

June 22, 2015

A special meeting of the City Council of the City of Hickory was held at 76 N Center Street in Council Chambers on Monday, June 22, 2015 at 8:00 a.m., with the following members present:

Brad Lail	Rudy Wright	Hank Guess
Bruce Meisner	Aldermen	David Zagaroli
Danny Seaver		Jill Patton

A quorum was present for Hickory City Council.

Also present were: City Manager Mick Berry, Assistant City Manager Andrea Surratt, Assistant City Manager Rodney Miller, Deputy City Attorney Arnita Dula, City Attorney John Crone, and Deputy City Clerk Sarah Prencipe.

Also Present: Mr. Bob Lackey, Mr. Bob Bryan, Ms. Karen Waddell, and Mr. Rob Lackey

- I. Mayor Wright called the meeting to order at 8:03 a.m.
- II. Closed Session Per NC General Statutes 143-318.11(a)(1)(4) to consult with the attorneys regarding pending litigation AGI Associates LLC vs Profile Aviation Center Inc. and City of Hickory, Civil Action 5:13-CV-61-RLV: (Action on these items, if any, will occur in Open Session)

Alderman Guess moved that Council go into closed session to consult with the attorneys to discuss the items above, seconded by Alderman Seaver. The motion carried unanimously.

City Council returned from closed session at 9:05 a.m. and reconvened the open meeting.

- III. Discussion of Agreements for the Deidra Lackey Memorial Park

Mr. Berry introduced the Lackey Family and Bob Bryan, who is the Lackey Family's attorney. He explained that this meeting was to discuss the agreements.

Deputy City Attorney Arnita Dula introduced Mr. Bob Lackey.

Mr. Lackey thanked city staff for working diligently on this project and helping navigate new territory. He introduced Bob Bryan, Karen Waddell, and Rob Lackey.

Ms. Dula explained that the meeting would be a free flowing discussion as she goes through each section of the agreements. She added that Mr. Lackey has shared his vision for the parks and that these agreements will bring that vision to fruition.

Ms. Dula began the discussion with the Grant Agreement, which includes construction easement, and governs the development and construction of a waterfront memorial park to memorialize the late Deidra Lackey. This consists of gardens, structures and landscapes.

Alderman Lail asked where the gardens are located.

Ms. Dula noted that the Memorial Garden, Conservatory, Lake House, Canopy Walk, Event Dock, and parking for facility qualify as "the gardens." Other facilities such as the restrooms, bikeways, picnic shelter, fishing dock, and boat ramp are not part of the "the gardens." The difference lies in who maintains those facilities, which is detailed in the agreements. The Conservancy will maintain some while the City maintains others.

Mr. Lail expressed that he would like to see an exhibit that shows the gardens. Ms Dula explained that the exhibits are forthcoming.

Ms. Dula went on to explain that the project is being completed in phases and this agreement covers phase one. The agreement consists of six articles covering the topics of land availability, the developer's obligations, the city's obligations, the ownership of facilities, bonds and insurance, and miscellaneous provisions.

Ms. Dula highlighted specific portions of the each article starting with item 1.4, which states that the grant and construction agreement is temporary and expires upon completion of the project. Article I also includes the city's requirement to give information regarding hazardous conditions and right-of-way parcels or easements. The article also notes that joint soil tests will be conducted.

Moving on to Article II, Ms. Dula explained the Developer's obligations. The Developer is responsible for engaging services of contractor and sub contractor to perform construction at its own cost and expense.

Alderwoman Patton asked for clarification in the second article that references "substantial changes or modifications to the plans."

Ms. Dula answered that those plans would be submitted to city through normal channels such as approval from the Planning Director, Parks & Recreation Director, Public Services Director, etc. The normal approval process for site plan would take place like any other construction project.

Mr. Bryan interjected that there would be minor corrections that would be expected in any construction project.

Ms. Dula continued discussing Article II. She explained that if the actual project cost exceeds the agreed project cost by ten percent due to soil and water problems then the Developer may choose to discontinue the project construction, reduce the project scope, change design, or use additional funds provided by the Conservancy, a third party, or the City to cover the additional expenses. Because this is a private/public partnership, the City is not investing a significant amount of funds in the project. Bidding requirements would have to be met if the City did provide a significant amount.

Mr. Bryan explained that this is an unlikely scenario because test borings will be conducted and should indicate the ground conditions so that they can estimate costs accurately. This would only happen if the tests fail to identify a major issue or if regulations change that would significantly increase costs. This puts no obligation on the city. We do not have to build if costs are too high. But we would be able to stop, reevaluate, and determine how to move forward.

Ms. Dula went on to explain that it is the Developer's responsibility to obtain necessary permits and licenses. It will monitor the contractors' compliance with laws and regulations. It will also present a warranty statement that there are no hazardous materials on property. Article II also details securing the site to prevent damage to property and to persons. The park will remain closed to the public throughout construction.

Alderman Lail clarified that the relevant area is defined under exhibit A of the Master Plan, which is the actual site plan. Ms. Dula concurred.

Ms. Dula then went on to discuss Article III that details the City's obligations. City has right to oversee the work but is not obligated because it is the Developer's project, even though it is being constructed on city property. Zoning will still fall under the purview of the city and if the contractor fails to follow regulations, the City can issue a stop work order. Normal processes and requirements are still in place for this project.

Construction of boating and fishing facilities are also addressed in Article III. The City will assist the Developer in obtaining necessary permits and approvals from Duke Energy. Additionally, with the exception of the actual project cost exceeding the agreed upon cost by ten percent, the city will not pay any portion of the costs. The City will provide written, contemporaneous documents to the Developer acknowledging its gifts to the City.

Alderman Lail asked about the removal of the existing structure.

Ms. Dula responded that will be handled by the Developer. There will be an option to keep and renovate it or it may choose to demolish the facilities and construct new ones.

Mr. Bryan added that they are trying to create a cooperative, flexible relationship with the City and they would like to jointly discuss what makes the most sense as far as dealing with existing facilities.

Ms. Dula then discussed Article IV, which deals with the ownership of the facilities. The City will own the facilities as they are being constructed. The Developer has the right to place personal property, paintings, furniture, etc. in the facilities and remove those items as necessary so long as they are not permanently affixed to the structure. The City can also place items, such as artwork, with approval from the Conservancy.

Article V deals with bonds and insurance. The Developer will take out performance and payment bonds in the amount at least equal to estimated total cost of project and will remain in effect. The Developer will purchase and maintain insurance during construction of the facilities, including general and commercial liability insurance and other appropriate insurance for project. Items covered under insurance include workers comp, personal injury, etc. The required insurance shall include the City as an additional insured and cover public officials, employees, staff, and anyone associated with the City. The City is not required to purchase and maintain property insurance to cover the Developer's interests or contractors and subcontractors. The Developer shall be absolutely liable for damage to persons or property caused by the construction or renovation of the facilities. The City will be held harmless.

Article VI deals with miscellaneous provisions. The agreement is governed by the laws of North Carolina and the venue for any legal proceedings would be in the Catawba County courts. The construction easement is only for construction and will be terminated upon completion of the construction.

Ms. Dula asked if there were any questions regarding the Grant Agreement. There were none.

Ms. Dula went on to discuss the Burial Site Agreement. Since this project is to memorialize Deidra Lackey, the City will make space available to the Company (a single member LLC) for up to fifty in-wall and/or below ground burial spaces located inside the conservatory for use of the Lackey Family.

Mr. Bryan added that this will not impose costs or obligations on the City other than making the space available. The City will only be responsible for normal maintenance.

Ms. Dula went on to explain that usually people purchase and own cemetery plots. However, these burial spaces are not being purchased. The right to use the spaces will occur in the form of a license and a fee will be paid for the license. A lump sum will be paid to utilize those spaces.

The City will not construct those spaces or install crypts, which is the responsibility of the Company. The City will license and provide to the Company the use of spaces, as well as retain the title to the burial spaces. Additionally, the family may want to have private use of the Gardens and will be able to do so six times per calendar year and will be scheduled in cooperation with the City. There will be no additional costs to the Company, except what would be considered excess costs, such as having an officer on duty for security, in which case the Company would reimburse the City. The Lackey Family and their guests will have access to the Gardens and Conservatory at all reasonable times.

The City will also need to pass a resolution designating the area as a cemetery, as well as waive the current ordinance that limits the purchase of plots to eight contiguous spaces because up to fifty burial spaces will be constructed. Additionally, the requirements placed on mausoleums will be waived to allow for up to fifty burial spaces.

The City will maintain the Gardens, including the burial spaces, in the same standard that the City's other cemeteries are maintained. If the City were to hire an outside company to maintain the area, it must perform at same level as the City of Hickory.

Mr. Bryan added that this would allow the City to shift some of the responsibilities to the Conservancy.

Alderman Seaver asked for clarification on the in-wall and below ground spaces and whether construction would be limited to one or the other or if both styles would be used. Ms. Dula confirmed that there could be both. He then asked if funerals and burials would be counted in the six times of private use per year. Ms. Dula explained that they did not. She added that standard burial procedures would be followed as in the other cemeteries.

Alderman Lail added that there may be an ordinance prohibiting the use of cemeteries after dark and if so, that would need to be waived also. Ms. Dula concurred.

Ms. Dula went on to lay out the obligations of the Company. The Company will furnish the information on who has the right to use the spaces. It will repair any damage to the crypts or headstones, unless the City is responsible for the damage, in which case the City will reimburse the Company for the cost of the repairs.

The Company has the authority to execute the necessary documents for the burial agreement. The term begins at execution of the agreement and continues unless the burial construction has not been completed by January 1, 2020. In that event, the City would reimburse the licensing fee. The Company may terminate the agreement at any time if it decides the burial space is no longer appropriate. It is the Company's responsibility to disinter the remains.

The City can not assign its rights and obligations but the Company may assign the agreement to any member of the Robert Lackey extended family. The entire agreement is governed by North Carolina laws.

Ms. Dula asked if there were any questions about the Burial Agreement. There were none.

Ms. Dula began discussion Conservancy Agreement. She noted that the majority of the work to create the Conservancy Agreement was completed by Mr. Bryan and the Lackey Family in cooperation with City staff. Mr. Lackey has requested that these facilities be maintained in a world class manner. This agreement is modeled after conservancy agreements in other cities.

The agreement outlines the City's and the Conservancy's rights and responsibilities in developing and managing the waterfront memorial park. The Conservancy will be a 501c3 non-profit and will be responsible for day-to-day operations, programming of events, and facility rental. The project occurs in phases through ongoing private/public partnership. Other phases will be funded by the Conservancy or by private donors. There will be a Board of Directors with seven members (Four appointed by Mr. Lackey and three appointed by City Council).

The Statement of Agreement goes over various definitions relevant to the agreement, including the exact areas that compose the Gardens.

Mr. Bryan interjected that the Conservancy's non-profit status will make it easier for donors to make donations and gifts will not have to go through the City.

Ms. Dula moved on to Section Two, which again outlines the City's ownership of the Gardens. The City and the Conservancy will develop, operate, maintain, and manage the Gardens together, in good faith cooperation, consistent with the Master Plan and Agreement.

Mr. Bryan added that it is a cooperative effort and the Conservancy will handle day-to-day operations but they understand that the City needs to maintain control. He noted that the City will have three board members and an active role in discussions, as well as having the final approval on the Master Plan. Additionally, the Conservancy will provide the City with updates and reports on a regular basis

Alderman Lail asked for distinction on the Conservancy's role in day-to-day management.

Mr. Bryan answered that the City will be responsible for facilities management, in the same way the City handles their other facilities. The Conservancy will handle programming.

Ms. Dula went on to point various aspects of Section Two, such as the reserved rights of the City to use the Gardens. The City is allowed to have twelve events at the Gardens per calendar year at mutually acceptable times. While the City does not currently sell or serve alcohol at events, if ever City Council so chose to, the proper liquor license and liability insurance would be necessary.

Alderman Lail asked if a third party wanted to use the facility, would they go through the Conservancy to rent the facility. Ms. Dula answered that yes, the Conservancy handles all aspects of private rental and the City will have no dealings in that.

Ms. Dula continued discussion and explained that the Conservancy has the right to sell food and alcohol for fundraising or other events. The Conservancy will provide an annual report detailing concessions operated in the Gardens.

The next section lays out the method by which disagreements are resolved. There will be frequent meetings between City staff and the Conservancy. But in the event of a disagreement The President of the Conservancy and the Parks & Recreation Director will meet within thirty days of written notice. If they are unable to reach a resolution, the President will meet with the City Manager within thirty days and attempt a resolution. If that is unsuccessful the parties will select a mutually acceptable mediator to come to a resolution.

Ms. Dula continued to detail other aspects found in the agreement such as naming rights, the Conservancy's governance (Board of Directors), and record requirements for non-profits.

The fourth section explains the construction of the facilities, which will occur in several phases. It also allows for the City to accept donations on behalf of the Conservancy in the event that the Conservancy does not yet have their 501c3 status. There will be ongoing discussion between the Conservancy and the City regarding future expansion. Also, the City will oversee all work performed in the Gardens and will have the right to suspend a project if it creates a safety hazard.

Mr. Bryan added that money might have to come from a third party but the Conservancy would still be responsible. He wanted to be clear that they are not increasing duties for the City.

Section 5 considers the operation of the adjacent park, which is the responsibility of the City. The section details features like existing bike trails, parking, restrooms, etc. which will be maintained by the City.

Alderman Guess asked how the cost for utilities would be handled. Ms. Dula explained that it will be delineated in the Operation and Maintenance Plan.

Ms. Dula moved on to continue discussing Section Five, which references a buffer zone for future expansion around the Gardens. She referred to a map in the PowerPoint Presentation that showed the buffer area.

Alderman Zagaroli asked for further explanation of the buffer zone.

Ms. Dula responded that it is simply raw land that is to be reserved for future expansion.

Mr. Bryan added that they had originally considered a larger buffer area but wanted to give the City more flexibility. He explained that the buffer was there in case they wanted to add more facilities in the future, but it is also there to keep the area undeveloped and maintain the peaceful nature of the Gardens.

Alderman Lail pointed out that the Riverwalk will connect to the Memorial Park. He asked if anyone had given consideration to parking.

Ms. Dula responded that there will be limited parking available.

Alderman Lail added that he felt consideration needed to be given about how the Riverwalk fits into the park and the likelihood that people will park at the Conservatory and access the Riverwalk.

Ms. Dula introduced Mr. David Carter who has his own consulting firm but worked with Parks in Wake County for many years and has experience with conservancies. He shared that he has been an invaluable resource and has helped with many of the documents. She apologized for not introducing him earlier in the meeting. She asked Mr. Mack Mcleod to expand on the parking discussion.

Mr. Mcleod reviewed the project with the Greater Hickory Tennis Association. He explained that part of the upgrades they are constructing will include expanded parking, which can be utilized by Riverwalk patrons. He also explained that for large events at the Conservatory, shuttles may have to be used to accommodate parking for everyone.

Ms. Dula continued by discussing Section Six, which details fundraising. She noted the rights and obligations of fundraising and the creation of usage fees for use of the Gardens.

Section Seven covers maintenance and support. Ms. Dula noted again that the Operation and Maintenance Plan will be drafted by City Staff with input and approval from the Conservancy. Also, the City will maintain property insurance on the completed facilities.

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Section Eight deals with representations. The City warrants and represents that the City owns the land that will constitute the Gardens and has the right to develop the park without any consent from Burke or Catawba Counties. The Conservancy represents that it is a not-for-profit corporation and has the authority to execute this agreement.

Section Nine details the allocation of liability. The agreement lists the types and amounts of insurance that are required to be carried by the Conservancy. The City will be an additional insured and will be notified if policies change or are canceled. The City must maintain insurance for the facilities at appropriate levels as suggested by the provider. Indemnification language is also detailed in this section.

Section Ten discusses the term and termination of the agreement. It begins at execution and may be terminated for cause, although a resolution would be sought. It may also be terminated if the Gardens have not been constructed (Phase 1) by January of 2020.

The final Section Eleven covers miscellaneous provisions. These are standard provisions contained in many documents.

Ms. Dula concluded by pointing out a document that is a chronology of events for the waterfront park, which gives an idea of the next steps. She asked Council to be considering persons they would like to appoint to the Board of Directors.

Alderman Lail asked if the bylaws will address the terms of the board members.

Ms. Dula answered that yes, they would.

Mr. Bryan added that there was flexibility in reappointing members to the board.

Alderman Lail expressed the need to set term limits for members.

Ms. Dula asked if there were any final questions. There were none.

Alderman Meisner thanked everyone for their diligent work and good information. He said he looked forward to this great partnership. There was general consensus from the rest of City Council.

Ms. Dula invited Mr. David Carter to make some comments on the project.

Mr. Carter shared that he has worked extensively on public/private partnerships all over. None are as visionary or exciting or of this magnitude. He said he is excited for the citizens of Hickory. It has been an easy process. The documents are excellent and well crafted by attorneys. He was confident that this will be a stellar project.

Mr. Berry quickly asked the Council Members about their schedules for a possible meeting at the end of the week. The members shared their availability.

Alderman Lail moved that the meeting be adjourned, seconded by Alderwoman Patton. The motion carried unanimously. The meeting adjourned at 11:01 a.m.

Mayor Rudy Wright

Deputy City Clerk