previously mentioned with respect to right-of-way number three, also abuts right-of-way number four as described in the resolution. They rely upon one of these two or both of these rights-of-way to access this 20 acre parcel which was intended for future development and to potentially expand Catawba Springs. Mr. Tarlton, as an abutter, had commenced making improvements to right-of-way number four, including but limited to, making a curb cut, which he obtained the City's approval for, and which work had been completed so he could begin the process of putting in a driveway for ingress and egress to his property.

Attorney Hexemer summarized they believe there are a number of defects with respect to the actions and request of the Catawba Springs Property Owners Association that had been brought before Council tonight. Because of these errors, they respectfully requested that City Council decline to grant the resolution. They contend that further investigation and more detailed understanding with respect to each of the rights-of-way at issue is necessary and appropriate before the City passes a resolution which was spoken to first by Mr. Geoghegan on behalf of Lake Hickory Country Club who believe they may have an interest in these rights-of-way. Alternatively, in the event City Council decides to move forward with consideration of the resolution, they had proposed an alternate resolution. The purpose for that was two-fold; one their resolution actually quotes the exact language of General Statute Section 136.96 rather than being paraphrased as it was in the other resolution. Their resolution also clarified that by the City Council passing the resolution the City is not taking any position or making any findings as to the rights of any which the Catawba Springs Property Owners Association, any abutting property owner, or any other party may have in or to the rights-of-way reserving said determination for the courts if necessary. She thanked Council for their time and advised she would be happy to answer any questions.

Attorney Bradshaw requested two minutes to respond.

Mayor Wright advised Attorney Hexemer would then have two minutes to respond.

Alderman Lail moved that Council complete the discussion after that.

Attorney Bradshaw commented Attorney Hexemer stated that the Property Owners Association doesn't have the right to bring this before Council. This body is not a court. There is no standing requirement. A request had been made to the City Council to simply adopt a resolution confirming that this is not on the City's street plan. Period. She thought any citizen could do that. Secondly, Attorney Hexemer had gotten into the details and to the issues surrounding the various conflicting claims to these rights-of-way and they understood that there were other parties who claim rights in this right-of-way. But that is an issue for the courts, and that is where that dispute will be. The only thing that was before City Council was whether this was on the official street plan. There are two versions of the resolution that had been submitted to Council. She commented that Attorney Hexemer had stated that she paraphrased the statute. If Council had read that

statute they would see that there was language that refers to something in another section. She had tried to state it in plain language. She believed that she had stated it accurately. If the Council is asked to state whether the streets, the right-of-way, is on the street plan, the City shall adopt a resolution whether confirming whatever the fact is, it is or it is not. She urged Council to stick with the statute, the request that had been made, and limit their resolution to the business before them that these rights-of-way are not on the street plan. The other issues, whether they are easements, adverse possession, conflicting claims to those rights-of-way will be before the court. She thought the best thing that Council could do was stay out of that and leave it to the courts. She thanked Council.

Attorney Hexemer commented her previous statement with respect to quoting exactly from the statute was General Statute 136.96 reads, "Upon request, a city shall adopt a resolution indicating that the dedication described in the proposed declaration of withdrawal is or is not part of the street plan adopted under G.S. 136-66.2." Their contention was in part the resolution, if City Council does decide to consider one, should state those exact words and the language from the statute as it is written. They also contend that City Council was supposed to be considering the dedication described in a proposed declaration of withdrawal. She did not believe that a proposed declaration of withdrawal had been presented to City Council. She advised it certainly had not been presented to any of the parties with an interest here. To the extent Council was being asked to look at this, she directed them to this specific language of the statute. As Attorney Bradshaw said, they had proposed in their resolution that the City make clear that it is not taking a position with respect to adopting this resolution as to the rights of any parties. This is a very contentious subject and she expects that they will be in litigation over the party's rights to these rights-of-way. They want to be sure that the City is clear that they are not implicitly stating that the Catawba Springs Property Owners Association, by bringing this resolution, has some rights in these rights-of-way. She thanked Council.

Mayor Wright commented Council had heard a lot of court room language here. Obviously it seemed to be a matter for the courts to sort out. He asked City Attorney John Crone to weigh in on the relevance of, one party wants it to be a sure it is not on the street plan. He felt they had acknowledged it wasn't on the street plan. Another one wants to say, it is not on the plan but that doesn't mean we care about it or something.

City Attorney John Crone commented he was proud to practice law in this County with two good lawyers like he had seen. He stated the statute is pretty straightforward and there is a lot of stuff after that which talks about who has standing, the right to bring the action, who is the real party in interest, whether there is vested rights, issues about ingress and egress. He did not think that the statute contemplates this body sitting as a judicial body in making a judicial determination about whether somebody has standing or not. He felt that was up to the courts. He thought that the statute was pretty clear that if somebody brings this to the attention of the City, Council either says it is or is not on the street plan. He thought there was no dispute that it was not on the street plan. He advised they could add whatever language they wanted to it, but sometimes he thought the simpler the better. He stated for the record that there were a number of issues here that may be and should be resolved by a court of law and not trialed before City Council. He reiterated the simpler the better, and the record is very clear. He thought Attorney Hexemer had made a very good record of her argument that could be reviewed by a court and Attorney Bradshaw had done the same. The bottom line was a pretty simple perfunctory issue, and that is, is it on the street plan or not. He hadn't seen any evidence or heard anything from staff that is was on the City's plan.

Alderman Seaver requested clarification of what the street plan was. He asked if it was a map that says right-of-way drawn on it, or is it some wording put down that says this is what is going to happen.

City Attorney John Crone explained there was a plat of this property that was recorded back around 1970 and it showed where the roads were and the lots were, and some rights-of-way adjacent to two recorded pieces of property on the plat that go to other property. In this case one of those goes to Mr. Tarlton's property, and Mr. Austin's property and maybe others. That was a dedicated plat. The law says if it stays that way for 15 years and no one uses it or does anything about it than the original declarant or its successor in interest has the right to ask that the City give an opinion as to whether it is on the street plan or not. The City had not adopted that per se on our street plan. That is not to say that a court might find that somebody has a right to use it, or that it is a right-of-way or whatever, but he didn't think that was for Council to determine. He advised the issue before Council was whether these unopened right-of-ways are on the City's

street plan. He thought there was ample record, and he had said it himself about standing, real party and interest, vested rights, ingress and regress. If a court finds that the City should have done something else then they can issue a writ of mandamus that says you should have done this or that, but he felt confident about his legal opinion and staffs legal opinion.

Alderman Lail requested clarification of City Attorney Crone's legal opinion with regards to Resolution "A" Amos or "B" Bradshaw.

City Attorney John Crone commented either one of them were fine, it liked brevity. He felt the first resolution was fine. He thought he had gone out of his way to beat the dead horse.

Alderman Lail moved, seconded by Alderwoman Patton approval of the Resolution presented by Attorney Bradshaw.

Mayor Wright announced that the motion was made by Alderman Lail seconded by Alderwoman Patton. He requested to continue the discussion. He asked City Attorney John Crone if Council had any basis to determine or even contemplating whether Lake Hickory Country Club had an interest in this issue.

City Attorney Crone stated that is correct in his opinion.

Mayor Wright questioned if people on the Council, being members of Lake Hickory Country Club, there is no basis for not voting on this issue.

City Attorney Crone didn't see one as being a member there. This is the Homeowners Association so far.

Mayor Wright asked if there were any additional comments or questions.

City Attorney Crone asked if any of the lawyers perceived any conflict of interest about any Council members voting on this.

Attorney Hexemer responded that she believed that the question which Lake Hickory Country Club had posed was that they may be the successor to the Catawba Springs Development Company not the Catawba Springs Property Owners Association that might be Lake Hickory Country Club's interest.

City Attorney Crone didn't see a conflict.

Mayor Wright didn't either, he thought it was one of those things that needed to be laid out there. Mayor Wright took the vote and the motion carried unanimously.

RESOLUTION NO. 17-09  
RESOLUTION REGARDING UNOPENED RIGHT OF WAY  
PURSUANT TO G.S. 136-66.2

WHEREAS, Catawba Springs Property Owners Association has requested that the City of Hickory confirm that certain rights of way shown on plats recorded for the Catawba Springs development are not part of the street plan adopted by the City of Hickory; and

WHEREAS, the rights of way in question are described on Exhibit A (the "Rights-of-Way").

WHEREAS, the City of Hickory Public Services Department has confirmed with the Greater Hickory Metropolitan Planning Organization that the Rights-of-Way are not part of the street plan adopted by the City of Hickory under G.S. 136-66.2.; and

WHEREAS, the G.S. 136-96 requires that a municipality adopt a resolution confirming whether the designated rights of way are or are not part of the official street plan adopted by the City pursuant to GS 136-66.2.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hickory that:

The Rights of Way described on Exhibit A hereto are not part of the street plan adopted by the City of Hickory under G.S. 136-66.2.

Exhibit A  
Rights-of-Way

1. 60 foot right-of-way off Pinecrest Drive between Lots 115 and 116 as

shown on a plat of Section 3 of the Catawba Springs Development recorded in Plat Book 15, Page 94A, Catawba County Registry, as narrowed to a 53 foot right-of-way by resolution and order of the City Council of the City of Hickory adopted on second reading October 19, 1999 and subsequently recorded in the Catawba County Registry on November 12, 1999.

2. 60 foot right-of-way off Elmhurst Drive between Lots 68 and 69 as shown on a plat of Section 1 of the Catawba Springs Development recorded in Plat Book 15, Page 14, Catawba County Registry.
3. 60 foot right-of-way off Pinecrest Drive between Lots 97 and 98 as shown on a plat of Section 2 of the Catawba Springs Development recorded in Plat Book 15, Page 46, and Section 3 of the Catawba Springs Development recorded in Plat Book 15, Page 94A, Catawba County Registry.
4. 60 foot right-of-way off Pinecrest Drive between Lots 91 and 92 as shown on a plat of Section 2 of the Catawba Springs Development recorded in Plat Book 15, Page 46, Catawba County Registry.

XII. Matters Not on Agenda (requires majority vote of Council to consider)

XIII. General Comments by Members of Council, City Manager or City Attorney of a Non-Business Nature

Mayor Wright pointed out the way-finding signs were going up and they looked very nice. He also mentioned that he received a call from a teacher at Morganton Day School who said their students had a major project in which they were looking at what is involved in preparing cities and other governments for the future. They were in Hickory and saw some signs and responded that was exactly what they had been doing. He advised the City would cooperate with them, being good neighbors and regional leaders, the City wants to help out these Morganton students. He also had a local cab driver express concern over Uber and Lyft. He checked with the City and staff reminded him that State legislature had determined that only the State would regulate Uber and Lyft. He advised the citizen expressed some concern about an accident in Charlotte. Mayor Wright responded that it might not have been the cab drivers fault. The citizen advised it was an Uber driver who collided with a Lyft driver. Mayor Wright advised Council may hear about that.

Alderman Guess advised that he and Alderman Zagaroli attended an open house at Publix. Their official opening was scheduled for 7:00 a.m. on February 8<sup>th</sup>.

Alderman Lail mentioned not to go by Northview Middle School on the way it might be a little congested.

Alderman Seaver commented he had heard a complaint that we have too many grocery stores. He mentioned Council could remember when they got complaints that the City didn't have enough.

Mayor Wright replied he could understand grocery stores saying there were too many grocery stores but he didn't know why anybody else would say that.

Alderman Guess thought it was more about the location.

Alderman Seaver commented they like the direct competition.

Mayor Wright commented if they would let this august body locate these grocery stores they would have them spread around town a little better. He asked Council if they had ever been asked if they could locate a grocery store somewhere.

Alderman Guess responded no.

Alderman Zagaroli commented the interesting thing about Publix was they hired 140 people and 70 were all new hires from this area. So, they had brought more jobs to the area. He didn't know if they left Lowe's to work at Publix.

Mayor Wright commented that is the reason the City does not do incentives for retail because, the theory is unless it is a retailer, we don't give incentives either, but retailers who bring in people from other regions, that is a knit thing.

Alderman Zagaroli replied that is evidently the case.

Mayor Wright responded they hired 70 here, which is great. There are 70 people there, and if there is any fall out on jobs somewhere else it will take a little while so somebody will have a chance to get another job.

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Alderman Seaver commented it will make them all work harder to keep your business. Competition is good for the consumer.

Mayor Wright joked that competition was good except in the sign business.

XIV. There being no further business, the meeting adjourned at 8:10 p.m.

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Mayor

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City Clerk