



City of Lawrence

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CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
JEREMY FARMER
DR. TERRY RIORDAN
ROBERT J. SCHUMM
MICHAEL DEVER

March 2, 2015

The Board of Commissioners of the City of Lawrence met in regular session at 5:45 p.m., in the City Commission Chambers in City Hall with Mayor Amyx presiding and members Dever, Farmer, Riordan and Schumm present.

A. RECOGNITION/PROCLAMATION/PRESENTATION: None

B. CONSENT AGENDA

It was moved by Dever, seconded by Farmer, to approve the consent agenda as below. Motion carried unanimously.

1. Received minutes from various boards and commissions:

Horizon 2020 Steering Committee meeting of 02/09/15
Plumbing Code Board of Appeals meeting of 09/09/12

2. **PULLED FROM THE CONSENT AGENDA FOR SEPARATE VOTE.**

3. Bid and purchase items:

a) Awarded the bid for patrol uniforms for the Lawrence Police Department, to the low bidder, Southern Uniform, for \$48,539.20.

b) Approved the extended Bid #B09034 pricing from Duke's Root Control, Inc. in the amount of \$99,228 for the 2015 Chemical Root Control Program.

c) Approved the purchase/lease of a slope mower for Eagle Bend Golf Course, from Professional Turf Products, L.P., for \$9,270.66 per year for three (3) years, for total price of \$26,896.43, utilizing the State of Kansas Contract EVT0003363.

4. Adopted on first reading, Ordinance No. 9087, establishing No Parking along both sides of George Williams Way from 6th Street, north to its end; and along the north side of Rock Chalk Drive from George Williams Way, west to the City Limits.

5. Adopted on second and final reading, Ordinance No. 9088, repealing Section 12-105.1 of the City ode pertaining to recoupment fees assessed in Municipal Court.



6. Adopted Resolution No. 7105, setting a public hearing date of April 21, 2015, pursuant to K.S.A. 12-1750 et. seq., to consider ordering the house and accessory structures at 1231 Pennsylvania Street to be repaired or demolished.
7. Approved the use of Synthetic Turf within an interior courtyard at Schwegler Elementary School for Site Plan, SP-14-00466, located at 2201 Ousdahl Rd. Submitted by Grob Engineering Services, LLC, for Unified School District #497, property owner of record.
8. Authorized the City Manager to execute a License Agreement permitting USD 497 to use a portion of the Harvard Road and Hilltop Drive Rights of Way for the installation of 67 parking spaces for use by Hillcrest Elementary School in accordance with the terms of that Agreement.

Moved by Schumm, seconded Farmer, to approve non-Rock Chalk Park related claims to 337 vendors in the amount of \$1,488,665.79. Aye: Amyx, Dever, Farmer, Riordan and Schumm. Nay: None. Motion carried unanimously.

Moved by Schumm, seconded by Dever, to approve Rock Chalk Park related claims to four(4) vendor(s) in the amount of \$6,813.49. Aye: Dever, Farmer, Riordan, and Schumm. Nay: Amyx. Motion carried.

C. CITY MANAGER'S REPORT: None

D. REGULAR AGENDA ITEMS:

1. Received McDonald & Associates audit on Rock Chalk Park infrastructure.

Michael Eglinski, City Auditor, presented the audit on Rock Chalk park infrastructure.

Commissioner Riordan asked, "The City interpret the agreement as a cost reimbursable, however, RCP and Bliss Sports see the contract as a lump sum. I interpreted that as we were supposed to pay 22.5 million regardless of how much was spent. Is that your interpretation and when you say lump sum, could you explain that to me?"

Warren Hudson, Auditor with McDonald Douglas, stated, "Contracts come in about three different varieties, cost reimbursable, lump sum, and unit price. Very few times are any contract purely lump sum, purely unit price, or purely cost plus, there's usually some amalgamation of the three that makes up your agreement. In this case, I think the City's stance on this was that the development agreement was audible up to the cap of the agreement so you had the right to

go in and look at all the cost that led up to the 22.5 million dollars. I believe that KU Endowment and Bliss Sports position was that 22.5 was the amount, you bought 'X' for 22.5 million dollars. As it turns out, Bliss Sports exceeded the contract amount significantly so it really became a non-issue at the end of the day because you're going to hit the 22.5 million dollar cap."

Riordan stated, "That was a potential problem, but it ended up actually not being a problem."

Hudson stated, "Had the contract cost come down to 10 million or 9 million dollars then you might have an issue, but it exceeded that."

Amyx stated, "The contract seems to be pretty specific in the language that talks about in the development agreement about being a 'cost plus' contract, correct?"

Hudson stated, "The development agreement doesn't specifically use the term 'cost plus', but does give the City the right to look at costs up to the cap."

Amyx stated, "Does it not say in the contract, under section 1101 where it talks about the hard and soft costs, out of pocket, plus at 2 ½ management fee."

Hudson stated, "Correct."

Amyx asked, "Is that not cost plus?"

Hudson stated, "Cost plus has connotations that have to do with the American Institute of Architects, some of their boiler plates. It's kind of risky just to say this is a cost plus agreement because 'cost plus' I believe, might actually be a trademark by the AIA, but I'm not sure. So no, it's not an AIA Agreement, it is an agreement for development that is a little bit out of the ordinary. I think you have the ability to review cost up to the cap. In essence yes, I think that the visibility or transparency is there in the contract to review costs."

Amyx stated, "As we looked at the AIA Contracts and I assume you familiarized yourself with those and the agreement that were there that even though that we are not a signature on some of those contracts it does talk about property and the investment that we have. Does it not talk in there about being 'cost plus' on some of those also?"

Hudson stated, "I believe that an aspect of this, Bliss Sports Agreement with KU Endowment was a cost reimbursable contract with no cap. The question is whether or not the city had visibility past that."

Amyx stated, "I think for myself, one of the things that I'm trying to determine here as I read the language and it may be different than the way that you read the language or other read it. I read it as a 'cost plus' so those hard and soft costs that the company would have paid and plus the 2.5 percent management fee which my understanding of the deal was have we done everything possible to establish what that cost is? In the information that you saw in the receipts and invoices that you've seen, have those costs been established."

Hudson stated, "Yes. We had exhaustive detail of the cost. What I did in the audit process was to trace back any of the construction costs to what I consider the baseline documentation whether that was an invoice, receipt or in most cases, a subcontract. The vast majority of these construction costs were made up of lump sum or fixed price subcontracts and Bliss Sports basically managed a bunch of lump sum or fixed price contracts in the construction of this project."

Amyx asked, "Other questions right now?"

Schumm stated, "I kind of would like to walk through the whole document. Let's just take it a point at a time, the page and you can just kind of summarize it and if you have any questions, we can ask specific questions at that time."

Hudson stated, "What I was trying to do with it in the first couple of pages is basically give an executive summary that outlined according to the agreement what is the total amount that the City is legally obligated to pay? There was an actual formulation in the contract that said you've got the recreation center construction costs that had to be considered first, the purchase price for the land and the architectural fee for the Recreation Center. After you remove those three items you're left with basically what amounts to the infrastructure cost or what's available for infrastructure which according to the agreement could have been zero had the rec

center costs 22.5 million. What I've done, I've outlined here that you had a max of 22.5 million, less the 10.5, \$784,941 and that leaves you with \$10,223,628 to spend on infrastructure. There was a provision within the development agreement to the Assist Foundation would contribute as much as I believe 3 million dollars, but for this project I believe they put in 1 million dollars of their own money. So that pops up the total amount available for the infrastructure to \$11,223,628. So really, I'm just trying to give you what money is left over after you go through the rec center, land purchase, the architectural fees and with the Assist Foundations money, you have 11.2 million dollars for the infrastructure. I made a note down here that \$161,000 was added based on change orders that the City Council approved. I believe that was for tennis courts and walking trails. That puts the total available for the infrastructure at \$11,385,000."

Schumm asked, "The additional \$161,654 was just for upgrades to those two facilities, is that correct? We didn't build 8 tennis courts in that running trail for \$164,000."

Hudson stated, "You're absolutely correct, it was an upgrade to the original cost, but it upped the cap, so you basically increased the contract."

Dever stated, "I think part of it was the difference in the base of the courts."

Schumm stated, "I didn't want the public to think we got 8 tennis courts for \$164,000 and a half mile running trail."

Hudson stated, "On page 2, I go through and I look at what was attested by each vendor. So this was a form that was developed, I believe by KU Endowment to basically get each one the service providers vendors subcontractors to sign-off of the work and say that yes, in fact, they'd been paid 'x' amount of dollars for whatever the contract supports and then we add in the construction management fees so that gives us a total project cost of \$13,495,556. That's far above the \$11,385,000 available for infrastructure. Essentially they spent more money than they had to spend. The City is only on the hook for \$11,385,000 according to the development agreement so less the payments already made to date of \$10,359,633 that leaves you guys with a balance of \$1,250,649. I tried to give another view of just the project estimate."

Schumm said, "There's an item here, the audit identified \$114,149 in costs as non-reimbursable, and so that was determined because the invoices submitted didn't match up with the quantities or didn't match up with the market?"

Hudson stated, "No, what happened is this has to do primarily with the soft costs in the project. I believe we were dealing with interest fees and legal fees. I took a very hard line look at these costs and I actually went down and we looked at the detail behind each of the legal fees, looked at the rate sheets from the law firm, looked at their hourly billing, what it was billed for and part of this was some legal costs that I questions because this seemed to be more in line with setting up the business, how best to structure, the Bliss Sports that it was, how to serve the development agreement, but even with the \$114,000 we take an exception to, that's off \$13,495,000. We'd still have to find quite a bit more money in order to affect the actual final payment for the City."

Schumm stated, "The first sentence is, 'City reduced payment of reimbursable costs by \$1,480,978 on page 2 and that was examining physical quantities installed in compliance with specifications.'"

Hudson stated, "The City had made adjustments on construction throughout the process. You guys conducted some fairly extensive testing on installed quantity use and whether or not it was up to spec or which your expectations were and you'd made some adjustments because there were some items that engineering disagreed with or did not fall within the specifications the City expected. You took off about \$1,480,000 out of the reimbursable amount."

Schumm asked, "So would you say that the City performed a due diligence that was adequate in terms of looking at the costs and submitted invoices?"

Hudson stated, "Honestly, the City performed more due diligence than I have ever seen on a project of this size."

Amyx asked, "Other questions?"

Amyx stated, "One that I would have as you look through the development agreement and as we look at the information that we received from Bliss and we'll just take the Qual Light , the lighting, we got a statement of 'to whom it may concern' and I realize the document was here. Were you able to physically see those invoices that relate to this?" I saw the Qual Light contract which outlined the parking lot lights at \$172,500, tennis court lights at \$150,300. I know that the check that paid for that was \$325,500 by Bliss Sports II. There were two components of that \$60,000 and \$24,000 that were on the contract, but were not paid. It seems that the labor and miscellaneous materials, they went ahead and covered through just the base price for parking lot lights and other lights."

Amyx stated, "I guess one of the things that I see Warren, the information that we received, is that acceptable under a contract like this and under the language that's in the contract or should we have those contracts and that information based on the language that's in the development agreement?"

Hudson stated, "Not being an attorney, I'm probably not qualified to tell you that, at the end of the day. I can say that the standard that's set forth in the development agreement is that you have the right to look at Bliss Sports costs. Where does that end at the end of the day? Is it what they pay? Is it the source document that backed up what they paid? I don't really know. They did allow me access to that information and I was able to validate that. I would say that if you're going to do a cost reimbursable contract going forward, that you would change the language and make it far clearer. Because obviously there is some room for interpretation on this because you've got 2 different parties that have a slightly different view of the agreement."

Farmer stated, "Warren, just going through this I want to make sure I understand because the real issue for the community is, one if we would have bid the contract, would we have gotten as good of a value as we got with the way that the development agreement was structured and I'd like your opinion on that first of all and secondly, how many of the subcontracting contracts did you not have access to or did not see? In other words, can you

verify that all of the bills essentially that were paid that we just had affidavits for, that you actually saw those contracts and subsequently they were in line with what we had agreed to pay in the development agreement.”

Hudson stated, “Except for two there was a verbal agreement I believed with Alpha Geotech and Gould Evans, but other than that I had my hands on every other agreement.”

Farmer stated, “That amount totals \$114,149, correct?”

Hudson stated, “No, the \$114,149 is purely our exceptions on the soft costs related to legal fees and interest. My standard of proof or what I try to validate when I look at Gould Evans and Alpha Geotech was there sufficient proof to show that you received some economic value for the money paid. I believe Alpha Geotech was providing reports on almost a daily basis with the city reports, looking at installed quantities and doing testing on concrete and what have you. So there was ample information out there that said these folks were on site, they weren't doing a barely extensive scope of work out here. Whether that was reasonable for what they performed, that's up for debate. I think it was. I think you got your money's worth and you got a lot of testing out of this. The fact that with the city and all the firms involved, looking a quality assurance there was a tremendous amount of testing on this project.”

Farmer stated, “To my first question, what would your response be to that?”

Hudson asked, “What was your first question again?”

Farmer stated, “If we would have bid it out.”

Hudson stated, “I did some analysis of looking at comparable projects in and around the Lawrence area and I was able to test about 70% of your project cost against comparable unit prices. I want to say that I came up about 1.8 million dollars more than what you ended up paying. The 30% was a lot of the soft cost and things that are hard to get your arms around because there's not a firm fixed unit price for legal fee or anything like that, but for the concrete which was the vast majority of the cost related to this project, you are at or below market standards.”

Farmer stated, "It's safe to say, I want to make sure to clarify this for everybody watching and everybody in the audience. The value that we received on the 70% of hard costs essentially, were potentially \$1.8 million less than what they would have been would we have bid this project."

Hudson stated, "Yes, based on other projects in this area, you'd come in at about 1.8 million under."

Farmer stated, "I'm really thrilled to hear everything you're telling me and I hope the public is too. The big question that the community has had is feeling like we got screwed by KU Endowment and Thomas Fritzel and that we did not get a good value for the money that we paid. If you had the opportunity to talk to everyone in Lawrence, Kansas, and hopefully those that are going to be reporting on this are paying attention right now, what would you tell them?"

Hudson stated, "You got a very good deal on this project. I've seen much smaller projects that cost a lot more money. For example, I'm working on something in eastern Arizona right now that's about half the size of that rec center doesn't include the parking and it's about 39 million dollars. As far as the landscaping, the amount of concrete you got out there, the infrastructure and the facilities, it looks like you got a pretty easy deal."

Amyx stated, "Let's keep going through the report."

Hudson stated, "On to page 3, what we tried to do in the criteria, we picked out key items from the development agreement and said okay, what was the condition that was in place with the City related to this contractual criteria. We're talking about the final acceptance of the infrastructure this is a fairly simple issue. There's an Exhibit J in the contract that according to the contract language has to be executed in order to acknowledge final acceptance to the project. I saw an Exhibit J executed by Bliss Sports and KU Endowment, but the City, I don't believe, had signed off on the final acceptance yet. Although, I believe the project was turned over to you and it's been in use by the City. On the second issue of section 9.02, the infrastructure improvement and site access what I wanted to focus on here was whether or not

there was proper due diligence within the City to make sure that installed quantities were in fact being put in place, that things were being built to specification. I just want to point out that there was a tremendous amount of work done by City engineering. A great deal of log books, testing reports and sheer man hours spent by your engineering personnel out there on this project looking at the construction. Like I've said, I've seen a lot of federal highway projects that have not had this much oversight on the concrete is pretty impressive."

Amyx stated, "On the Schedule I that is in the performance agreement, I went through it and looked at that because you had mentioned the concrete. Did you do the conversions, most of those estimates were in square yards and those tickets came in, in cubic yards."

Hudson stated, "Yes."

Amyx asked, "Did you do all the calculations and they did match the 7100 or 7200?"

Hudson stated, "It was less than 3% of the total concrete delivered which frankly, is unheard of."

Schumm stated, "Unheard of on the low end."

Hudson stated, "It's pretty good. I very rarely see waste that's that minimal. I'll move on to Number 3, Section 9.03, Bliss Sports II agrees to provide monthly progress reports. Really, all I was doing was looking to see that there was something coming from Bliss Sports II or the Endowment side that was also providing the same checks that the City was doing just so you had a reasonable check between the two entities and everybody was on the same page and there was sufficient evidence that that was occurring. Number 4, the City oversight of construction infrastructure improvements, we talk about the City having the right to attend infrastructure meetings whether or not there was some sort of evidence of that intended is in place. Once again, I focus very heavily on the concrete since that was 9.1 or 9.2 million dollars of the 11.3 million dollars he questioned. I really want to focus on whether or not there was adequate review of concrete pourers, if you had enough QAQC out there looking at whether or not things were done to spec and once again like we were talking earlier that the estimate on

exhibit I was roughly 7,276 cubic yards of concrete. The deliver tickets were 7,171 and you had City reports so you had your independent engineers out there looking at the pours and they were calculating around 7,081 cubic yards. So once again, this is very tight markers.”

Amyx asked, “When you and I talked about, early on in the process, batch tickets and when you open those up, the batch tickets were charged to whom?”

Hudson stated, “The batch tickets were charged, well, they had Bliss Sports II name on it and here was the reason why: Because you’ve got over 7,000 cubic yards of concrete, I believed it was Penny’s, the concrete provider, wanted a guarantee from Thomas Fritzel personally and so Sports is on the actual receipt, but the delivery was paid for by King Construction so basically it was a personnel guarantee that if King Construction didn’t follow through, that Sports would cover the payment. On number 5, honestly the as-built drawings, the only reason I was looking for those was to be able to make sure that I understood what the final installment quantities were and what changes that may have occurred during the construction process if someone decided that instead of this curb being at this angle, it needs to be at this angle, whatever that was actually performed in the field, I was wanting to be able to have a chance to look at in the drawings so I could make sure that I had actual installed quantities. The fact is that you had so much engineering oversight out there, you probably captured ‘as-built’ drawings, but it just wasn’t stamped by a final architect as ‘as-build’. That would really be probably critical if you were dealing with an area that had a lot of underground work, high plane work, something like that where City personnel needed to know exactly where something was located or they could dig into a watermain or something. I don’t know if it was entirely necessary in this case because like I said, you had the City water and City sewer folks out there looking at the construction and they were making notes as to when and where this stuff was being put down. Number 6, in Exhibit I, in terms of the development agreement the City negotiated prices for the infrastructure. So the way I read the contract was that there was a good faith estimate that was made in the negotiation of Exhibit I quantities and dollar amounts.

In essence, you guys in principle said, yes this was a sufficient amount for this quantity of concrete or this length of curb or whatever. We went through and made sure that the installed quantities were comparable to a similar material, like what we were talking about earlier about other projects in and around the Lawrence area are from here to Topeka. It was probably the best gage of construction costs was to look at something where you're using the same vendors and the same materials, suppliers in this area to make sure that you got a comparable cost."

Schumm stated, "A point of interest on that, those projects that we compared to had been bid though. Is that correct?"

Hudson stated, "Yes."

Schumm asked, "That was two projects, Venture Park and 15th and Iowa?"

Hudson stated, "I had as many as 5 projects that I looked at."

Amyx stated, "When you look at those projects and you're really looking at true comparable, are you comparing greenfield area where you have an intersection shut down and having to move things around and all the mobilization that went into that?"

Hudson stated, "I did try to look for whether or not mobilization was broken down into a separate line item or if it was included in the line item before the installment of material. Because obviously, if they would have included mobilization in a unit cost for concrete then that was going to inflate your concrete cost. I tried to make apples to apples comparison as best as I could so I was looking for projects and expenses where we were dealing with purely material installation. On article 11, infrastructure payment, all I'm doing here is going through basically what the executive summary of the report did which was walk through the accounting of the project, what the development agreement sets out as what the City owes and I'm reiterating the fact that your architecture was \$941,000 and your end cost was 784 and the construction of the rec center was 10.5 million. Once again I'm bringing up the fact that more costs were incurred in this project than the cap. We would really have to find the fairly substantial amount of money that was in question in order to affect the final payment of the City."

Dever stated, "You keep mentioning the excess amounts of costs beyond the cap and I want to make sure it's clear that you actually audited that excess amount as well so that this isn't a fabrication or some sort of overstatement by the developer or KU Endowment, that in fact, these dollars were spent in excess of the cap."

Hudson stated, "No, I put my hand on all of these costs."

Amyx stated, "As part of the language that is in 11.01 and 11.02, as the person we've hired to do this audit, I've noticed that it is not recommended here, but it seems to me that we have to answer to tax payers because of public funds here. Would it not be appropriate to have all of the documents that you had in your hands for public view to make people feel more comfortable with those costs?"

Hudson stated, "In some instances with Bliss Sports, you had a co-mingling of let's use legal fees for example: Mr. Fritzel had a lot of personal activity that occurred with the same law firm that was on the same billing with things having to do with the development agreement. I'm not sure how easy it would be to separate that out at the end of the day without divulging a lot of personal information of his to the public. Whether or not that should be a requirement, if that's what you wanted the contract could be a little more specific in that area to say specifically, I want to see all the invoice backup for legal billing, I want to see all the invoice backup for engineering or design costs. I want to see down to the subcontract level and time cards. I'm used to seeing a lot more detail in the contract as far as what the requirement is and what you're asking for."

Amyx stated, "One of the concerns well one of the concerns that I shared with you early on was specifically due with comingling and whether or not we paid for only the portion that we were to be responsible for. Do you believe in everything that you've seen that we paid specifically for what we said we would pay for in this agreement?"

Hudson stated, "Yes."

Amyx stated, "You don't think we didn't pay for any other parts?"

Hudson stated, "I don't think you paid for any other parts. There's sufficient cost related directly to this project that if we look at the cap in the development agreement, we can take strictly project related costs and come to that cap easily. If there was something, let's say the \$114,000 that I took exception to up in the front, which was legal fees and interest that may have fallen outside the parameters of the development agreement, there's sufficient direct project cost to replace that. Under the 11.2 million dollars there's sufficient cost there that is directly project related to code."

Dever stated, "So to follow up on that thought, that's where I was trying to get some clarification on your fact based assessment of the total cost of the project, specifically the infrastructure. I know you've been living this now for a couple weeks now and I'd like to know, in your estimation, the total amount of costs that are, as Mike was referring to, undocumented or not thoroughly documented in the total project costs. Approximately how many hundreds of thousands of dollars were out there that don't have adequate backup either on our City's website or that we have in-house from other activities. Do you have a kind of a feeling for what numbers are still out there that Mike was referring to that the public might want access to?"

Hudson stated, "The only two I can think of would be the Gould Evans and Alpha Geotech."

Dever stated, "They add up to approximately?"

Farmer stated, "Alpha Geotech was \$84,272."

Hudson stated, "So it's \$184,000."

Dever stated, "So \$184,000 of what you believe are coffered or not clearly delineated."

Hudson stated, "There's no contract supporting the cost. Now, is there sufficient detail that exists out there, not necessarily on the City's website, but exists at Bliss Sports to report that work was performed, yes?"

Dever stated, "So \$184,000 and as you said if we were to call of that into questions, we still exceeded the cap by 1.8 million or more."

Hudson stated, "After we took into consideration what the City is taken off already from the payments and mild exceptions, we'd have to come up with over a half million dollars in order to affect the final payment. On number 9, the Development Agreement Contract Type, unfortunately with these types of agreements, it's not like there's a boiler plate existing out there for development projects so it's hard to say that you'll ever run into a situation like this again. Most likely, this is kind of a 'one off time project.' In any agreement, if you're looking for the transparency, I'll go back to what I was telling Mike a minute ago, is that you really want to specify exactly what you want to see in that contract and I usually suggest a specific audit provision. Now that doesn't mean you have to call in a 3rd party auditor, it just gives knowledgeable people within the organization, let's say its engineering and your audit staff has access to all the records and there's no ambiguity there. Quite frankly, as far as Bliss Sports and KU Endowment, they provided everything that I've asked for. They've been cooperative in that process. Finally, this just comes down to the contract law standards. I went down and looked at, what your basics of contract law and your contract should be clear, ambiguous, unmistakable and inconspicuous in order to be enforceable. Obviously, with Alpha Omega and Gould Evans you have two arrangements with a surface provider that's not in writing. You run into some potential liability issues later on. If something went wrong and it happened to be related to their design of the project, you don't have much recourse to go back and say: Well, you didn't fulfill this portion of your agreement because there's no agreement. Finally, on Exhibit A, all I've done is breakout each of the cost that were attested to or presented in this audit. The \$13,495,000 is actually what I audited to, since that quote was presented as actual costs in the project. Looking down at what the City is taking exception to, it's been 1.4 million dollars which I break it by Kings Construction, DFC, Ernie's Mechanical, Mid-America, etc... and I show how it divides up by each one of the vendors involved on the project and then finally, on Page 9, I show my audit exceptions as they relate to legal fees. The \$79,000, it may relate to the project, but there was enough question in the detail behind the billing to say, this looked to

be related more to specific business with Bliss Sports II and how they setup their day to day activities rather than directly to the development agreement. As far as the interest fees what I did was take a look at the payments made by one of the Fritzel entities whether it was Bliss Sports II, DFC or Thomas Fritzel directly. I looked at those against the draws from the bank. I have dates and amounts that they've taken money out of the line of credit and the bank to pay for various things. With that high level of analysis, I could tell you that Thomas Fritzel came out of pocket roughly \$600,000 on this project, over and beyond what the line of credit provided for, but I took exception to a portion of the interest charges because the development agreement specifically says: To Bliss Sport II and Bliss Sports II has created a specific date so I took all the interest from that date and the date the project was delivered to the City and said that that would be the interest that fall under the development agreement and be the responsibility of the City. That's how I came up with the additional money on that exception which I believe would be \$10,167 as if fell outside of the other development agreement criteria."

Dever asked, "What do you mean by out of pocket?"

Hudson stated, "I mean that the line of credit did not cover about \$600,000 that was spent."

Dever stated, "The line of credit is what you were assessing for the interest structure and noticed that there was cash used outside this line of credit or whatever."

Hudson stated, "Based on the draws it had to come from something else. There was no other interest that came from any other entity so since that line of credit was the only in depth area. You are charged interest whether you got it from bank X, Y, or Z, I don't know"

Dever stated, "In your report that has led some people to be concerned and has been reported on a lot and I just want to give you a chance to respond to them in hopes that folks are watching, for those who have read the articles. Was your determination that Fritzel's and Bliss Sports II did not provide a complete accounting for the project and that you stated that they did not keep a formal job ledger? How much did those weigh into the fact that they didn't do it with

your comfort level that all the costs are in line with what we agreed to pay in the development agreement. Can you respond to those two things?”

Hudson stated, “Yes, Bliss Sports had the documentation available in order for me to create a job cost ledger. As an auditor, I always like to see documentation come straight from the system that says this is the cost that way there is no human error involved. I know it’s coming directly from the system and it should tie to buildings. It might be more of an issue of semantics here, but I prefer to see that documentation come directly from the developer or the contractor. I did have to create the thing from scratch. I feel very comfortable having seen the receipts and the subcontracts that it is accurate. The only thing that was missing from what the City has in its possession and what I’d expect to see on a job cost ledger was some of the internal transfers. You had related parking transactions between the DFC Company and Bliss Sports II and those were not handled with checks between the parties, they were done through journal entries and that was something you’d have access to except by going over and looking Thomas Fritzel’s records directly.”

Farmer stated, “That’s another thing that’s been reported and brought up was and frankly a big deal has been made about it because it’s essentially been assumed that because those are journal entries as you stated or however they were, that there’s been in essence some sort of assumed misappropriation. Can you just speak to that because my hope is that I’m really glad we went through this as much as we have tonight and probably we can go through it for a long time more, but in essence there’s been kind of this general sense in almost a sometimes justified, sometimes not hysteria surrounding the fact that this was a bad project for the City to be involved with. Can you just speak to the whole DFC Company, Bliss Sport II and Bliss Sports and how some contractors were paid from Bliss Sports instead of Bliss Sports II and DFC Company and your comfort level with all that because the perception is it wasn’t done according to the development agreement and in essence, it means that we got a bad deal or we were screwed over somehow.”

Hudson stated, "That was a question that I had as one of my audit steps. I wanted to dig in to that quite a bit. What I ended up finding was that when you look at the project timeline, a lot of the payments that came from either Thomas Fritzel, DFC, or Bliss Sports LC, it was before Bliss Sports II, those happened prior to the City's involvement directly in the development agreement so there was still some question of how this deal was going to be structured. I believe KU Endowment's position was that they were always going to develop the stadium site and the facilities. The question was whether or not the City was going to be involved in this process and have the rec center out there and share the infrastructure or if the City was going to do something else. Because of the timeframe of the project I believe they had relays in April 2014 and there was some rush to get this project off the ground because there's a lot of pre-planning that has to be done. You've got to get contractors lined up and materials available in order to do a project at this site. So they had to essentially make commitments prior to the City's involvement. That means that there wasn't necessarily a Bliss Sports II created yet, when some of these initial payments came over. I can see absolutely no evidence that anything nefarious went on. I mean any of the inter-company transfers were well documented. There were actually some areas where DFC paid King Construction directly and I was worried that King Construction billed and DFC billed and might have been doubled dipped, but no there was evidence there was amounts reimbursed back to DFC from Bliss Sports II to compensate for that."

Farmer stated, "A review that found at least 3 contractors on the project, not signing documents attesting to the cost, did you find those discrepancies and omissions to be significant?"

Hudson stated, "DFC signed an attestation, but there was nothing there that proved that the payment was made. I believe the issue I had were Emprise Bank and the law firm. I got the opportunity to go in and look at all the detail related to both of those. So I didn't have an issue

with them. Whether or not they should have provided proper attestation at the end of the day that's another issue, but the cost was validated, it was there."

Amyx stated, "Warren, can you go back and you had said that Mr. Fritzel appears to have \$600,000 out of pocket into the project. The interest that is outside the development agreement period, is that based on the Emprise Bank loan the \$12,979,000."

Hudson stated, "Yes."

Amyx stated, "That is for that final time from like May until October or is throughout the contract somewhere, the time of the note."

Hudson stated, "The detail started in May of 2013 and went through October 27th of 2014."

Amyx stated, "Because May was when the last time the draw was made."

Hudson stated, "May of 2013 was the original establishment of the line of credit."

Amyx stated, "That was when the line of credit started, but the timeframe which negated the \$10,000 was that at the end of the project? Was it before it started?"

Hudson stated, "Yes. If you want, I can provide you more detail."

Amyx stated, "That will be fine because I'd like to figure out where it came from, if it was before that's fine. I figured it would have been at the end, the way I read it."

Farmer stated, "Did Bliss Sports II ever write any checks related to the stadium project. In other words are taxpayers from the City of Lawrence paying for anything in relationship to the stadium? In other words are we paying for more than what we agreed to specifically just for the infrastructure."

Hudson stated, "No, there's no evidence to that. As a matter for fact they actually did a very good job of delineating costs between the projects. The only issue there might have been would be in some of the design fees and there was a specific contractual provision in there to do a 31/69 split between the stadium and the City infrastructure and that was followed pretty consistently except for Alpha Geotech. There was about a \$6,000 discrepancy, but according to

discussions with Thomas Fritzel and KU Endowment. The gentleman that was making the estimate had a better knowledge in his opinion of how much the split should have been. So instead of \$77,000 it was \$84,000 because he said due to the footprint of the construction project and the fact that there were lots of roads of concrete involved, he spent a little bit more time than a direct 31/69 split. Since we were talking \$6,000 it seemed like it was a reasonable explanation, but you could call any questions.”

Dever asked, “Can you elaborate for people how the split that you just referred to, where that split came from and how they arrived at that calculation?”

Hudson stated, “In the development agreement it says that there are costs that are common and there is no bases to determine how to divide that cost between the stadium project and the infrastructure and that there will be a 31/69 split. The City will take 31% of the costs and the stadium will take 69% of the cost.”

Dever asked, “Do you know how they arrived at that number? Did they ever tell you that, the 31/69 split?”

Hudson stated, “Actually, once I read it in the contract that was my basis to audit.”

Corliss stated, “The acreage.”

Dever stated, “It’s straight up square footage of land.”

Farmer stated, “Do you feel like the City has delivered on its promise to verify the cost of this project in a very robust manner?”

Hudson stated, “I think your engineering department did a fantastic job of verifying that what was paid for was installed. So yes, you’ve done a very good job.”

Riordan stated, “I just have two questions. One is, if they had built this in your city, as a citizen knowing what you know would you be pleased with the project and felt that you got a good value?”

Hudson stated, "Since my entire career deal with construction projects, I might be a little bias but this is a pretty good deal. I very rarely see construction costs this low that also includes land costs. It's almost unheard of for what you've got."

Riordan stated, "One last question, and I don't mean to insult you, but there will be critics that say you guys paid for this audit and you got exactly what you wanted. Could you explain to me and explain to the public, based on your professionalism and your profession why that would not be the case?"

Hudson stated, "My job is to come in and find problems. That's what I'm hired for. That's what I'm looking for so when I'm coming out to a project, first and foremost I'm expecting issues and I'm looking for issues. It's very rare that I get on a project and have as little issues as we've had here. I would say this was one of 3 projects in my 20 plus year career that had been this 'uneventful'. I've done this from the contracting side where we were working on multi-billion dollar international projects. Worked as a consultant on the owner's side where we've done everything from City projects to office buildings and hospitals. Same with the breadth of experience, I feel very comfortable looking at what I was looking at and I feel like I can speak to it fairly knowledgably. I would hope that the City likes what they've got from this effort and I tried my best to do it in a cost effective and reasonable manner and provide you guys with as much values as I possibly could."

Riordan stated, "Thank you very much, I think you did that."

Schumm stated, "These are some more hypothetical questions because there's been all kinds of accusations made, all kinds of misunderstandings, in your experience as an auditor for the many years that you've been doing that, do you find other entities, other cities, other municipalities, or governmental bodies entering into other than only bid projects."

Hudson stated, "I have run across the rare few that go into a development type project like this. The issue you've got here is that you entered the agreement a little after the train had started rolling, because it wasn't exactly a greenfield project for the City where you went out you

competitively bid it, found that your contractor and went ahead with the project. This is something that was in conjunction with another party and you had the choice to be involved in it or not. That's kind of a rare thing. I don't normally see that. I'm not saying that you got a bad deal from it, I think actually it was a pretty decent deal for the City as far as I was concerned, but it's not a typical arrangement. I've seen maybe one or two over 20 years. People are fairly leery about no-bid contracts and they think there's a lack of transparency involved in the process whether that's true or not."

Farmer asked, "What would you say to them?"

Hudson stated, "It depends on a case by case basis."

Farmer stated, "What would you say to them about this project?"

Hudson stated, "As it turns out, you had fairly decent visibility into this project and a lot of it has to do with the work that was done by the City and the engineering crew because you had folks out there each and every day looking at concrete pourers and placement of rebar and spacers. That kind of diligence is hard to find. That's being a good steward of the public's money. Does every municipality do that? No."

Farmer stated, "In your opinion we have been a good steward of the public's money?"

Hudson stated, "I think you've done a good job with the public's money."

Dever stated, "We got into this predicament. I don't know if you were briefed on the whole history, but I think one of the things that I came out of, I think the infrastructure cost, I agree with what you said, I believe in the field that I work in that there's an excessive amount of oversight by the City on this project to the point where I felt like we had a pretty good idea on the quantities, the number, the quality, the thickness of the pours, and the alignment and the location. I think that was all pretty black and white. I felt like that all along. I didn't think there would be any impropriety when it came to that because I trust them to do that and that's what they get paid to do. The part of this that really confused me and really frankly bothered me and one of the reasons why people feel uncomfortable about this is because the cost for

construction of the rec center came in so low. The actual bid costs as compared to the engineers estimates because we paid people to give us engineering estimates on what these buildings should cost and we used that estimate in coordination with what we felt like our infrastructure costs should be and arrived at a number. Because of that poor estimating or inaccurate estimating whatever word you want to use, it flipped the formula a little bit, but none the less, I just want to get your idea on the building itself. I know you didn't look at specifically, but you're out there. Any clues as to how engineering estimate like that could be so far off?"

Hudson stated, "I have a pretty good idea what you got is a developer with a contractor that's a related to DFC, I believe wanted to bid on the rec enter. They were already mobilized out there for the vast majority of the infrastructure work so they didn't have to incur mobilization cost to build the rec center. That's a tremendous amount of savings right there so basically you guys benefited from economies of scale by having the contractor who won the bid actually already on site, but you didn't have to pay to move job trailers and logistics of people and equipment out there, it was already there."

Schumm stated, "I understand that and that's perfectly understandable. The 9 bids and the next bid was only \$250,000 more than the Fritzel Co. bid so that kind of throws out and also there were a number of bids in the range of as I recall, I sat right here next to the City Clerk when they opened them up. The first bid that was opened up was like 15 million and I thought, oh gosh, they've screwed up that bid, they forgot something in there because our previous estimates, correct me if I'm wrong staff, was like 17 or 18 million and we actually had a contractor, 17, 18, 19 million, somewhere in there. The first bid was 15 million and I thought, man, somebody has really goofed up but then they kept coming down until, when they were all in, 10.5 million was the lowest bid. The explanation the architects gave us at that time, because we asked them at that time, why we were so off. You've got to remember this was about two years ago, and construction was not as robust as it is today, not that it's that robust anyway, and what they said, as I recall, there were four major trades that gave us bare bones, keep the men

working, pricing that brought the overall price way down by a third. Does that sound reasonable, plausible?”

Hudson stated, “That’s very plausible. It’s better than closing your doors if you’re a concrete sub, or someone doing any sort of tilt wall construction, or equipment company. They are going to want to keep their people working so it makes perfect sense. Now, the question I would have, and since I didn’t look at the specific costs of the rec center, all I know is what the city paid for it. Was there a King Construction bidding on the other bidder’s proposals for this project?”

Schumm stated, “I can’t remember if King was not a bidder or were they?”

Corliss stated, “I’m looking at the bids right now if you want me to get you that. Gene Fritzel Construction had the bid at \$10.5 million. There was no Kings. The bids ranged from \$13.5 million to the low bid.”

Schumm stated, “I was wrong when I said the first bid was \$15 million something. I was sitting over here thinking that guy is going to take it on the chin.”

Dever stated, “The engineering estimate was?”

Corliss stated, “Well we had two. One was provided by Gould Evans which was \$18.4 million and we had Penzler provide \$20.7 million. About 5 months before hand we had asked Crossland Construction to give us an estimate and I think they gave us a range of like \$17-\$18 million. That was not a formal estimate that was just a weekend of looking at the cost estimates.”

Schumm stated, “And they were a company that bid on it.”

Corliss stated, “Yes. Crossland bid at \$10.7 million.”

Schumm stated, “Prior to the project he knew what it was going to be, and they’re saying \$17 million, and it comes in bid at \$4 million less.”

Corliss stated, “It speaks to the value of bidding.”

Dever stated, "I just want to follow up on that. I know that you mentioned there is a similar project that you worked on. I just thought it might be helpful for people to understand, including myself, that this stuff happens. That you get engineering estimates and they're way off but by a factor of 50% or more seems a lot."

Hudson stated, "That's fairly significant. What I don't know is what your prevailing wage rate is in this area and all the material suppliers and that sort of thing. Maybe they were working off of numbers from a prior year which might have had more market tension, more demand on some of the skilled crafts, I don't know."

Schumm stated, "I think the 'per square foot', if my memory recalls correctly, is about \$62 per square foot for that rec center."

Corliss stated, "I think that is about right."

Schumm stated, "We had looked at other projects that had been recently completed that were rec center kinds of creatures and the going rate was about \$120 per square foot."

Hudson stated, "That's a very low rate."

Schumm stated, "I think a garage works out to about \$62 a square foot. Maybe more if you've got nice doors."

Amyx stated, "Going back, one more time, on the line of credit verses \$13,495,000 of the total projected costs, is that where you project the difference in the \$600,000 that came from Bliss Sports, the difference between the line of credit and that \$13.5 million?"

Hudson stated, "I've got the loan principle draws of \$12,597,510. I've got physical checks paid by Bliss Sports of \$10,827,000 and that leaves me a variance of \$1,769,963. I know that \$1.7 million dollars was spent internally with the DFC Company through transfers. So, I'm taking the \$1.7 million off and that leaves me with \$69,463. I'm just looking at cash flow. We know that the loan origination fee was \$158,643 and the interest, as of the report, was \$599,547. So, that's how I'm coming up with the \$688. I've got excess cash at \$69,000, less the loan origination and the interest."

Farmer stated, "Two questions. You obviously have a lot of notes. Let me ask three questions. For those that say you didn't have adequate time to thoroughly research everything you needed to in relationship to this project, do you feel like you had adequate time to comb through everything you needed to, to be as thorough as possible?"

Hudson stated, "I had completely sufficient time for this."

Farmer stated, "Secondly, you've got a lot of note in relationship to things that aren't necessarily a part of your report. Would those be something you would be willing to put in, maybe, an addendum so we could make it available to the public so they can see the breakdown of some of these numbers?"

Hudson stated, "I was planning on handing over my work papers to you guys after I presented."

Farmers stated, "Do those work papers include your estimated ledger that you created?"

Hudson stated, "Yes. Everything that is referred to in the report and more is outlined in the work."

Farmer stated, "My last question is, how does your estimated ledger compare with what our staff put together to review the costs in the December memo? It was a memo from Chuck I believe, right?"

Corliss stated. "It was Chuck's memo but actually David Cronin put the ledgers together."

Hudson stated, "I can tell you just from the sake of independence, I tried not to look at too much of the documentation that was provided. I tried to be able to pull from the source documentation and create it myself so I could back engineer into the number. So, I can't tell you that I actually made a formal comparison between the memorandum and what I came up with."

Dever stated, "That is what he was paid to do, make up his own numbers."

Amyx asked, "Are there other commission questions at this point?"

Riordan stated, "I don't have another question but I can tell you, as a private citizen who had two contractors come in and bid on my house 15 years ago, one bid at \$188,000, one bid at \$91,000 to do the work and the better of the two companies was \$91,000. I asked the people who were performing the work, because it was quite specific and delicate work, why they were so low. He said because they wanted to keep their crew together and do something over the winter. There are explanations for significant changes. They weren't looking to make a profit, they were looking to keep their crews together and to continue as a company and the company actually did significant work for the city, for the reconstruction of the Carnegie Building, and things like that. I think this is understandable."

Amyx called for public comment.

Greg Robinson stated, "Some of the comments I'm hearing tonight, it's all based on value. Did we get value? I don't think that is necessarily the public's anger in this. It all started back when the project started out, and Mr. Amyx you may remember this one because some of you weren't on the commission at the time, with Mr. Schwada's property west of K10 was the go-to spot and that was getting rushed through. I believe that property was annexed into the city. That was the rush. We're going to do this, Mr. Schwada's property, this is what we're going to do and then it was not even 4 weeks later, bang, now we're doing Rock Chalk Park. This is so good we cannot, not do it as I remember a commissioner as being quoted. So, that's kind of the history behind the tax payer's anger because they got no input to the process. This was such a quick deal. We got to move, we got to do this, forget the citizens, we're just going to do what we're going to do and come tell us exactly what you want in this place and we're going to build it regardless of what you think. In reference to the bids, as I recall, when the first numbers were thrown out to the public, I believe, the Fritzel infrastructure cost, or estimate, was a lot higher but then when the public backlash came, there was this bid process. Then, if I recall correctly, the Fritzel bid infrastructure costs dropped tremendously. I think the public take's exception with that because it knows the city was promising a cap. So, you can play with the

numbers however you felt appropriate so you could get the bid per se. That's kind of what the process appeared to be. Because, when your bids were opened, as you've already discussed, the bids were a lot lower in reference to the infrastructure that was already estimated before by the winner of the bid. So, what numbers could have changed other than the fact that they could catch it on the back side, building the actual facility. One of the things I'd like to direct your attention to is the actual report. It says, on page 1, 'based on the audit work, M&A determined that the construction work delivered met or exceeded the established specs and the costs were compliant'. We had our public works director stand here and say it did not meet the specs when it delivered the wrong aggregate of concrete the city inspector did not turn away. So, we have concrete that didn't meet specs out there. In fact, on page 3 of the report, it says, 'engineering reports identified areas where construction was not completed to specifications. In these incidents the city withheld reimbursement'. Ok. That's fine. We didn't pay for something but, yet, we did not receive what were the specs. I would ask you to correct the front page of that if you accept it."

Joe Harkins stated, "I have one comment, one question. I'll try to avoid becoming hysterical. My comment is that I am very pleased with what I heard tonight. It's a great relief to hear from an objective, third party that this project seems to be above reproach. I'm delighted that that's the outcome of this exercise. I think it is probably was in part achieved by an extraordinary expense of city staff that may not have been utilized the same way on a contract that had been bid. I think there were some costs that weren't discussed here. I have no way of knowing what they were and don't think the City Manager wants to comment on that. The question is where the auditor, who answered a question earlier, I'm kind of surprised that he did, that you got just as good a deal, or maybe better, with this process than you would have with a bid. I don't want to misrepresent that. My question then is that we invented some new standard for public organizations? Are we in a position of saying, based on our outcomes, we think millions of dollars in projects can best be done by having no bids, having the contractor hire

other sub-contractors without contracts and with no bids? Is that a new standard that Lawrence wants to follow and encourage other municipalities to emulate?"

Farmer stated, "Can I ask a question?"

Amyx stated, "Please."

Farmer stated, "Can I ask you a question? Was that a, and I mean this with all due respect because you and I chatted about this in your house for a half hour 2 years ago, is that a rhetorical question or are you suggesting that we should perhaps?"

Harkins stated, "I'm not suggesting you should. I'm just saying this is an enlightening moment for me. I spent 50 years in public service. I never heard, and I think you heard from your consultant, that in his multiple years in this business only a few projects like this he's seen. So, I'm hoping that someone answers that question because I have thought, for half a century, that what you did was irresponsible."

Farmer stated, "And what do you think now?"

Harkins stated, "I still do."

Amyx stated, "Warren would you like to answer that question please."

Hudson stated, "I hope I'm not suggesting that the City of Lawrence go into no bid contracts from here on out. But, in this case, you ended up with a pretty decent deal. I mean, that's the luck of the draw, honestly. I wouldn't suggest doing that on the path forward, honestly. Why this came out to be so inexpensive, at the end of the day, I think there are several factors involved. You had the city enter into an agreement with some entities that were already planning on building something, whether the city was involved or not. So, I think the KU Endowment and Thomas Fritzel had already planned to embark on building the track facilities and the stadium. The question is whether or not the city was going to be involved in, order to share or partake in, the infrastructure costs and have the rec center there, or not have a rec center, or have it somewhere else. In this case I just think it worked out for you."

Farmer stated, "But, you did say that your assessment is that the value that we paid was \$1.8 million under what we would have on the 70% hard costs if we would have bid the project."

Hudson stated, "Based upon projects that you've had, in and around this area, in the last few years, yes, if the costs were to hold."

Amyx stated, "Joe, in answer to your question about no bid process and to be very careful here. We look at this particular project, and the numbers that Warren is bringing forward, depending on where you are on this issue, there's going to be some people agree some people that are going to disagree. One of the things I look at is I compare the process that we've gone through, and in this particular case it's compared to the Waste Water Facility, and the process that we've just come through with the bidding process there and how easy all of that seemed to go through. The prices that we've got, I'm just talking about the process. The process, very good, handled by our staff, all the folks it went through. But, we did have a very good process that we follow and I don't think that we heard a whole lot about that process. So, as we look at the bid process versus this one, there is question in the community about the bidding versus no bidding or as an economic development deal as was put together here. I just want everybody to understand commissions are going to make decisions on where they are going to invest public monies in the future. I can't speak to commissions in the future, I can speak for this commission from time to time, but in this particular case a decision was made in the past that this was the way we would go. Greg, in answer to your questions earlier about those estimates of cost, I remember, and you guys can correct me, I seem to remember one time an infrastructure cost that was like \$8 million, around \$8 million or \$9 million on an estimate of infrastructure costs at Rock Chalk Park."

Corliss stated, "It moved around a lot. Remember we had a project that was \$25 million."

Amyx stated, "That's right. We were offered to have it built at \$15 million."

Dever stated, "We added tennis courts, trails, and thickness of concrete. There were a lot of alterations that occurred between those fluctuations. Yes, you're right, they moved all over the board. As did our wishes as to what this rec center wanted to be based on public input."

Amyx stated, "Absolutely. But, in answer to Greg's question about where it started and where it ended up. There were all kinds of figures that were floating around on this deal and all kinds of estimates were out there. We need to remember all of that. Finally, as it was negotiated, one of the reasons I bring up the fact that it was a cost plus contract, Bob I remember you negotiating the management fee. It started out at like 5% and it was negotiated down to 2 ½%."

Schumm stated, "I don't know if it was 5 but it was reduced. We didn't do a lot of hard core negotiating to get it to where we felt comfortable with it."

Amyx stated, "One of the things I want to say is there were estimates that were given in the project. Whether the building was going to be \$18-\$20 million, whether the infrastructure was going to be \$8 million, finally the decision was made that we would bid the building. Those bids did come in and we did have the cap amount set. That's where we are."

Schumm stated, "First of all, that was not a rushed job by any means. We started out, if you recall, next to Wal-Mart and at that site looking at building 3, 4 or 5 courts and different cost scenarios. And, then, we decided that we wanted to have a bigger facility that has more activity available. So, we looked around for land and we ended up west of K10 and that particular site, through negotiation, was smaller site, would not have had, I can't remember if it would have accommodated tennis courts."

Corliss stated, "I don't believe we talked about tennis courts."

Schumm stated, "Well, anyway, that site would have required us to pay for 100 percent of the infrastructure to not only service our building but all the rest of the platted lots in that subdivision. We all thought, at the end, that was not a good deal and, at the same time, KU

Endowment found the piece of property we're on today and said come look at it. We did and said this is a lot better site. We've got room for the tennis courts. We own the land behind it. We can do something with a nature trail or running trail and that's how it all moved. The progression of time, you're way off on a rush job. That had to be at least a year and a half from when we first heard from the advisory board. We had dozens of public meetings and people showing up. That was truly a citizen initiative. That was a petition of the local government to put in some facility for them that they didn't have, their kids, themselves. The average age out there now is 40. That means there are a lot of people who are using that who are bettering themselves and keeping themselves well. So, you've got a lot of kids, more league play, everything. That was what we heard when we were making a decision whether to move ahead and what size it was going to be. 80,000 people visited that site in January. 60,000 visited it through the 3rd week in February. Those people were right. We answered what they asked us to do and I'm very, very proud of the fact that we listened, and we listened to the staff, and we listened to our advisory board, and we ended up with a premier project. I'm also extraordinarily happy with the audit reports tonight. I've said, all along, that the audit's going to show that we got what we paid for. We got installation of all the different products that we asked for and that the city got fair market value. I think that's even a lighter statement than what the auditor has delivered tonight. We got a much better dealer than I ever thought. If it's \$1.8 million less than if it would have been bid, that's great. That's wonderful. I've lived through this whole entire project from the beginning. I'm absolutely certain, tonight, that it is honorable in spades. It's absolutely been verified tonight, to the public, that it's a good deal. Joe, I am not going to no-bid another project as long as I live. I am going to bid every project from here on out. The problem with this was that the public didn't understand it, didn't feel comfortable with it, and it lacked clarity. Because of that, we asked this gentleman to audit it and come back and let us know if we got a good deal or not and that's what happened."

Amyx stated, "We are still in public."

Jim Budde stated, "I'm almost at the sport complex, or at the rec center, about every day and Bob what you said about taking care of ourselves and all my fellow friends that are out there it's the same way. But I would like to talk a little bit about the process because I was confused about it, probably listened to too much gossip that was going on, and it was a very complex process. If any around here thinks it is easy go to the City's website and look through the development agreement that is 98 pages long. I spent some time with that. Then I looked at all the reports that were being put in by the engineers, and I looked at the spreadsheets that were being used, and I didn't know to what extent the inspectors were working out there but I'd heard it was pretty extensive and I heard that again tonight. If I take a look at the history of what had gone on, I was in those original meetings that were going on, and then it happened to Schwada, and the other options that you were looking around, I'll tell you that was pretty fast moving. And, I'd say this, when I heard your comments about the train was already moving, if you wouldn't have been on top of it we may not have had this center out there. So, I think you acted responsibly. I think when the community was disgruntled, some of them anyway, not the people that are out at the rec center, I guarantee you that, you acted very responsibly to have the audit. I hope this puts an end to it."

Carol Klinknett stated, "I can hear in your voices how relieved you are at how this audit came out and I hope you never do this again, going out without a bid. And, it may have been a good deal, and it's true that the public loves the facility and is using it, which is also good, but right after it was announced in the paper that the final payment was going to be made, this was before the audit was called, I believe, it came out that the City needed a new police department. That was a shocking slap in the face to the public because if you needed a police department that bad, why are you building a sport's facility? That's what bothers me. In the last year, 3 people have been killed by people with mental illness in this town. We need a mental health facility and, according to everybody in the know, a new police station. Although the public may have voted no on the police decision because they're afraid of the police, which I think is a

possibility because of the national news and what's going on in the world, but I'm just saying sports are nice, and it may be true that everybody if they exercise they live longer and is in better shape, but there are people in this town, and the police are one of them, they want a new facility and the mentally ill need a facility. So, I just wonder what your priorities are, as a private voter."

Monty Soukup stated, "RCP is pleased that the audit performed by McDonald & Associates confirmed our position that the infrastructure improvements met or exceeded specifications established in the development agreement and that the costs incurred by Bliss II in constructing and delivering infrastructure improvements were compliant with the terms and conditions of the development agreement. Of the 10 audit findings and recommendations made by McDonald & Associates, not a single one pointed to the none performance of RCP or Bliss II with regard to their obligations defined in the development agreement. The City has been utilizing the project for nearly 6 months. RCP LLC and Bliss II have performed their contractual obligations relative to the development agreement and willingly submitted to a 3rd party audit which they were not contractually obligated to oblige. Bliss II is continuing to be damaged by the delay in the payment of the last infrastructure payment by the fact that they have outstanding loan balances that they are still paying interest on. Accordingly, RCP requests the City Commission place this matter on the agenda and approve paying the balance due at the earliest possible opportunity that this commission has. Thank you."

Amyx stated, "Joe did you have another question? If you do, you need to come to the microphone."

Joe Harkins stated, "I don't want to be a Mr. Buzz Kill on this thing tonight but I'm not unaware of what day it is. Bob, I've got to respond to one thing you said. I attended several of those public meetings and the word for them, my word for them, is dog and pony show. There was a whole lot more talking than there was listening. It was a project being presented that had already been designed. We didn't have an opportunity to evaluate different options and

recommend to you what we thought, as citizens, were the best projects to be pursued. This deal was, basically, in my opinion, a done deal before it ever got in front of the public.”

Amyx stated, “Jim, did you have another question?”

Jim Budde stated, “I need to start paying attention to my notes. There’s one last item that I wanted to speak to and that’s the amount of money that is being brought into the community out there. I talked to some people in McDonald’s. They’d brought their team in. I asked them where they’d come from. They said they came from Great Bend, the girls played basketball last night, they stayed at a motel, they’re eating here and going to be here all day long, and we may spend the night. You also noticed in the paper a fellow wrote down that somebody had bought a car from him. I hear a lot of business is being picked up out there at 6th & Wakarusa and I know one of the restaurants out there is talking about how much business is being picked up. I understand you’re doing some kind of a study on what that impact is but it is generating money for the community.”

Amyx asked if there is any other public comment.

Greg Robinson stated, “Thank you for the extra time Mayor. The only thing I would bring out is that we just heard a comment that they were compliant and completed everything in accordance with this agreement. However, section 11.02 it indicates that Bliss Sports II will provide these documents and we’ve heard our auditor stand up here tonight, it’s on tape, he had to develop this from scratch. So, therefore they were not compliant in having the records readily available to turn over to the city. I understand that this commission is probably going to put it on an agenda, and make this payment, but I would ask this commission to subtract the audit costs because those documents were not readily available and our auditor had to develop everything from scratch. I would ask that you take the cost of the audit out of the payment. Thank you.”

Amyx stated, “Any other comment of anyone who hasn’t spoken this evening?”

Dever stated, “Eight years, I’ll be done in a month, and eight years ago when I got on the commission I had people knocking on my door when I was running asking me if we can get a

rec center in this community and telling me how important it was. And, eight years later, we're still talking about it. Fortunately, the commission did something about it. I am happy to hear that people were in a hurry, but if you're in this job and you work for the City, there's been people talking about a rec center or at least 4 courts in this community for probably 9. So, I'm just going to say I like to do things fast in my business and in my life. I like to try to get things done and move on. I think this was done with appropriate amount of consideration and time. I believe the public has finally seen how there \$11.5 million was spent. I believe the \$10.5 million we spent on the rec center was an incredible value. I'm shocked at how many adjectives were used by our auditor tonight. Most of the time when I speak to auditors they don't use very many adjectives. They use numbers and facts. I will say this much, I'm sorry that we, that this process looked inappropriate, and veiled, and non-transparent. I would never involve myself in a contract of this nature again but I believe, as some people pointed out, that this was a special set of circumstances and that, as the auditor pointed out, the train was rolling down the tracks, and we jumped on. We didn't jump on because we weren't thinking about it for 6 years because we were. We jumped on because we saw an opportunity for this community to have something that is 10 times greater than we could have done on our own. Whether or not that's worth the political hassle that all of us had received, whether we've lost your faith, it's discouraging to somebody who has put a lot of time into this. It's sad to be doubted, over and over again, after we've paid somebody who knows nothing about this business to tell us that we got a good deal and there is still people arguing about it. It's really frustrating. So, I'm going to say this much. There was no hurry here. We spent you money wisely and I feel like we did the best job possible."

Riordan stated, "There was an article in the paper today that I think was very important, it was an editorial, and it talked about the Constitution. It talked about what we are, and what we are is a republic. What we do is we vote for people that we trust. We vote for people to make decisions for us. And, there are many times, and I can think of the times in the past that

we put things to vote that we didn't have to, as a City, and the republic has to deal with our concept of government. So, if somebody says, everything has to be bid, and then we ought to scrap our republic which I don't think we should do. I was not on, I was a private citizen, when this was all designed and I had faith in the 5 people that were up here. I knew each one personally. I still know each one personally. I had faith in them but many citizens, because of the unusual nature of this particular concept with what we did as a City, by elected officials from a republic concept, we built a structure that is universally loved. I've walked and visited 600 houses and I've talked with hundreds and hundreds of people and you know what? I didn't find one person that said that this was not a great structure. I did have somebody complain about lack of parking, and this parking was made much bigger because we combined with the university. So, when I look at the concepts that we have here, it is based on trust and there are a lot of people who don't have trust because of this particular project and I hope the things that have occurred tonight will bring them back. I hope they remember, and this will take a minute, that based on the audit work, M&A determined that the construction work delivered met or exceeded the established specifications and the cost for complying with the terms and conditions found in the development agreement. The further go on to say information requested in the audit was available, was available, and provided it in a timely manner. The City should consider paying an amount up to the total described in the development agreement plus additional charges. That is, the last \$1 million withheld pending the audit results. Although, there was no formal job costs the backup provided was sufficient to support costs in excess of the development agreement. It goes on to say, evidence was sufficient to indicate work in these areas was delivered. It was delivered. In addition, even removal of these expenses from the project costs would not affect the remaining amounts owed on the project. In the future steps should be taken to improve transparency through specific audit language to allow audits and to require costs on any projects. Any time you do something new, you're going to make some errors. Not out of commission but out of omission and you learn from that. Every day I learn

from projects I do on my house that I'm involved with that I wish I would have done it different. I don't think anybody has had an exact thing that they have done that they said I would have done that the same way the first time you do it. If you do, you didn't analyze it very well and I think this has been analyzed exceptionally well. Remember some of the things that were said tonight. The costs have been established honestly. The City has performed more due diligence on this project than I have ever seen before. The kind of diligence is hard to find. You were a good steward of the monies. They did a very good job of delineating costs between the projects. This is from a forensic auditor. You got a very good deal on this project. I've seen smaller projects costing a lot more. I have seen less oversight on federal highway construction. Less than 3% waste is unheard of. You have had so much engineering oversight it was the same as an as-built it was just not stamped by the engineer. When we look at this, I would say that the faith that I had in the 5 people that were sitting here before has been verified. This is what we are, we're a republic and what we want to do is place our trust in the commissioner's that are here because they are elected to make decisions that are hard decisions. This was a very hard decision to make. It's almost as hard as the decision to take the difficulties that we have had as a city commission in the last 2 years but I hope the City that we can say, this is the point, this is the time that we can start to build trust again."

Farmer stated, "This has been one of the most frustrating times in my entire life. I'm not a quitter but there have been nights when I've left here and morning's after I've read the newspaper where I've wanted to throw in the towel and, frankly, get as far away from Lawrence, Kansas as I possibly could. The things that people have said when they've called me, when they've shown up at my house, when they send me emails, have been in their minds justified but extremely, blatantly untrue attacks on, and I'm sure we've all experienced this, our integrity and our character, our loyalties being paid off. People sat up here and, what's the word they used, graft and I'm having a real hard time maintaining my own composure, especially after watching 2 men who that I greatly respect nearly lose it. But, the reality is this work is so damn

hard and sometimes it means that we make good decisions and sometimes it means we make really bone headed ones. The fact that we seem to make a good one that was verified by an independent auditor, it doesn't mean that every decision we've ever made, or will make, has been good. This project has been, I can't even imagine you guys that have been working on it for as long as you have and Terry we came in midway through. Just the constant barrage of criticism and, I've lost friends, I've even lost several people I would have considered to be in my extended family because of supporting this project and just because I've done what I thought was right. And, tonight's outcome doesn't mean that what I did was right, or what we did was right. Tonight's outcome merely means we have to get to a place where the incompetence the public feels about our positions and decisions we make, Terry I agree with you, we have to come up with some sort of a way to build trust with the community again. I'm telling you guys, this has been unbelievable to have to experience and have to go through. I will say that I think there are a lot of things that we need to make sure that, maybe after, maybe when we put this on the agenda to pay the final bill that we can have conversations about the recommendations that Warren made. And, I also think, and I've talked to Dave and staff about this, about going through a very rigorous exercise as City staff to talk about what was done well, what needed to be improved, what we could have done better. I think we need to do a better job as a community of that, in general; being very open and having that process be very public. I will say that there is a lot of fault in our ability to be pro-active in getting on the other side of things that were reported. I think the newspaper stands to have a lot of the fault, just as much as we do, for almost some sort of personal vendetta they wanted to take our on people for whatever reason. And, that no matter how good this project seemed to be, and you know, I would have people show up at my office and say, I read this, I saw this, I heard this, and after a conversation of a few minutes I think that we came to a pretty good mutual understanding but the explanations that were offered really never seemed to be enough because, regardless of our explanations, we weren't seen as people that could be trusted. To those people tonight, I

want to tell you, first and foremost, that I'm sorry that we did not do enough to earn your trust and to those of you in the community that are still doubting, and skeptical, I want to say that I hear you, and I understand. Mr. Harkins, I have a great amount of respect for you and what you have done for the public in your 50 years of service. I don't want to do anything that would disappoint you as an elected official for the next 2 years, but I know I'm probably going to anyway, but I want you to know that I will be more thoughtful and intentional and that I will do everything I can to listen, but, it's a 2 way street and we've been very assuming in this and, in my opinion, the fault on our commission is, and I've heard it said, you guys know how I feel and what I think about each of you, but when we make comments like the public doesn't understand, or we just haven't given the public enough information to digest, I think that that's on us. I think that, I'm not being critical of you, I'm taking this on myself here, but I think when we make comments like that and I've made them plenty of times, we under mind the intelligence of one of the most intelligent communities in the Country. What I'm saying is there's a lot of things that I wish I would have done differently, but I feel like tonight we cross the finish line and I feel Carol, you were right, I feel like a 10 million pound weight has been lifted off my shoulders. I can't imagine how these two feel fighting this battle for 8 years. Let me just say a few things, Dave and staff thanks for just the incredible job and Chuck, Dave, Ernie and all you guys, I'm sorry the public didn't believe you either and I'm sorry that we didn't do more to advocate and tell the story about how much you guys were doing in order to make this project fly. Mike and Bob, I want to say thanks for your leadership in getting this once in a lifetime project off the ground. I will never do another no-bid contract. I didn't do this one. This was done before I got on here, but just for the record, I think you probably got them just for the record. I just hope that we can move forward as a community and I hope that we can all begin again building trust. I want to close with something that Teddy Roosevelt said, he said the government is us. We are the government you and I. If we're ever going to be in a place where we build and I'm talking you and me and everybody. I'm talking the Commission, the public, City staff, every neighborhood

in every part of town, 6 news, the newspaper, we are all the government and if we're ever going to move forward, we have to be concerned with one thing and one thing alone and that is working together for the common good, for the health safety and welfare of people in Lawrence and we may have differences about how we get there, but ultimately, at the end of the day, we have to understand that you don't have to see eye to eye to walk hand to hand."

Schumm said, this was really difficult this whole project, it was not easy. I took it on though because I felt like it was a real need in that the community as I said before, petitioned us. I knew from past experience during 25 years ago when we were in there fighting for downtown to keep it from being annihilated by a corn field mall, how ugly and how difficult it would get, but I had that prior experience. I didn't think it would get quite as bad as what it did. I'm of the opinion a lot like Terry, who just indicated to you, that when you go to the poles, don't you want leaders and leadership? Is that not what you're looking for or you looking to elect critics? It's either A or B and I always wanted to be progressive and do things. I think in the last 4 years we've accomplished a tremendous amount of product, service and programs. I'm very proud of that, I really am, the whole smear. This bordered on personnel assassination, personnel character assassination in that people continually challenged us in terms of our integrity and who the developers were and this project and that project. That's what really hurt. I've been pounding on a lot of doors lately and I ran into a women yesterday that said, she was not happy, in fact she was very unhappy about this Rock Chalk Park and she even challenged me as to what kind of parent I was and how I raised my children and if that's the way I'm acting in public life, then my children had not been very well raised as intended to as a parent. That stuck me right here. This group and the last group hung together on this stuff and they went through the same miserable things that I've gone through. I think that's what leadership is about. If you're going to get something done, you're going to have to pay some consequences for it. Everybody hung in on this thing and I'm very happy about that, the last Commission, this Commission and we've accomplished what we've set out to do. Tonight is really nice to hear

that the outcome is a good value for the citizens. I want to close with one thought and that's 18,000 and that's how many people have joined to use that facility, 18,000, that's roughly 20% of the population in 6 months from October to now, not even 6 months. That if phenomenal, it is unbelievably phenomenal and so tonight, as other people have said I hope this puts it behind us. I really do. I'm sick and tired of getting trashed. I'm getting sick and tired of every time I open up the newspaper that it's got this situation or that situation. It makes life hard, but I think tonight, probably should be the end of it. We should just declare it's the end, it's over, go and enjoy the place, have fun, and be well."

Amyx stated, "I've had the opportunity to serve on the last several commissions that have been involved with this project and it's been no secret as to my voting record on this. In December of 2012, I did an interview and I still stand behind it today as I did then. I still believe that the responsibility that we had at the time, was to consider a police building first and I still believe that. A majority of the Commission thought that the recreation facility should have come first and that's fine. I respect the opinion. One of the things that we had talked about is the process and whether or not it should have all been bid. I still believed that it should but here again the majority of Commission decided that we should go another way. One of the things that I have say to the 4 men that I serve with and the people that I've served with in the past Commissions previous Commissions that worked on this is that when you're on the end of the 4-1 vote, there's times when I had the opportunity to serve under Mayor Dever as his Vice Mayor and there are times those eyes just pierced me, but I will say one thing, he still treated me with respect that I was due as Commissioner or at that time as Vice Mayor and I want to thank you for that. Even though that we had a difference of opinion, we still had the respect the same with Commission Schumm and the other Commissioners that I serve with. They respected my opinion even though I have a difference of opinion on the way that we went on this particular project and I will probably continue to do so, but I do want you to know, I appreciate the fact that each one of you, when I ask for an audit to be done, that we came

together as a Commission to get resolution to the cost of this project and that's what McDonald and Associates has attempted to do and Warren we will take you up on all of your notes as being our property and I think that we should. As been stated by the Commission members tonight, this is a pretty tough job and at the same time that I know what former Mayors have gone through on this project, there are times when people say, 'What could you be thinking with the number of people that are going through that place? You know we've got a very popular facility. I will admit that. My goal here has always been to look at did we pay for exactly what we had signed up to pay for? Did we only pay for what was on the property that we had? Did we go through our development agreement? Did we pay for cost-plus? There are a lot of questions that will always be around, but where we are tonight, we've gotten a lot of good information and it's probably time to move on. David, I do want to thank you for always listening to my side also, to all the staff. Gentleman I appreciate you all again, giving me the time to express the opinion that I had, but I do have a question at this point. Do we believe that this was a cost-plus agreement that we had and does the information that's been provide answer those questions to proceed to place that payment on the first available agenda that we have full Commission and I would ask that question of this Commission?"

Riordan stated, "Yes."

Schumm stated, "I didn't understand the whole question."

Amyx stated, "The questions is do we believe that this is a cost plus development agreement and whether or not the information that's been provided tonight satisfies all the questions that we have and the direction would be to place the final payment on the next agenda where we're all here?"

Schumm stated, "Absolutely. Do we need a motion?"

Amyx stated, "So here is going to be the motion. At this point, the item that is before us tonight is to receive the McDonald and Associated audit on Rock Chalk Park infrastructure.

We'll do that and I've got the direction that I need to place that item on the agenda at the next regular meeting."

Moved by Schumm, seconded by Riordan, to direct staff to receive the McDonald and Associates audit of the Rock Chalk Park project and place final payment on the agenda at the next City Commission meeting. Motion carried unanimously.

Farmer stated, "Those work papers, are we going to get those tonight Warren? Can we get them scanned and posted tomorrow?"

Corliss stated, "As soon as we get them. It would probably be best for him to get them and work with Megan and whoever else to get it posted."

E. PUBLIC COMMENT:

Carol Klinknett stated, "I just wanted to respond to the idea that because you are City Commissioners and you were voted into office, that you should be trusted. I don't think there's any such thing as an elected office that people automatically trust and that's part of the price you pay for running for office is that people will question some of the things that you do and maybe not treat you as well as you ought to be treated, but if you look at how many people actually vote, it's not like everybody in Lawrence ran out and voted and this isn't saying anything bad about you guys, but for any particular City Commission, a small percentage of people vote. It's especially true in off years when you're just not partisan and most of the public, I don't know if they read the paper, they may be looking at the computer and their thunder struck by stuff that happens and they take it out on elected officials but it's part of the territory and I realize the things that have happened to you sound devastating and I wouldn't want them to happen to me either, but it goes with the territory, sad though that may be."

Riordan stated, "I would just like to make a quick comment that I couldn't agree more and the fact that public officials don't get trust because they're officials, they get trust because of what they do. My hope is that this is the beginning, this is the time, this is the place, this is the situation where we can begin to build that trust and I think the audit says that that's a

reasonable thought and then you base it on what happens from this point. You build trust, not by words, but by what you do. I couldn't agree with you more."

Amyx asked, "Other public comment."

Joe Harkins stated, "First of all I want to tell you that I know that local government is the toughest form of government to perform. You have no place to hide and higher levels of government, state and federal government, a whole lot of things get done and decisions made and the public never even knows about, but you don't have that luxury so I've always admired and do admire people who serve at the local level both as administrators and as elected officials. You left out one group that you should have thanked and that is the general public. This is a democracy and when I became aware of this project, it was a no-bid deal and that didn't just raise red flags, that set up players and everybody's eyebrow went up and were concerned and anxious about what you were going to do and you backed off partially and the city staff stepped up with an extraordinary level of oversight in the un-bid part and I think you should thank the citizens of Lawrence for frankly being good members of a democracy and raising some hell, even though it made you uncomfortable because I think it got you a project that you could be proud of without it being tarnished with other questions. If you don't want to thank them, I want to at least because I'm pleased that we still have a community that has people that are willing to stand up and speak the truth."

Amyx stated, "Joe we always want to thank the public on everything that we do and I think one of the things that we do is as we look at tonight's meeting with the amount of participation that there's been, not only folks coming to the podium and we appreciate any time somebody comes to the podium and wishes to speak on any item that is before us. The amount of communication that we received today, throughout any of these projects, it's always amazing to me. On the nights that I think we're going to have the calmest of meetings and the items that I see on the agenda, it's always amazing how these meetings will go on for a long time, just because of things that we have probably forgotten and the fact that the public is still in charge

and still reminds us through their participation that we may not know all the answers and that the public is extremely helpful in making sure that we're doing it right. Thank you for bringing that to our attention."

Riordan stated, "Joe, I have one word and I hear it often, amen."

Amyx stated, "Any other public comment." There was none.

F. FUTURE AGENDA ITEMS:

David Corliss, City Manager, outlined potential future agenda items.

G: COMMISSION ITEMS: None.

H: CALENDAR:

David Corliss, City Manager, reviewed calendar items

Amyx stated, "Tomorrow is primary election day. I want to remind everyone of the responsibilities that we have to get out and vote. It's extremely important in our community that we participate in the process and I hope anybody that needs a ride, call somebody. If you need help getting there, I know there are people that will stand up and do it. You can call me, I'm in the book."

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

Moved by Schumm, seconded by Riordan, to adjourn at 8:14 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON MAY 5, 2015.


Diane M. Trybom (City Clerk)